

# **Revised access arrangement decision pursuant to rule 64(4) of the National Gas Rules giving effect to the Economic Regulation Authority's proposed revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline**

Revised by reason of and pursuant to orders of the Australian Competition  
Tribunal made on 26 July 2012

5 October 2012

**Economic Regulation Authority**

WESTERN AUSTRALIA

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## Contents

<b>INTRODUCTION</b>	<b>1</b>
<b>AUTHORITY'S ACCESS ARRANGEMENT REVISIONS</b>	<b>2</b>
Legislative requirements	2
Debt Risk Premium	3
BEP Lease	10
New Tariffs	11
<b>ACCESS ARRANGEMENT INFORMATION</b>	<b>11</b>
Legislative requirements	11
<b>DECISION</b>	<b>12</b>
<b>APPENDICES</b>	<b>13</b>
Appendix 1 - Authority's amended access arrangement revisions	14
Appendix 2 – Required revisions to the access arrangement information	15

## INTRODUCTION

1. On 1 April 2010, DBNGP (WA) Transmission Pty Ltd (**DBP**) submitted to the Economic Regulatory Authority (**Authority**) its proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) for approval under the *National Gas Access (Western Australia) Act 2009* (**NGA**).
2. The Authority issued its draft decision regarding DBP's proposed access arrangement revisions on 14 March 2011. The draft decision listed 109 Required Amendments which the Authority required DBP to make to its proposed access arrangement revisions in order for those proposed access arrangement revisions to be approved by the Authority.
3. On 18 April 2011 DBP submitted to the Authority an amended version of its proposed revisions for the DBNGP access arrangement, as permitted by rule 60(1) of the National Gas Rules (**NGR**). DBP also submitted further revised versions of the access arrangement proposal on 20 May 2011, 11 August 2011 and 8 September 2011.
4. On 31 October 2011 the Authority issued its final decision regarding DBP's amended proposed access arrangement revisions dated 8 September 2011. The final decision of the Authority was to refuse to approve DBP's amended proposed access arrangement revisions. The final decision set out 73 amendments that the Authority required to be made to the revised access arrangement proposal.
5. In a notice issued by the Authority on 1 December 2011, the Authority gave notice of its intention to amend its final decision under clause 20 of Schedule 2 to the NGA. The Authority invited public submissions on its proposed amendments to its final decision, which related to the forecast of operating expenditure, extension and expansion requirements and correction of minor errors of fact.
6. On 22 December 2011, the Authority published its amended final decision (**Final Decision**) which did not approve DBP's revised access arrangement proposal. On the same date, pursuant to rule 64 of the NGR, the Authority issued its own access arrangement proposal giving effect to its Final Decision for the DBNGP (**Access Arrangement decision**).
7. On 17 January 2012 DBP applied to the Australian Competition Tribunal for leave to apply for review of the Access Arrangement decision. Leave was granted and the hearing of DBP's application took place on 16 April and 21 – 24 May 2012.
8. A number of interested parties were granted leave to intervene in DBP's application and made submissions to the Tribunal on certain issues. The intervener parties were BHP Billiton Nickel West Pty Ltd (**BHPB**), Verve Energy, Alinta Sales Pty Ltd and APT Parmelia Pty Ltd.
9. The Tribunal delivered its written reasons in the application on 26 July 2012.
10. The Tribunal ordered as follows:
  - 1) The Decision of the Economic Regulation Authority of Western Australia (the ERA) made on 22 December 2011 and titled the *Economic Regulation Authority's revised access arrangement determination for the Dampier to Bunbury Natural Gas Pipeline* be set aside and be remitted to the ERA, for the purposes of making

the said decision again, limited to giving effect to the reasons for decision of the Tribunal on:

- (a) the Debt Risk Premium, in particular to determine a value for the Debt Risk Premium using its bond-yield approach in accordance with the Tribunal's reasons; and
- (b) the correct valuation of capital expenditure in respect of the Burrup Extension Pipeline, in particular to adjust the Base Rent in accordance with clause 4.3 of the Burrup Extension Pipeline Lease to the commencement of the lease.

## AUTHORITY'S ACCESS ARRANGEMENT REVISIONS

### Legislative requirements

- 11. Section 259(1) of the NGL provides that, in an application for review before the Tribunal, the Tribunal must make a determination in respect of the application.
- 12. Pursuant to section 259(2)(b) of the NGL, the Tribunal may determine to remit a matter back to the Authority to make the decision under review again, in accordance with any direction or recommendation of the Tribunal.
- 13. The decision under review in DBP's application was the Authority's Access Arrangement decision made under rule 64 of the NGR.

### *Remitter decision*

- 14. Pursuant to rule 62(2) of the NGR, the Authority's Final Decision was to refuse to approve DBP's amended proposed access arrangement revisions.
- 15. As a consequence, in the Final Decision the Authority proposed revisions to the access arrangement for the DBNPG as required by rule 64(1) of the NGR. That is, the Authority identified in the Final Decision those parts of DBP's proposed access arrangement revisions dated 8 September 2011 which the Authority would adopt and, otherwise, the amendments to those proposed revisions that would be included within the Authority's revisions to the access arrangement for the DBNPG.
- 16. The Authority's proposed access arrangement revisions were given effect by the Access Arrangement decision.
- 17. In accordance with the Tribunal's orders and pursuant to its directions, the Authority has re-made its Access Arrangement decision by this document. The Authority's reasons set out in the Final Decision and the Access Arrangement decision are revised to the extent set out in this remitter decision.
- 18. As a result of this decision, the Authority has amended its proposed access arrangement revisions for the DBNPG.
- 19. The Authority hereby gives effect to the amended access arrangement revisions for the DBNPG which are set out in Appendix 1 to this decision.
- 20. Pursuant to 64(6) of the NGR, those access arrangement revisions will take effect on and from 19 October 2012.

## Debt Risk Premium

21. Pursuant to orders 1(a) and 2(a) of the Tribunal's Reasons in DBP's application, the Authority has reconsidered the proper application of the bond yield approach in determining the appropriate value of the debt risk premium. In doing so, the Authority has had regard to the Tribunal's criticisms of the simple averaging process adopted in the Final Decision and the submissions made by DBP and other interested parties on the averaging issue. The Authority has re-made its decision in this respect as ordered by the Tribunal.
22. The Authority's decision and its reasons for reaching that decision are set out below.
23. In its Draft Decision and in the Final Decision, the Authority set out and discussed the requirements of the National Gas Access Law (**NGL**) and NGR as regards the determination of the rate of return. The Debt Risk Premium (**DRP**) is one of the parameters used to determine the rate of return. The Authority has made its decision herein in relation to the DRP having regard to all of those requirements. The Authority is of the view that its decision meets those requirements. In particular, the Authority considers that the DRP value determined by this decision, in combination with the parameters of the WACC and Sharpe-Lintner CAPM previously determined in its Final Decision, derives a rate of return that is commensurate with prevailing conditions in the market for funds and the risks involved in providing the reference services as required by rule 87(1). The reasons for the Authority forming this view are reflected in its discussion below.

### **Submissions**

24. On 20 August 2012 the Authority invited DBP to make a submission in respect of the Authority's reconsideration of the simple averaging process, as was contemplated by the Tribunal in its reasons in DBP's application at [312]. As other parties intervened on the rate of return issues in DBP's application, in the interest of procedural fairness, the Authority also extended an invitation to interested parties to make a submission on how best to derive a value for the DRP using the Authority's bond-yield approach.
25. In response to its request for submissions, the Authority received three submissions on 17 September 2012. The submissions were received from Verve Energy, BHPB and DBP and its consultant, the AMP Capital.
26. Verve Energy submitted that it considers the Authority's approach outlined in its revised decision in respect of ATCO's Mid-West and South-West Gas Distribution System Access Arrangement (**WAGN Revised Decision**) whereby it averaged yields for a range of Australian corporate bonds according to weight given to the period to maturity and the size of the bond issue, to be an appropriate averaging methodology to apply when deriving the value for the DRP using the bond-yield approach for the revised DBNGP Access Arrangement.
27. BHPB submitted that to determine a value for the DRP using the bond-yield approach, the ERA should adopt the same approach as in its recent revised decision in respect of the WAGN Revised Decision. Specifically, in relation to the averaging approach, BHPB submits that the joint "amount issued" and "term to maturity" weighting adopted in the WAGN Revised Decision is the most appropriate method to be adopted.
28. AMP Capital submitted that it has taken into consideration the theoretical averaging approaches used by the Authority in calculating DRP and compared these to the

practical approach undertaken by some institutional fixed income investors.<sup>1</sup> DBP's submission in response to the Authority's estimate of the DRP was mainly based on AMP Capital's analysis.

29. DBP submitted that the Authority is required to not only make a determination on the rate of return for a benchmark efficient service provider (which, in DBP's opinion, may not necessarily have a credit rating of BBB+), the Authority must also take into account the revenue and pricing principles which mandate that a reference tariff is to allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which the tariff relates.<sup>2</sup>
30. In relation to the Authority's bond-yield approach, DBP submitted that it has considered the Tribunal's decision and the ATCO Revised Decision. DBP examined four scenarios, labelled A, B, C and D, using the ERA's bond sample as set out in the Final Decision. DBP noted that its calculations were based on the values for the bond samples as at 30 September 2011.<sup>3</sup>
  - the full sample of 15 bonds used in the Authority's Final Decision (being BBB-/BBB/BBB+ Australian Corporate Bonds) (Scenario A);
  - BBB- only bonds (Scenario B);
  - the full sample excluding the Mercedes-Benz Australian bond (Scenario C); and
  - scenario C including the DBNPG Finance Co Bond (Scenario D).
31. On the basis of the above four scenarios, DBP has drawn attention on the following issues:
  - a consideration of a sample including BBB- bonds only;
  - exclusion of the Mercedes-Benz Australia bond;
  - inclusion of the DBNPG Finance Co bond; and
  - an adjustment for the debt risk premium for the 5-year term to maturity.

Each of these key issues is outlined in turn below.

#### A consideration of a benchmark sample including BBB- bonds only

32. DBP argued that a sample of BBB- bonds only should be included in the bond-yield analysis. DBP submitted that doing so is an important reference point because DBP's own credit rating is BBB- which reflects the regulatory and commercial risks its business faces in providing the reference services. However, DBP also noted that the scenario of including only BBB- bonds has an obvious limitation as there are only very limited number of BBB- rated companies in the sample set. As such, DBP did not place sole reliance on this scenario.<sup>4</sup>

#### Exclusion of the Mercedes-Benz Australia bond

33. DBP submitted that, in making its remittal decision, the Authority must exclude the Mercedes-Benz Australia bond from the sample set.<sup>5</sup> DBP argued that Mercedes-Benz Australia's credit rating was BBB+ at the time the sample was set by the Authority but its DRP was not indicative of the BBB range. DBP was of the view that

<sup>1</sup> AMP Capital, 2012, AMP Capital Views around the Economic Regulation Authority's Consultation Process as it relates to Debt Risk Premium, Dampier to Bunbury Natural Gas Pipeline, 11 September 2012, p 13.

<sup>2</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 7.

<sup>3</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 6.

<sup>4</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 7.

<sup>5</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 7.

<sup>4</sup> Revised decision pursuant to rule 64(4) of the NGR giving effect to the Authority's revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline.

the Mercedes-Benz Australia bond at 30 September 2011 should have been considered as a statistical outlier by the Authority. DBP also notes that Standard and Poor's current credit rating is A- for Mercedes-Benz Australia.<sup>6</sup>

#### Inclusion of the DBNGP Finance Co bond

34. DBP also submitted that the Authority was wrong to have excluded from the available sample set the DBNGP Finance Co bond data. DBP noted that this bond was included in the benchmark sample in the Draft Decision released in March 2011, but not in the Final Decision released in November 2011.<sup>7</sup>
35. DBP submitted that it is of the view that DBP's own bond issuance is the most appropriate comparator of what is commensurate with the risks involved in providing reference services when determining the correct value for DRP for the DBNGP Access Arrangement. DBP also argued that, should the ERA not agree with this submission, it at least could not be excluded from consideration based on it being inconsistent with the concept of a benchmark efficient service provider.
36. In addition, DBP noted that there are two bonds with credit ratings of BBB- in the Authority's benchmark sample: Nexus Australia and Envestra. DBP argued that, because the Authority did not remove the Nexus Australia and Envestra bonds, there seems little reason to exclude DBNGP Finance Co bond from the benchmark sample to estimate the DRP.<sup>8</sup> As such, DBP submitted that the DBNGP Finance Co bond should be included for consideration when determining the most reasonable estimate for the DRP.
37. On the advice of AMP Capital, who considered the Authority's analysis of the joint weighted averaging methodology as adopted in the ATCO Revised Decision, DBP was of the view that, while the Authority's joint weighted averaging methodology does create a compounding effect, the methodology mathematically provides a more accurate estimate of DRP. As such, DBP submitted that the joint weighted averaging methodology is a valid method to be adopted in estimating the DRP from the Authority's bond-yield approach.<sup>9</sup>

#### Adjustment for 5-year term to maturity

38. On the basis of AMP Capital's advice, DBP considered that it is appropriate to make a further adjustment to the estimate of the DRP using the Authority's joint-weighted averaging approach. This adjustment is needed to accommodate for the difference between the maturity weighted average of the benchmark sample of the Australian corporate bonds the Authority used and the period of 5 years, applicable to the relevant access arrangement.
39. DBP submitted that the estimate by AMP Capital indicates that, on a forward looking basis, the appropriate step-up in credit spread between 4 and 5 years, using Bloomberg's estimate of BBB Composite Spreads, is about 31 basis points.<sup>10</sup> DBP submitted that this estimate is conservative in the context of the historically observed spread which indicates a spread of 34 basis points.

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<sup>6</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 7.

<sup>7</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 8.

<sup>8</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 8.

<sup>9</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 9.

<sup>10</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 10.

40. DBP submitted that the weighted average maturity of the Authority's benchmark sample is 4.92 years. As such, DBP argued that an adjustment proportional to the difference between the sample's weighted average maturity of 4.92 years and the 5-year access arrangement period should be applied.

### DBP's Conclusion

41. In conclusion, DBP used Scenario D, which is the Authority's full sample of Australian corporate bonds, but including DBNGP Finance Co bond and excluding the Mercedes-Benz Australia bond, to estimate the DRP. Using the Authority's joint-weighting approach, and DBP's own adjustment for the term of 5-years, DBP submitted that the debt risk premium is 3.277 per cent.<sup>11</sup> DBP submitted that it was of the view that the DRP of 3.27 per cent is arrived at on a reasonable basis and represents the best estimate using the Authority's bond-yield approach.<sup>12</sup>

### Authority's reasons

42. The Authority has set out below its considerations in respect of each of the four key issues raised by DBP and its consultant, AMP Capital.
- a consideration of a sample including BBB- bonds only;
  - exclusion of the Mercedes-Benz Australia bond;
  - inclusion of the DBNGP Finance Co bond; and
  - an adjustment for the debt risk premium for the 5-year term to maturity.

### A consideration of a benchmark sample including BBB- bonds only

43. The Authority notes that the Tribunal's observations on the estimate of the debt risk premium were similar in both its decisions on the appeal applications made by ATCO and DBP. In these decisions, the Tribunal indicated that Scenario 2 (a sample of 12 bonds that includes only BBB and BBB+ rated bonds) appeared to offer the best estimate of the debt risk premium.
44. The Authority is of the view that Australian economic regulators have consistently adopted the credit rating of BBB+ for the benchmark network service provider in their regulatory decisions. However, current regulatory practice in Australia is to use firms with credit ratings of BBB and BBB+ when estimating the debt risk premium based on a benchmark credit rating of BBB+. The main rationale for this practice is to ensure that there are sufficient Australian corporate bonds in the sample to estimate the debt risk premium. It is understood that Bloomberg's estimate of the Australian fair value curve for 7-year BBB credit rating also includes bonds with the credit rating of BBB+ in its underlying sample.
45. The Authority notes that DBP proposed that the Authority consider a scenario in which a benchmark sample to be used to estimate the DRP includes Australian corporate bonds with a credit rating of BBB- only. However, the Authority is of the view that this sample size of three bonds in total is too small to constitute a statistically reliable sample.

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<sup>11</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 10.

<sup>12</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, p 10.

46. In conclusion, the Authority is of the view that the benchmark sample should include Australian corporate bonds with the credit rating of BBB/BBB+. This observation is consistent with evidence available regarding the credit rating for Australian regulated businesses; with Australian current practice; and with recent Tribunal observations. On this basis, the Authority has adopted Scenario 2 to estimate the debt risk premium in this revised Final Decision.

#### Exclusion of the Mercedes-Benz Australia bond

47. The Authority is of the view that there is no basis to exclude the Mercedes-Benz Australia bond from the benchmark sample as proposed by DBP and its consultant. The Authority is not convinced that because the observed yield of this bond is relatively lower than those of other bonds in the benchmark sample, this bond should be considered a statistical outlier to be excluded from the sample.
48. The Authority considers that, as long as Australian corporate bonds satisfy all selection criteria as set out in the Authority's discussion paper on *Measuring the Debt Risk Premium: A Bond-yield approach* released in December 2010, they should be included in the benchmark sample to derive the DRP. *Ad hoc* exclusion or inclusion of bonds into the benchmark sample will compromise the integrity of the Authority's approach.

#### An Inclusion of the DBNPG Finance Co bond

49. As at 30 September 2011, the Authority notes that there are 66 Australian corporate bonds which satisfy all selection criteria to be included in the benchmark sample. However, for the 20 day-trading averaging period in September 2011, which covers the period from 5 to 30 September 2011 inclusive, only 15 bonds with data on their observed yields were reported from Bloomberg. As such, the Authority decided that the benchmark sample of Australian corporate bonds as at 30 September 2011 only included these 15 bonds. This decision is consistent with the principles when the bond-yield approach was developed in December 2010 which states that:

"The Authority notes that bonds issued by individual companies change over time, as does the credit rating of the company. As a result, the sample of the Australian corporate bonds will be frequently updated as soon as any new bond is issued which satisfies the criteria set out above. In addition, it is noted that only bonds in the sample which are currently traded (i.e. data on fair yields available from Bloomberg) in the averaging period are included in the sample of bonds used to derive the debt risk premium."<sup>13</sup>

50. The Authority notes that, among 66 Australian corporate bonds which satisfy all selection criteria to be included in the benchmark sample, 4 bonds were labelled as "DBNPG Finance Co Ltd", and presumably, these 4 bonds were issued by DBP. However, none of these 4 bonds had data available from Bloomberg for the averaging period in September 2011. As such, it was not viable for the Authority to consider these bonds in the benchmark sample.
51. In conclusion, the Authority does not agree with DBP's and AMP Capital's proposal that this particular bond should be included in the benchmark sample.

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<sup>13</sup> Economic Regulation Authority, 2010, *Estimating the Debt Risk Premium: A Bond-Yield Approach*, 1 December 2010, page 11.

### An Adjustment of the joint-weighted averaging DRP for 5-year term to maturity

52. The Authority agrees with DBP's observation that the simple average term to maturity of the benchmark sample of 12 Australian corporate bonds is less than 5 years. However, the Authority does not agree that the debt risk premium derived from this benchmark sample of bonds should be adjusted to accommodate the difference between this simple average term to maturity of 4.53 years and the regulatory control period of 5 years.
53. The Authority notes that DBP has made an adjustment of approximately 0.048 per cent, which is 4.8 basis points being the difference between the DRP of 3.277 per cent (using the Authority's joint weighted average adjusted for a 5 year term) and 3.229 per cent (using the Authority's joint weighted average only).<sup>14</sup> The Authority is of the view that there is no convincing evidence to support such adjustments.
54. The Authority considers that longer term bonds have been compensated via the compounding effect of taking two characteristics of the bonds into consideration: term to maturity and amount at issuance. Further adjustment may result in double counting or over-weighting of some bonds in the sample. Over-weighting was one of the Tribunal's main criticisms of the Authority's simple average approach to the four scenarios in estimating the DRP in the Final Decision on DBNPG's revised access arrangement.
55. In conclusion, the Authority does not agree with DBP's and AMP Capital's proposal that the DRP estimated using the joint weighted averaging approach needs to be adjusted to match the 5-year term of the regulatory control period of the access arrangement.

### Estimating the Debt Risk Premium under the Bond-yield approach using the joint weighted averaging method

56. In its decision, the Tribunal accepted the Authority's "term to maturity" weighted average to determining the debt risk premium. As such, the Authority has maintained this approach in this revised Final Decision.
57. In addition, as in the Tribunal's decision on ATCO's issues, the Tribunal has requested more detailed discussions of the "amount-issued" weighted average. Given that both these characteristics might be regarded as important in the market, the Authority considers that there is merit to assigning greater weight to bonds with large issuance in comparison with other bonds in the benchmark sample. However, the Authority is of the view that more work needs to be undertaken to better reflect both characteristics in a joint weighting system to determining the debt risk premium, as recommended by the Tribunal. In the absence of further evidence, and for the purpose of this revised Final Decision, consistent with the Tribunal's observations, the Authority considers it is appropriate to apply a greater weight to bonds with larger issuance and longer terms to maturity.
58. As a consequence, the Authority considers that it is appropriate to use the *multiplicative rule* to account for this compounding effect.
59. The multiplicative rule will be applied to two characteristics of the bonds simultaneously: (i) the term to maturity; and (ii) the amount at issuance. In

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<sup>14</sup> DBP, 2012, Best Estimate of DRP Using the Bond-Yield Approach, 17 September 2012, paragraph 4.36 on page 10.

determining the weight for each bond in the benchmark sample, the multiplicative contribution of these two characteristics for any particular bond is calculated (i.e. “term to maturity” is multiplied with “the amount at issuance”). The weight of any particular bond is a ratio between its multiplicative contribution and the total multiplicative contributions of all bonds in the benchmark sample.

**Table 1. Debt Risk Premiums using a joint weighted averaging approach as at 30 September 2011, (per cent)**

No.	Australian Corporate Bonds in the benchmark sample	S&P Credit Rating as at 30 Sep 2011	Amount at Issuance (A\$'000)	Weight (Issuance)	Maturity	Terms to Maturity as at 30 Sep 2011 (years)	Weight (Term)	Combined Contribution (A\$'000-Year)	Combined Weight	Bond's own DRP	Contributed DRP
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1	APT PIPELINES LTD	BBB	300,000	0.136	22/07/2020	8.81	0.162	2,643,333	0.257	2.928	0.752
2	DBCT FINANCE PTY LTD	BBB+	150,000	0.068	9/06/2016	4.69	0.086	703,750	0.068	4.326	0.296
3	MERCEDES-BENZ AUSTRALIA	BBB+	125,000	0.057	11/04/2014	2.53	0.047	316,319	0.031	1.347	0.041
4	DEXUS FINANCE PTY LTD	BBB+	180,000	0.081	21/04/2017	5.56	0.102	1,000,500	0.097	2.940	0.286
5	GOODMAN AUSTRALIA INDUST	BBB	175,000	0.079	19/05/2016	4.64	0.085	811,319	0.079	3.538	0.279
6	LEIGHTON FINANCE LTD	BBB	280,000	0.127	28/07/2014	2.83	0.052	791,778	0.077	3.982	0.306
7	LEASEPLAN AUSTRALIA LTD	BBB+	200,000	0.090	24/02/2014	2.40	0.044	480,000	0.047	3.027	0.141
8	SYDNEY AIRPORT FINANCE	BBB	175,000	0.079	6/07/2015	3.77	0.069	659,167	0.064	2.823	0.181
9	SYDNEY AIRPORT FINANCE	BBB	100,000	0.045	6/07/2018	6.77	0.124	676,667	0.066	3.119	0.205
10	MIRVAC GROUP FUNDING LTD	BBB	200,000	0.090	15/03/2015	3.46	0.064	691,667	0.067	2.971	0.200
11	MIRVAC GROUP FINANCE LTD	BBB	225,000	0.102	16/09/2016	4.96	0.091	1,116,250	0.108	3.336	0.362
12	SANTOS FINANCE LIMITED	BBB+	100,000	0.045	23/09/2015	3.98	0.073	398,056	0.039	2.410	0.093
<b>TOTAL</b>			<b>2,210,000</b>	<b>1.000</b>		<b>54.389</b>	<b>1.000</b>	<b>10,288,806</b>	<b>1.000</b>		<b>3.143</b>

Source: The Economic Regulation Authority’s analysis

60. A combined weight, which takes into account both characteristics of the bonds including the “terms to maturity” and the “amount at issuance”, is calculated as follows:
  - First, the product of a “term to maturity” (column 7) and an “amount at issuance” (column 4), to be called “the combined contribution” (column 9), is calculated for each bond in the sample.
  - Second, the sum of all these contributions is derived, to be called “the total”.
  - Third, the weight assigned to each bond in the benchmark sample of the Australian corporate bonds used in the bond-yield approach is simply the ratio between its own contribution and the sample’s total, to be called “the combined weight”.
  - Fourth, the combined weight for each bond (column 10) is multiplied by its associated debt risk premium (column 11) to derive the debt risk premium for each bond contributed to the sample (column 12), to be called “the bond’s contributed DRP”
  - Fifth, the sum of the bond’s contributed debt risk premiums is the estimate of the debt risk premium for the sample when two characteristics of bonds are considered: (i) the term to maturity; and (ii) the amount at issuance.
61. There are some important implications arising from the Authority’s joint weighted averaging approach which takes into account both bond characteristics simultaneously, the term to maturity and the amount at issuance, to estimating the DRP using the Bond yield approach.

62. First, for example, the APT pipelines bond contributes 0.136 (or 13.6 per cent) to the weighted average when the issuance is considered solely. When the term to maturity is considered on its own, this bond contributes 0.162 (or 16.2 per cent). However, when both characteristics of this bond, namely the issuance and the term to maturity, are considered jointly, this bond contributes 0.257 (or 25.7 per cent) in the sample. The compounding effect is more significant for this bond in the sample because both characteristics are assigned relatively higher weights in comparison with other bonds in the sample.
63. Second, Dexus Finance bond (No. 4 of the sample) and Sydney Airport Finance bond (No. 9 of the sample) are considered for illustrative purposes. When the issuance is considered, Sydney Airport Finance bond is less important than Dexus Finance bond (4.5 per cent versus 8.1 per cent). In contrast, when the term to maturity is considered, Sydney Airport Finance bond is more important than Dexus Finance bond (12.4 per cent versus 10.7 per cent). However, when the joint effect of the two characteristics is considered, Sydney Airport Finance bond is less important than Dexus Finance bond (6.6 per cent versus 9.7 per cent) in the benchmark sample. In this case, it is clear that the issuance effect dominates the term to maturity effect from Dexus Finance bond. The reverse effect (i.e. the term to maturity effect is dominant when compared to the issuance effect) can be found when comparing Goodman Australia bond (No. 5 of the sample) and Mirvac Group Funding bond (No. 10 of the sample).

### ***Authority's decision***

64. In conclusion, the Authority is of the view that the debt risk premium of 3.143 per cent for the benchmark sample of the Australian corporate bonds derived using the bond-yield approach is appropriate for the 20 trading day average ending on 30 September 2011. The Authority will continue to further develop its approach to determining the debt risk premium in the course of future regulatory decisions.
65. The access arrangement revisions in Appendix 1 to this decision and the required amendments to the access arrangement information in Appendix 2 to this decision reflect this decision of the Authority.

### ***BEP Lease***

66. In relation to the BEP Lease, as is set out in the Tribunal's reasons, in the course of DBP's application, the Authority determined that it should:
  - adjust the base rent under the lease (\$281,450 as at 1 January 2008) by the CPI formula in the lease to derive an adjusted base rent as at the commencement of the lease in December 2010; and
  - add an additional amount of \$0.317 million to the lease valuation in respect of DBP's initial direct costs in establishing the BEP Lease.
67. In accordance with the Tribunal's direction, the Authority proposes to adjust its BEP Lease valuation by these calculations, which results in a capital value of the BEP Lease which is forecast conforming capital expenditure for the 2011 calendar year in the Access Arrangement Decision of \$18.858 million (2010 dollars).

## New Tariffs

68. Pursuant to the observations of the Tribunal, the Authority has determined to vary the Tariffs that will apply from 1 January 2012. This is a result of the increase in the cost of service after the amendments to the rate of return and an increase to the historical and forecast conforming capital expenditure.
69. The Weighted Average Cost of Capital has increased from 5.74% to 5.77%, this increase is a result of an increase in the DRP.
70. The conforming capital expenditure has increased due to an increase in the amount allowed for the BEP lease valuation and a reduction in the amount deducted for the Project Management Retainer Fee (**PMRF**).
71. The DRP and the BEP lease valuation are discussed in this revised decision. The Authority's decision to vary the PMRF is addressed in a Notice published on the Authority's website in conjunction with this decision.
72. The new reference tariffs are set out in section 3 of the revised Access Arrangement and reflect the following revisions;
  - The introduction of the joint weighted averaging approach has increased the DRP from 3.082 per cent to 3.143 per cent.
  - The adjustment to the BEP lease value has increased the forecast conforming capital expenditure for the 2011 calendar year by \$1,018,256.
  - The adjustment to the PMRF has resulted in a decrease to the amount that the Authority originally deducted from conforming capital expenditure in the Final Decision. The amount the Authority deducted fell from \$9,020,000 to \$5,838,827 resulting in an increase in conforming capital expenditure of \$3,181,173.

## ACCESS ARRANGEMENT INFORMATION

### Legislative requirements

73. Rule 42 of the NGR provides that access arrangement information for an access arrangement or an access arrangement proposal is information that is reasonably necessary for users and prospective users:
  - to understand the background to the access arrangement or the access arrangement proposal; and
  - to understand the basis and derivation of the various elements of the access arrangement or the access arrangement proposal.
74. Pursuant to Rule 43(3) of the NGR, if access arrangement information is, in the Authority's opinion, deficient in its comprehensiveness or in any other respect, the Authority may require:
  - 1.2 revisions necessary to correct the deficiency; or
  - 1.3 submission of further access arrangement information as an addendum to the information already submitted.

## DECISION

75. The Authority is of the view that the amended access arrangement information lodged by DBP on 8 September 2011 is deficient. The amended access arrangement information submitted by DBP will not fulfil the requirements of Rule 42 of the NGR as regards the Authority's amended access arrangement revisions for the DBNGP in Appendix 1 to this decision. That is because the amended access arrangement information submitted by DBP relates to and explains DBP's amended proposed access arrangement revisions and not the Authority's access arrangement revisions given effect to by this decision.
76. Pursuant to Rule 43(3)(a) of the NGR, the Authority hereby requires DBP to revise its amended access arrangement information. The revisions that are required to the amended access arrangement information are set out in Appendix 2 to this decision.
77. The Authority requires DBP to re-submit the access arrangement information revised in accordance with this decision by 19 October 2012.

## APPENDICES

## Appendix 1 - Authority's amended access arrangement revisions

# Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline

Revised by reason of and pursuant to orders of the Australian Competition Tribunal made on 26 July 2012

5 October 2012

**Economic Regulation Authority**  
WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at  
[www.erawa.com.au](http://www.erawa.com.au).

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## Contents

<b>Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline</b>	<b>1</b>
<b>Access Arrangement</b>	<b>1</b>
Introduction (Section 1)	1
Pipeline Description (Section 2)	1
Pipeline Services (Section 3)	2
Terms and Conditions (Section 4)	8
Queuing Requirements (Section 5)	8
Capacity Trading Requirements (Section 6)	14
Extensions and Expansions (Section 7)	15
Changing Inlet and Outlet Points (Section 8)	16
Depreciation (Section 9)	17
Speculative Capital Investment (Section 10)	18
Reference Tariff Variation Mechanism (Section 11)	18
Capital Contributions (Section 12)	22
Fixed Principles (Section 13)	23
Revision and Commencement Date (Section 14)	23
Definitions (Section 15)	24

# Access Arrangement

## Introduction (Section 1)

1. INTRODUCTION
  - 1.1. This document is the applicable access arrangement that is a full access arrangement (**Access Arrangement**) for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) pursuant to the requirements of the *National Gas Access (WA) Act 2009 (NGA)*, the *National Gas Access (Western Australia) Law (NGL)* and *National Gas Rules 2009 (NGR)*.
  - 1.2. The DBNGP is an old scheme covered pipeline, a scheme pipeline and a covered pipeline under the NGA, the NGL and the NGR.
  - 1.3. This document revises the access arrangement for covered pipeline services that was approved by the ERA on 26 June 2008 (including the corrigenda of notice issued by the ERA on 22 January 2010) (**Prior Access Arrangement**).
  - 1.4. Operator is DBNGP (WA) Transmission Pty Limited ACN 081 609 190 (**Operator**). It is a covered pipeline service provider who submitted the revisions to Prior Access Arrangement. Operator is a complying service provider for the purposes of section 10 of the NGL. It submitted the revisions on its own behalf and on behalf of DBNGP (WA) Nominees Pty Limited ACN 081 609 289 (**Nominees**) as Trustee for the DBNGP WA Pipeline Trust, who is also a covered pipeline service provider.
  - 1.5. This Access Arrangement sets out the terms and conditions about access to Pipeline Services provided or to be provided by means of the DBNGP.

## Pipeline Description (Section 2)

2. THE DBNGP (DESCRIPTION OF THE PIPELINE SYSTEM)
  - 2.1. The DBNGP is made up of the assets that are:
    - (a) as described in the following pipeline licences issued under the Petroleum Pipelines Act 1969 (WA):
      - (i) PL 40 (as amended or varied before the date the revisions to the Access Arrangement for the DBNGP commence to have effect under clause 14.1 of this current Access Arrangement);
      - (ii) PL 41 (as amended or varied before the date the revisions to the Access Arrangement for the DBNGP commence to have effect under clause 14.1 of this current Access Arrangement);
      - (iii) PL 47 (as amended or varied before the date the revisions to the Access Arrangement for the DBNGP commence to have effect under clause 14.1 of this current Access Arrangement); and
      - (iv) PL 69 (as amended or varied before the date the revisions to the Access Arrangement for the DBNGP commence to have effect under clause 14.1 of this current Access Arrangement); and
    - (b) the BEP Capacity.

- 2.2 A detailed description of the DBNGP is provided in Appendix 2 to the Access Arrangement and maps showing the pipeline system are annexed to the Access Arrangement Information.

## Pipeline Services (Section 3)

### 3. DESCRIPTION OF PIPELINE SERVICES [R.48(1)(b) & (c)]

#### 3.1. Pipeline Services

Operator, on its behalf and on behalf of Nominees, proposes to offer the following pipeline services on the DBNGP:

(a) Reference Services

- (i) Full Haul T1 Service (T1 Service).
- (ii) Part Haul T1 Service (P1 Service)
- (iii) Back Haul T1 Service (B1 Service)

(b) Non-Reference Services

- (i) Operator proposes, subject to availability of Capacity (as determined by Operator as a reasonable and prudent service provider), to offer to Prospective Shippers the following pipeline services:
  - (A) Spot Capacity Service;
  - (B) Park and Loan Service; and
  - (C) Seasonal Service;
- (ii) Operator proposes, subject to Operational Availability (as determined by Operator as a reasonable and prudent pipeline operator), to offer to Prospective Shippers the following pipeline services:
  - (A) Peaking Service;
  - (B) metering information service;
  - (C) pressure and temperature control service;
  - (D) odourisation service;
  - (E) co-mingling service;
  - (F) pipeline impact agreement service; and
  - (G) interconnection service.
- (iii) Non-Reference Services also include pipeline services provided by Operator under Access Contracts entered into prior to commencement of the Current Access Arrangement Period which are not for a Reference Service;

(iv) Operator is prepared to negotiate to provide a Prospective Shipper with any other pipeline service; and

(v) a description of each of the above pipeline services follows.

3.2. [Deleted]

3.3. T1 Service

(a) T1 Service is a Full Haul Service in which Operator (subject to availability of Capacity):

(i) takes receipt, at one or more Inlet Points on a Day, of a quantity of the Shipper's gas not exceeding:

(A) the sum of the Shipper's MDQ;

(B) plus or minus the quantity of gas required to correct any Imbalance on the preceding Day; and

(ii) delivers to the Shipper at one or more Outlet Points on that Day a quantity of gas not exceeding the Shipper's MDQ, without interruption or curtailment except as permitted by the Access Contract.

(b) The reference tariff for T1 Service (T1 Tariff) is:

(i) made up of the following components:

(A) the T1 Capacity Reservation Tariff; and

(B) the T1 Commodity Tariff; and

(ii) varied in accordance with section 11 of this Current Access Arrangement.

(c) As at 1 January 2012:

(i) the T1 Capacity Reservation Tariff is \$1.094252/GJ (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)); and

(ii) the T1 Commodity Tariff is \$0.092389/GJ (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c));

making a T1 Tariff of \$1.186641/GJ (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)).

(d) Prospective Shippers seeking access to Spare Capacity of the DBNGP as it is configured at the time of approval of this Access Arrangement must nominate a minimum term of 2 years when lodging an Access Request for T1 Service, unless Operator in its absolute discretion agrees otherwise.

(e) Prospective Shippers seeking access for Developable Capacity must nominate a minimum term of 15 years when lodging an Access Request for T1 Service, unless Operator in its absolute discretion agrees otherwise.

### 3.4. P1 Service

- (a) P1 Service is a Part Haul Service in which Operator (subject to availability of Capacity):
- (i) takes receipt, at one or more Inlet Points on a Day, of a quantity of the Shipper's gas not exceeding:
- (A) the sum of the Shipper's MDQ;
- (B) plus or minus the quantity of gas required to correct any Imbalance on the preceding Day; and
- (ii) delivers to the Shipper at one or more Outlet Points on that Day a quantity of gas not exceeding the Shipper's MDQ, without interruption or curtailment except as permitted by the Access Contract.
- (b) The reference tariff for P1 Service (P1 Tariff) is:
- (i) made up of the following components:
- (A) the P1 Capacity Reservation Tariff; and
- (B) the P1 Commodity Tariff; and
- (ii) varied in accordance with section 11 of this Current Access Arrangement.
- (c) As at 1 January 2012:
- (i) the P1 Capacity Reservation Tariff is \$0.000782/GJ MDQ\*km (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)); and
- (ii) the P1 Commodity Tariff is \$0.000066/GJ\*km (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)); and
- making an P1 Tariff of \$0.000848/GJ\*km (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)).
- (d) Prospective Shippers seeking access to Spare Capacity of the DBNGP as it is configured at the time of approval of this Access Arrangement must nominate a minimum term of 2 years when lodging an Access Request for P1 Service, unless Operator in its absolute discretion agrees otherwise.
- (e) Prospective Shippers seeking access for Developable Capacity must nominate a minimum term of 15 years when lodging an Access Request for P1 Service, unless Operator in its absolute discretion agrees otherwise.

### 3.5. B1 Service

- (a) B1 Service is a Back Haul Service in which Operator (subject to availability of Capacity):
- (i) takes receipt, at one or more Inlet Points on a Day, of a quantity of the Shipper's gas not exceeding:
- (A) the sum of the Shipper's MDQ;

- (B) plus or minus the quantity of gas required to correct any Imbalance on the preceding Day; and
  - (ii) delivers to the Shipper at one or more Outlet Points on that Day a quantity of gas not exceeding the Shipper's MDQ, without interruption or curtailment except as permitted by the Access Contract.
- (b) The reference tariff for B1 Service (B1 Tariff) is:
- (i) made up of the following components:
    - (A) the B1 Capacity Reservation Tariff; and
    - (B) the B1 Commodity Tariff; and
  - (ii) varied in accordance with section 11 of this Current Access Arrangement.
- (c) As at 1 January 2012:
- (i) the B1 Capacity Reservation Tariff is \$0.000782/GJ MDQ\*km (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c)); and
  - (ii) the B1 Commodity Tariff is \$0.000066/GJ\*km (\$2010) (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c));
- making a B1 Tariff of \$0.000848/GJ\*km (\$2010). (to be converted to \$2012 values by applying the variation mechanism in clause 11.2(c))
- (d) Prospective Shippers seeking access to Spare Capacity of the DBNGP as it is configured at the time of approval of this Access Arrangement must nominate a minimum term of 2 years when lodging an Access Request for B1 Service, unless Operator in its absolute discretion agrees otherwise.
- (e) Prospective Shippers seeking access for Developable Capacity must nominate a minimum term of 15 years when lodging an Access Request for B1 Service, unless Operator in its absolute discretion agrees otherwise.

### 3.6. Other Non-Reference Services

- (a) Spot Capacity Service

A Spot Capacity Service is a pipeline service available on an interruptible basis (and at varying levels of interruptibility), subject to availability of Capacity in accordance with the following principles.

- (b) Until otherwise advised by Operator, the following principles apply to Spot Capacity and Spot Transactions (as the case may be) (which principles form the basis of the Spot Market Rules):
- (i) If the Shipper seeks to bid for Spot Capacity for a Gas Day it must, by notice to Operator at any time no later than 15:00 hours on the Gas Day before that Gas Day, notify Operator of the amount of Spot Capacity it requires for that Gas Day (**Daily Bid**) and the price it offers to pay for that Spot Capacity for that Gas Day (**Daily Spot Bid Price**).
  - (ii) Operator must by no later than 16:00 hours on each Gas Day before the relevant Gas Day allocate Spot Capacity for the relevant Gas Day

between Daily Bids on the basis (subject to clause 5.3(e)(iv)) of the Shipper bidding the highest Daily Spot Bid Price for that Gas Day being allocated the Spot Capacity it bid for, the shipper bidding the second highest Daily Spot Bid Price for that Gas Day being allocated the Spot Capacity it bid for, and so on until all Daily Bids are satisfied or until all available Spot Capacity is allocated to Daily Bids. If two or more Shippers bid the same Daily Spot Bid Price and there is not sufficient available Capacity to allocate to each of them the amount of Spot Capacity bid for by each of them, the Spot Capacity available to be allocated between them shall be allocated in proportion to the amount of Spot Capacity bid for by each of them respectively at the said Daily Spot Bid Price for that Gas Day.

- (iii) Subject to clause 3.6(b)(v), if the Shipper is allocated Spot Capacity for a Gas Day in response to a Daily Bid the Shipper must pay the Daily Spot Bid Price bid by it for that Spot Capacity for that Gas Day whether or not it uses the Spot Capacity.
- (iv) Operator may set a minimum bid price (**Minimum Bid Price**) for Daily Bids and is not obliged to allocate Spot Capacity to any shipper bidding a Daily Spot Bid Price which is less than the Minimum Bid Price. The Minimum Bid Price for Daily Bids may not be set by Operator at a price greater than 115% of the Base T1 Tariff as defined in the standard shipper contract published by Operator on its nominated website from time to time applying on the relevant Gas Day.
- (v) The Shipper is relieved from paying the Daily Spot Bid Price in relation to Spot Capacity allocated to it for a Gas Day only where Operator interrupts or curtails the Spot Capacity which has been allocated to the Shipper, and then only to the extent of that interruption or curtailment.
- (vi) Operator must provide the following information to the Shipper in respect of each Gas Day as soon as practicable after that Gas Day:
  - (A) the quantities the subject of Daily Bids which relate to that Gas Day;
  - (B) the quantities of Spot Capacity allocated for that Gas Day; and
  - (C) the Daily Spot Bid Prices for all bids allocated Spot Capacity for that Gas Day.
- (vii) Operator will not bid for Spot Capacity and if an Operator Entity, Alcoa, WestNet or a Related Body Corporate of either Alcoa or WestNet bids and is allocated Spot Capacity, Operator must indicate on its electronic customer reporting system that the relevant Spot Capacity has been allocated to an Operator Entity without disclosing the identity of the Operator Entity.
- (viii) Operator may unilaterally determine (and, if applicable, vary) over time rules governing the market for Spot Capacity in addition to the principles in this clause 3.6(a), provided that those rules are designed with a view to achieving the following objectives:
  - (A) there is no discrimination among shippers (other than in respect of price) in respect of the terms and conditions upon which, and the circumstances in which, Spot Capacity is granted;
  - (B) hindering market manipulation and gaming by Operator or shippers; and

- (C) consistent with this clause 3.6(a).
- (c) Park and Loan Service
- Shippers or Prospective Shippers serving end users with Gas demands that are difficult to predict from day to day, or who face the prospect of outages of their Gas suppliers, may find the maintenance of their Accumulated Imbalances within the tolerance specified in the Access Contract for the Reference Service (or any other Haulage Service as the case may be) difficult. To assist these Shippers and Prospective Shippers, Operator will offer a Park and Loan Service, permitting limited Gas storage in the DBNGP, and/or taking of additional Gas from the DBNGP when required. Operator's ability to offer a Park and Loan Service is restricted by the operating characteristics of the DBNGP. A Shipper must also contract for a Haulage Service when contracting for a Park and Loan Service.
- (d) Seasonal Service
- Capacity in the DBNGP varies inversely with ambient temperature. A higher pipeline Capacity is available during winter months when ambient temperatures are low. A lower Capacity is available during summer months, with the lowest Capacity usually available in January. Operator may, in these circumstances, have unused Capacity when ambient temperatures are low, and this Capacity can be made available to shippers for use as Seasonal Service. Seasonal Service will only be made available subject to Operational Availability (as determined by Operator as a reasonable and prudent pipeline operator) and Operator meeting its obligations under Gas transportation contracts entered into prior to the commencement of the Access Arrangement Period.
- (e) Peaking Service
- This service will enable an increase in the MHQ at a Outlet Point for a specified period.
- (f) Metering information service
- This service will entail the provision of metering and operational data directly to a Shipper in addition to the data the Operator agrees to provide under an Access Contract for the Reference Service.
- (g) Pressure and temperature control service
- This service will entail the provision of a service by the Operator to vary the temperature and/or pressure at which the Operator shall deliver Gas at a Outlet Point.
- (h) Odorisation service
- This service will entail the provision of a service by the Operator to odorise the Gas being delivered at a Outlet Point.
- (i) Co-mingling service
- This Service entails the agreement by the Operator with a Shipper to blend Out-of-Specification Gas with the main Gas stream such that the aggregate of the main Gas stream is within specification.
- (j) Pipeline impact agreement service

This service encompasses any service DBP may agree to provide to facilitate the receipt into the DBNPG of Gas as a result of the application of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*.

- (k) Interconnection service

This service will entail the construction of facilities to connect the DBNPG with another pipeline system and the terms and conditions for the ongoing operation and management of the interconnection facilities.

## Terms and Conditions (Section 4)

4. TERMS AND CONDITIONS [R.48(1)(d)(ii)]
  - 4.1. The terms and conditions upon which Operator will grant parties access to the T1, P1 and B1 Services, are those terms and conditions for the T1, P1 and B1 Services contained in the Access Contract Terms and Conditions as amended or varied from time to time in accordance with clause 4.3 of the Access Arrangement.
  - 4.2. At the commencement of the Access Arrangement Period, the Access Contract Terms and Conditions are set out in APPENDIX 1.
  - 4.3. Operator may amend or vary the Access Contract Terms and Conditions in accordance with:
    - (a) Part 8, Division 10 of the NGR;
    - (b) Part 8, Division 5 of the NGR; and
    - (c) in the case of the Reference Tariff, the Reference Tariff Variation Mechanism in this Access Arrangement.

## Queuing Requirements (Section 5)

5. QUEUING REQUIREMENTS [R.48(1)(e)]
  - 5.1. Informal Requests and Reports

Shippers and Prospective Shippers are encouraged to consult with Operator on available Capacity and facilities prior to making an Access Request.
  - 5.2. Submission of Access Request
    - (a) Subject to clause 5.2(b), a Prospective Shipper may apply for access to a Service by submitting an Access Request in accordance with this clause 5.2.
    - (b) An Access Request must be lodged by a Prospective Shipper if:
      - (i) the Prospective Shipper requests a feasibility study to be prepared by Operator;
      - (ii) the Prospective Shipper requests a terms sheet to be prepared or considered by Operator; or
      - (iii) Operator advises in the course of consultation under clause 5.1 that investigations are required under rule 112 (3) (b) of the NGR.

- (c) An Access Request must be made in writing and must state:
- (i) whether the Service requested is a Reference Service or a Non-Reference Service;
  - (ii) in the case of an Access Request for a Non Reference Service, the type of Non Reference Service that is requested;
  - (iii) a Commencement Date for the Service, which must be a date at least 30 Gas Days after the date the Access Request is submitted or such earlier date as the Service Provider agrees;
  - (iv) a Capacity End Date for the Service, which must, in the case of an Access Request for a Reference Service, be a date no earlier than the date 2 years after the Commencement Date;
  - (v) relevant technical details (including the proposed Gas specification) for the connection to the pipeline and for ensuring safety and reliability of the supply of Gas to, or from, the pipeline, as outlined in the customer requirements form available on Operator's website;
  - (vi) in the case of a Reference Service and any other capacity related Non-Reference Service:
    - (A) each Inlet Point and Outlet Point for the Service; and
    - (B) the amount of the requested Service (in TJ/d) for each Inlet and Outlet point;
  - (vii) the terms and conditions on which the Service is requested, by:
    - (A) in the case of a Reference Service, stating that the Prospective Shipper accepts the Access Contract Terms and Conditions;
    - (B) in the case of a Non-Reference Service (other than a Spot Capacity Service), specifying either:
      - a. that it accepts the terms and conditions of any Access Contract for the relevant Non-Reference Service that the Operator has posted on its website; or
      - b. the terms and conditions the Prospective Shipper proposes should apply to the Service or requesting Operator to propose the terms and conditions for provision of the Service; or
    - (C) in the case of a Spot Capacity Service, stating that the Prospective Shipper accepts the Spot Transaction Terms and Conditions and agrees to comply with the Spot Market Rules; and
  - (viii) any conditions that apply to the Access Request.
- (d) An Access Request must:
- (i) be in the form for the particular Service requested, as specified from time to time by Operator on its nominated website (**Access Request Forms**). As at the commencement of the Current Access Arrangement Period, the Access Request Forms are available at <http://www.dbp.net.au/access.aspx> and comprise:

- (A) the Reference Service Access Request Form, for use for an Access Request for a Reference Service;
  - (B) the Non-Reference Service (other than Spot Capacity Service and Non- Transportation Services) Access Request Form, for use for an Access Request for a Non-Reference Service (other than Spot Capacity Service);
  - (C) the Spot Capacity Service Access Request Form, for use for an Access Request for Spot Capacity Service; and
  - (D) the Non-Transportation Services Access Request Form (used for such services as data, blending and park and loan services);
- (ii) be executed by or on behalf of the Prospective Shipper in accordance with sections 127(1), (2) or (3) of the Corporations Act or in such other manner as Operator, acting reasonably, may approve; and
  - (iii) be submitted in duplicate to the address from time to time specified by Operator for this purpose on the Access Request Form.
- (e) A Prospective Shipper may withdraw an Access Request at any time before Operator accepts the Access Request by giving notice in writing of the withdrawal to Operator.
  - (f) A Prospective Shipper may amend an Access Request at any time prior to its acceptance by Operator by submitting a further Access Request which states expressly that it amends the previous Access Request (Original Access Request) and where the Access Request Form is marked up to show the changes from the Original Access Request. The amended Access Request supersedes the Prospective Shipper's Original Access Request.

### 5.3. Assessment of Access Requests

- (a) Operator will assess and respond to an Access Request in accordance with rule 112 of the NGR based on the information provided to it with the Access Request.
- (b) The information specified in the Access Request Form does not necessarily contain all of the information Operator may need to assess an Access Request. If Operator requests more information it must, within 20 business days of receiving an Access Request from a Prospective Shipper:
  - (i) request further information from a Prospective Shipper (including any evidence reasonably required by Operator that the Access Contract that would be formed by Operator's acceptance of the Access Request would be a valid and binding obligation of the Prospective Shipper);
  - (ii) advise the Prospective Shipper that investigations are required to be undertaken prior to responding to the Access Request. If so, the Operator must, in the advice to the Shipper, outline a proposal to the Prospective Shipper for carrying out the further investigations (**FEED Proposal**). The FEED Proposal must include:
    - (A) a statement of the nature of the investigation;
    - (B) a plan (including a time schedule) for carrying out and completing the investigation;

- (C) a statement of the reasonable costs of the investigation the Prospective Shipper would be required to meet; and
  - (D) any other information reasonably required by the Operator for the purposes of the investigation.
- (c) If an Access Request is for a Non-Reference Service and the Prospective Shipper does not agree to the terms and conditions for the relevant Non-Reference Service as posted on the Operator's website, the Prospective Shipper must promptly, on request by Operator, proceed to negotiate in good faith with Operator the terms and conditions on which the Service is to be provided.
- (d) Operator may accept an Access Request:
- (i) where the Access Request is for a Reference Service and is made on the basis of the Access Contract Terms and Conditions or is for a Spot Capacity Service, by executing the 2 copies of the Access Request Form executed by the Prospective Shipper and returning one executed copy to the Prospective Shipper; or
  - (ii) where the Access Request is for a Non-Reference Service (other than a Spot Capacity Service), and Operator and the Prospective Shipper have agreed the terms and conditions for the Service, by submitting an Access Contract in the form agreed to the Prospective Shipper for execution. If the Access Contract is not executed by the Prospective Shipper and returned to Operator (together with any evidence reasonably required by Operator that the Access Contract is a valid and binding obligation of the Prospective Shipper) within 10 business days, the Access Request will be deemed to have been withdrawn by the Prospective Shipper.
- (e) Subject to clause 5.3(f), Operator may reject an Access Request at any time prior to its acceptance in any of the following circumstances:
- (i) the Access Request is incomplete or otherwise does not comply with the requirements specified in clause 5.2;
  - (ii) Operator considers, acting as a reasonable and prudent pipeline operator, that the Prospective Shipper is not capable of meeting its obligations under the Access Contract;
  - (iii) the Prospective Shipper fails to comply with a reasonable request by Operator for further information under clause 5.3(b)(i) within 20 business days after the date of such request;
  - (iv) where the Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper, and the Prospective Shipper fails to negotiate in good faith when required to do so under clause 5.3(c);
  - (v) acceptance of the Access Request would require an expansion of or extension to the DBNGP and the expansion or extension is inconsistent with the Extensions and Expansions Requirements of this Access Arrangement;
  - (vi) the requested Service cannot be provided having regard to the load characteristics set out in the Access Request and the load characteristics of Other Shippers;

- (vii) the Access Request is for substantially the same Service as another current Access Request submitted by the Prospective Shipper; or
  - (viii) Operator considers, acting as a reasonable and prudent pipeline operator, that the Access Request is not a bona fide request for access.
- (f) The Operator must reject an Access Request if the Operator and the Prospective Shipper are unable to agree on the FEED Proposal issued by the Operator under clause 5.3(b)(ii), or on some modification to it, within 20 business days of the date of the FEED Proposal.
  - (g) If the Operator rejects an Access Request, it must notify the Prospective Shipper in writing and include reasons for rejecting it.

#### 5.4. Queuing Requirements

- (a) If Operator notifies a Prospective Shipper in accordance with Rule 112 of the NGR that Spare Capacity does not exist to satisfy an Access Request, Operator will create a queue for determining the priority of access to Spare Capacity and Developable Capacity that will apply as between that Access Request and any other Access Request.
- (b) Operator will maintain a single queue for access to Reference Services and Non- Reference Services that are Haulage Services (**Queue**).
- (c) Access Requests are to have priority of access to Spare Capacity and Developable Capacity in the order in which they are entered in the Queue by Operator in accordance with this clause 5.4. Subject to clauses 5.4(d) to 5.4(k), Operator will enter Access Requests in the Queue with a priority date being the date on which they are received (or, as appropriate, deemed to be received) by Operator. Access Requests entered in the queue with the same priority date will have equal priority in the queue as between each other.
- (d) Subject to clauses 5.4(e) and 5.4(f), an Access Request will only be entered in the Queue if it complies with the requirements specified in clause 5.2.
- (e) If an Access Request is incomplete or otherwise does not comply with the requirements of clause 5.2 and, in Operator's reasonable opinion, the Prospective Shipper remedies the deficiencies within 10 business days after being given notice of the deficiencies by Operator (which notice must be given promptly), the Access Request may be entered in the Queue with a priority date being the date on which the original Access Request was received by Operator. This clause only applies once. Otherwise, the Access Request will be entered in the Queue with a priority date being the date on which, in Operator's reasonable opinion, the deficiencies are remedied.
- (f) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the Queue with a priority date being the date of receipt of the Access Request by Operator. However, unless:
  - (i) where Operator notifies Shipper in accordance with Rule 112 of the NGR that there is Spare Capacity sufficient to satisfy the Access Request, within 40 business days after the date Operator responds to the Prospective Shipper in accordance with rule 112 of the NGR in respect of the Access Request; or

- (ii) where Operator notifies Shipper in accordance with rule 112 of the NGR that there is not Spare Capacity sufficient to satisfy the Access Request and the parties agree to a FEED Proposal, within 60 business days after the date the Shipper receives the report on the investigations to be provided to the Shipper under the FEED Proposal,

either:

- (iii) the negotiations are completed and/or the conditions are satisfied; or
- (iv) the Prospective Shipper has agreed to amend the Access Request such that it becomes an Access Request for a Reference Service made on the basis of the Access Contract Terms and Conditions,

the Access Request will be removed from the Queue and will subsequently be reentered in the Queue with a priority date being the date that negotiations are completed and/or the conditions are, in Operator's opinion, satisfied. However, where a dispute between Operator and the Prospective Shipper arises in respect of the terms and conditions of access and that dispute is referred to arbitration under section 181 of the NGA, the period of time remaining pursuant to paragraphs (i) and (ii) (as applicable) will be suspended from the date the dispute is referred to arbitration (**Referral Date**) until 4 months after the Referral Date.

- (g) Operator may deal with Access Requests out of order provided that:
  - (i) the Access Request that is being dealt with out of order is materially different to the Access Requests which have the same or earlier priority dates; and
  - (ii) Prospective Shippers with the Access Requests which have the same or earlier priority dates do not suffer any material prejudice as a result.
- (h) Access Requests received by mail are deemed to be received on the day they are delivered to Operator. Access Requests delivered by hand are received on the date actually received.
- (i) Any Access Request for a Service that was made prior to the revisions to this Access Arrangement coming into effect (**Prior AA Access Requests**) will have priority over Access Requests made after the revisions to this Access Arrangement come into effect. The priority amongst Prior AA Access Requests is to be determined in accordance with the order in which they were received by Operator.
- (j) If an Access Request is rejected, that Access Request's priority in the Queue is lost.
- (k) If a Prospective Shipper amends an Access Request in accordance with clause 5.2(f), the following applies:
  - (i) the amended Access Request will have the same priority date as the Original Access Request if the amendment complies with clause 5.2(f) and if:
    - (A) the amendment is limited to a reduction in the amount of the Service requested or a change in the requested Commencement Date; or
    - (B) the amendment is not in Operator's reasonable opinion a material change to the Original Access Request; and

- (ii) in all other cases, the amended Access Request will be removed from the Queue and will subsequently be re-entered in the Queue with a priority date being the date the amended Access Request is received by Operator.
- (l) These Queuing Requirements are subject to any Capacity Expansion Options which may be granted by Operator from time to time under the Extensions and Expansions Requirements of the Access Arrangement. Nothing in the Queuing Requirements prevents Operator offering a Capacity Expansion Option in accordance with the Extensions and Expansions Requirements of this Access Arrangement at any time or complying with its obligation to provide Capacity to a Prospective Shipper in accordance with a Capacity Expansion Option.
- (m) Where a Prospective Shipper has lodged an Access Request and Operator has agreed to undertake an expansion to satisfy the Access Request (including by the creation of a Capacity Expansion Option in accordance with the Extension and Expansion Requirements of this Access Arrangement) the Prospective Shipper's Access Request will remain in the Queue until the expansion capacity has become available to satisfy it. If Spare Capacity becomes available to satisfy the Access Request prior to completion of the expansion and Operator and the Prospective Shipper agree, that Spare Capacity may be made available to satisfy the Access Request (in accordance with its priority in the queue at that time) in place of the proposed expansion capacity.
- (n) Queuing Requirements do not apply to access to a service secured pursuant to a Spot Capacity Service or to a Pipeline Service that is not a Haulage Service.
- (o) Within a reasonable time of Operator becoming aware of any material change (in the context a Prospective Shipper's Access Request) in the expected timing of when the Prospective Shipper's Access Request in the Queue will be satisfied, Operator will notify the Prospective Shipper of the change.

## Capacity Trading Requirements (Section 6)

6. CAPACITY TRADING REQUIREMENTS [R.48(1)(f)]
  - 6.1. A Shipper of any Haulage Service may:
    - (a) without the Operator's consent transfer by way of subcontract, all or any of the Shipper's contracted capacity to another Shipper in accordance with clause 27.2 of the Access Contract Terms and Conditions for each reference service.
    - (b) with the Operator's consent transfer all or any of the Shipper's contracted capacity to another (**Third Party**) in accordance with clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service and clause 6.3.
  - 6.2. Operator must not withhold its consent under clause 6.1(b) unless it has reasonable grounds, based on technical or commercial grounds for doing so.
  - 6.3. In addition to any conditions outlined in clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service, and without limitation, the following are examples of reasonable technical or commercial grounds that the Third Party and the Shipper must comply with before Operator will consent under clause 6.1(b):
    - (a) The Third Party must comply with the Queuing Requirements in clause 5.4.

- (b) The Shipper must reimburse Operator for all reasonable costs incurred by Operator in processing and determining the Shipper's consent request, subject to Operator providing, if requested by the Shipper, an estimate for the costs that Operator expects to incur (which estimate will not limit the costs which must be reimbursed under clause 6.3(b)).
- 6.4. If Operator consents to the transfer of all or any of the Shipper's contracted capacity to a Third Party under clause 6.1(b), the following consequences arise:
- (a) the Shipper's rights and obligations are terminated except that any rights or liabilities that accrued under, or in relation to, the Access Contract before the date on which Operator grants consent are not affected; and
  - (b) an Access Contract arises between the Operator, DBNGP (WA) Nominees Pty Ltd (in its capacity as Trustee for the DBNGP WA Pipeline Trust) and the Third Party on terms and conditions determined by or in accordance with this section 6.

## Extensions and Expansions (Section 7)

7. EXTENSIONS & EXPANSIONS REQUIREMENTS [R.48(1)(g)]
- 7.1. Operator is not required to fund part or all of the expansion (except in relation to a Capacity Expansion Option, where the provisions of the Capacity Expansion Option require the expansion to be funded by the Operator or an Operator Entity).
- 7.2. Unless the Operator states otherwise in a Capacity Expansion Option, an expansion of the DBNGP pursuant to the exercise of a Capacity Expansion Option by the holder is to be treated as part of the Covered Pipeline.
- 7.3. If the Operator proposes to extend, expand or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option.
- (a) an extension or enhancement is to become part of the Covered Pipeline unless Operator elects otherwise; and Operator will give the Regulator notice of an extension, expansion or enhancement which Operator elects will not become part of the Covered Pipeline; and
  - (b) an expansion is to become part of the covered pipeline except in instances where DBP can demonstrate to the Authority's reasonable satisfaction that application of the access arrangement to such services is inconsistent with the National Gas Objective and the Authority issues a notice that it is thus satisfied.
- 7.4. In considering whether to treat an extension or enhancement as part of the Covered Pipeline, Operator may have regard to the following factors:
- (a) the application of the matters set out in rule 104 of the NGR in respect of the facilities comprising the extension, expansion or enhancement;
  - (b) the extent to which the Capacity resulting from the extension, expansion or enhancement is Contracted Capacity;
  - (c) the legitimate business interests of Operator;
  - (d) the application of any voluntary right of access to the Capacity resulting from the extension, expansion or enhancement; and

- (e) the extent to which any Access Contract under which the extension, expansion or enhancement capacity is contracted relies upon a determination of the Reference Tariff.
- 7.5. If an extension, expansion or enhancement of the DBNGP becomes part of the Covered Pipeline, the extension, expansion or enhancement will not affect the Reference Tariff before the next Revisions Commencement Date. Although, if an extension, expansion or enhancement of the DBNGP becomes part of the Covered Pipeline:
- (a) Operator may seek a Capital Contribution from Prospective Shippers or levy a Surcharge on Incremental Shippers in accordance with Rules 82 and 83 of the NGR; and
  - (b) Operator may submit proposed revisions to this Access Arrangement under rule 50 of the NGR.
- 7.6. Operator may (as determined by Operator in its sole discretion) from time to time seek Surcharges or Capital Contributions from Prospective Shippers in respect of capital expenditure for assets in accordance with rules 82 and 83 of the NGR. If Operator intends to levy a Surcharge on Shippers, it will provide written notice, including to the Regulator, of its intention to do so.
- 7.7. Except where Operator imposes a Surcharge or seeks a Capital Contribution, or where clause 7.10 applies, Shippers using Incremental Capacity will pay the Reference Tariff.
- 7.8. To assist Prospective Shippers with their future Gas transportation needs, the Operator may from time to time offer Capacity Expansion Options. The Operator acknowledges that at the commencement of this Access Arrangement Period, Capacity Expansion Options have already been granted to certain Shippers on the DBNGP.
- 7.9. A Capacity Expansion Option gives a Prospective Shipper a right to a specified quantity of Capacity on the terms and conditions specified in the Capacity Expansion Option. A Capacity Expansion Option will have a purchase price to be determined by Operator and is able to be traded by the Prospective Shipper to another Prospective Shipper on the terms outlined in the Capacity Expansion Option.
- 7.10. If the Operator elects to include as part of the covered pipeline any expansion to be undertaken as a result of the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009* (WA) and in circumstances where the funding of that expansion was made by someone other than the Operator or its Related Bodies Corporate (PIA Expenditure) the Operator and Nominees will not benefit, through increased revenue, from each amount of PIA Expenditure that has been rolled into the capital base through a mechanism equivalent to that in clause 12.4.

## Changing Inlet and Outlet Points (Section 8)

8. CHANGING INLET AND OUTLET POINTS [R.48(1)(h)]
- 8.1. In accordance with rule 106 of the NGR the Shipper under a haulage service Access Contract may:
- (a) change inlet and outlet points; and
  - (b) relocate all or any part of its Contracted Capacity from an existing inlet point or an existing outlet point to which the Access Contract relates,

**(Change Request)**

in accordance with the following principles:

- (c) a Shipper must make a Change Request to the Operator in writing;
  - (d) the Operator must consent to a Change Request from the Shipper before any change or relocation that is the subject of the Change Request becomes effective; and
  - (e) the Operator must not withhold its consent to a Change Request unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
- 8.2. Without limitation, the considerations which the Operator will take into account in deciding whether to consent to a request under clause 8.1 include:
- (a) technical considerations;
  - (b) commercial considerations;
  - (c) in the case of a Change Request for a Reference Service, the considerations outlined in section 14 of the Access Contract Terms and Conditions.

## Depreciation (Section 9)

### 9. DEPRECIATION [R.90]

9.1. In accordance with rule 90 of the NGR, this section 9:

- (a) governs the calculation of depreciation for establishing the Opening Capital Base for the Next Access Arrangement Period after the Current Access Arrangement Period (that is, the Opening Capital Base for the access arrangement period that is due to commence on 1 January 2016).
  - (b) provides that depreciation of the Capital Base during the Current Access Arrangement Period is to be based on forecast conforming capital expenditure.
- 9.2. As part of the formula for establishing the Opening Capital Base for the Next Access Arrangement Period, the Operator will use the sum of the values of depreciation determined for the purpose of determining the Total Revenue for the Current Access Arrangement Period.
- 9.3. The values of depreciation determined for the purpose of determining the Total Revenue for the Current Access Arrangement Period are determined using the following principles:
- (a) A separate depreciation schedule has been determined for each of the 4 groups of physical assets that form the DBNGP, these 4 groups are:
    - (i) pipeline assets;
    - (ii) compressor station assets;
    - (iii) metering assets; and
    - (iv) other assets.

- (b) For the assets in each of the 4 groups, depreciation has been determined using the straight-line method.
- (c) Each depreciation schedule has been designed so that:
  - (i) each group of assets is depreciated over the economic life of that group; and
  - (ii) each group of assets is depreciated only once (that is, so that the sum of the depreciation that is attributable to each group over the life of the assets is equivalent to the value of that group of assets at the time at which that value was first included in the Capital Base, subject to such adjustment for inflation as is appropriate given the approach to inflation adopted).

## Speculative Capital Investment (Section 10)

### 10. SPECULATIVE CAPITAL EXPENDITURE [R.84]

- 10.1. For the purposes of rule 84 of the NGR, the amount of any Non-Conforming Capital Expenditure is, to the extent that expenditure is not to be recovered through a Surcharge on Shippers or a Capital Contribution, to be added to a notional fund (Speculative Capital Expenditure Account) and dealt with in accordance with rule 84(2) and rule 84(3) of the NGR.

## Reference Tariff Variation Mechanism (Section 11)

### 11. REFERENCE TARIFF VARIATION MECHANISM [R.92(1)]

- 11.1. The Reference Tariff Variation Mechanism for the Current Access Arrangement provides for the variation of the Reference Tariff by the Operator by way of:
  - (a) CPI Formula Variation;
  - (b) Tax Changes Variation;
  - (c) New Costs Pass Through Variation; and
  - (d) the mechanism contained in clause 20.5 of the Reference Service Access Contract Terms and Conditions.

#### 11.2. The CPI Formula Variation means the following mechanism:

- (a) The Reference Tariffs in clauses 3.3(b), 3.4(b) and 3.5(b) of this Access Arrangement will be periodically varied for the effects of inflation during the Current Access Arrangement Period.
- (b) Each Reference Tariff will be varied annually on 1 January of each year of the Current Access Arrangement Period for the effects of inflation.
- (c) This variation of each Reference Tariff will be effected by adjustment on 1 January in each of the years 2012, 2013, 2014 and 2015 in accordance with CPI on the following basis:

$$\text{Tariff}_n = \text{Tariff}_b \times \left( \frac{\text{CPI}_n}{\text{CPI}_b} \right)$$

where:

$\text{Tariff}_n$  = Capacity Reservation Tariff or Commodity Tariff (as the case may be) in year  $n$ , where year  $n$  is each of the years 2012, 2013, 2014 and 2015;

$\text{Tariff}_b$  = Capacity Reservation Tariff or Commodity Tariff (as the case may be) set out in clause 3.3(c), 3.4(c) and 3.5(c) of the Current Access Arrangement;

$\text{CPI}_n$  = CPI for the quarter ending on 30 September of the year before the year for which the Reference Tariff is being adjusted; and

$\text{CPI}_b$  = CPI for the quarter ending on 30 September 2009.

- (d) CPI means the Consumer Price Index, All Groups, weighted average of eight capital cities as published by the Australian Bureau of Statistics.
- (e) Within 10 Business Days of effecting the CPI Formula Variation, the Operator must provide the ERA with a written notice advising of this fact and include the application of the mechanism and the resultant varied Reference Tariff.

11.3. Tax Changes Variation means the following mechanism:

- (a) The Operator has established the Reference Tariff for the Reference Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure (**Included Taxes and Carbon Costs**).
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNPG whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:
  - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services (**Rule 91 Criteria**) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator must vary the Reference Tariff to deal with the financial impact of the Tax Change; and
  - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator may vary the Reference Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the Reference Tariff under clause 11.3(b), the Operator must provide a written notice to the Regulator (**Tax Change Notice**) which:

- (i) in the case of a Tax Change where the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period – is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;
  - (ii) outlines the amount of the relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure in the Current Access Arrangement Period;
  - (iii) provides evidence of the amount of the Tax Change;
  - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;
  - (v) specifies the scope of the financial impact of the Tax Change;
  - (vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
  - (vii) states the effective date for the variation to the Reference Tariff to take effect.
- (d) The Operator must not vary the Reference Tariff under clause 11.3(b)(ii) unless:
- (i) the Operator provides a Tax Change Notice to the Regulator; and
  - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.
- (g) If the Tax Change Notice results in a reduction in the Reference Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and
  - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.

#### 11.4. New Costs Pass Through Variation means the following mechanism:

- (a) The Operator may recover certain expenses it or its Related Bodies Corporate incur or are to incur if (but only if) the expenses:
  - (i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;

- (ii) satisfy the Rule 91 Criteria;
- (iii) could not be predicted prior to the time at the revisions to the Access Arrangement were approved;
- (iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.

Expenses which satisfy all criteria in this clause 11.4(a) result in a Cost Pass Through Event.

- (b) Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause 11.4 are:
  - (i) a Change in Law; and
  - (ii) [Deleted]; and
  - (iii) additional costs not included in the forecast operating expenditure that arise from a change in the type or level of the fees payable to the Land Access Minister under any Access Right relating to the DBNGP and granted under the Dampier to Bunbury Pipeline Act 1998.
- (c) Before the Operator varies the Reference Tariff under this clause 11.4, the Operator must obtain written approval from the Regulator to vary the Reference Tariff by providing a notice to the Regulator (**Cost Pass Through Event Notice**) which:
  - (i) must include the substantiation for the Cost Pass Through Event justifying an increase to the operating expenditure that is used to calculate the Total Revenue for each year of the Current Access Arrangement Period;
  - (ii) provides evidence –
    - A as to how the Cost Pass Through Event has increased the operating expenditure of the Operator or its Related Bodies Corporate in their roles as service providers on the DBNGP, and
    - B that the expenses associated with the Cost Pass Through Event satisfy the Rule 91 Criteria;
  - (iii) specifies the scope of the financial impact of the Cost Pass Through Event;
  - (iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event; and
  - (v) states the effective date for the variation to the Reference Tariff to take effect.
- (d) The Operator may submit one or more Cost Pass Through Notices each Year. Each Cost Pass Through Notice may incorporate a number of claims relating to different Cost Pass Through Events.
- (e) The minimum notice period for a Cost Pass Through Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.

- (f) The Operator must not vary the Reference Tariff under clause 11.4(a) unless:
  - (i) the Operator provides a Cost Pass Through Event Notice to the Regulator; and
  - (ii) the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.
- (g) If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:
  - (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date that the variation to the Reference Tariff commenced to have effect; and
  - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.

## Capital Contributions (Section 12)

### 12. CAPITAL CONTRIBUTIONS BY SHIPPERS [R.82(3)]

#### 12.1. Capital Contributions made or to be made

Shippers have made capital contributions to Operator's capital expenditure during the earlier access arrangement period and may, in the Current Access Arrangement Period, make capital contributions to Operator's capital expenditure (For the purposes of this clause, each such Shipper is defined as a **Funding Shipper**).

#### 12.2. Third party use of Funded Capital Expenditure

Capital expenditures to which Funding Shippers have made (or will make as the case may be) capital contributions (**Funded Capital Expenditure**) have created (or will create) pipeline assets (**Contributed Assets**) which are used (or will be used) in the provision of pipeline services, and which may be used in provision of a pipeline service.

#### 12.3. Capital Contributions included in the capital base

Funded Capital Expenditure has been rolled into the capital base of the DBNGP.

#### 12.4. No benefit by Operator from Funded Capital Expenditure

The Operator and Nominees will not benefit, through increased revenue, from each amount of Funded Capital Expenditure that has been rolled into the capital base through the following mechanism:

- (a) Subject to clause 12.4(b), Funded Capital Expenditure is included in the Total Revenue determined for each year of the Current Access Arrangement Period on the basis that, the portion of the Total Revenue for each year of the Current Access Arrangement that equals the sum of the return on the Funded Capital Expenditure and the depreciation of the Funded Capital Expenditure will not be allocated to any pipeline service.

- (b) Operator may levy a charge on any Shipper other than a Funding Shipper (**Shipper Specific Facilities Charge**) if:
- (i) Shipper requests a pipeline service and, to provide that service, Operator must use contributed assets;
  - (ii) Operator's contract with a Funding Shipper (**Contributing Agreement**) requires payment to the Funding Shipper for use by other Shippers of those contributed assets;
  - (iii) the Shipper Specific Facilities Charge is equal to the amount the Operator is required to pay to the Funding Shipper to which the contributed assets relate; and
  - (iv) Operator pays the proceeds from the levy of the Shipper Specific Facilities Charge to the relevant Funding Shipper in accordance with the terms of the Contributing Agreement.

## Fixed Principles (Section 13)

### 13. FIXED PRINCIPLES [R.99]

- (a) The following are Fixed Principles in accordance with rule 99 of the NGR:
- (i) the method of determination of the Capital Base at the commencement of each year of each access arrangement period as set out in section 7 of the Current Access Arrangement Information;
  - (ii) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:
    - (A) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and
    - (B) the revenue actually earned from the sale of those services which were services other than Full Haul Services,
- must not:
- (C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or
  - (D) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.
- (b) For the purposes of the Fixed Principles referred to in clause 13(a) of this Access Arrangement, the fixed period is until 31 December 2031.

## Revision and Commencement Date (Section 14)

### 14. REVISION & COMMENCEMENT DATES [R.48(1)(i)]

- 14.1. The Current Access Arrangement Period commences on 1 January 2012.
- 14.2. The review submission date for the Current Access Arrangement is 3 years after the commencement of the Current Access Arrangement under clause 14.1.
- 14.3. The revision commencement date for the Next Access Arrangement is the later of:
  - (a) 1 January 2016;
  - (b) the date the ERA stipulates in a Final Decision to approve an Access Arrangement Revision Proposal as to which the dates have effect or if no date is so fixed, 10 business days after the Final Decision as under rule 62 of the NGR;
  - (c) if the ERA decides, under rule 64 of the NGR, to refuse approval of an Access Arrangement Revision Proposal, the date on which the ERA makes a Final Decision under rule 64 of the NGR that stipulates the date the revisions are to have effect or if no date is fixed, 10 business days.

## Definitions (Section 15)

### 15. DEFINITIONS

**Access Arrangement** means Operator's access arrangement for the DBNPG as approved, varied or substituted by the Regulator.

**Access Contract** means a contract between Operator and a Shipper for a Pipeline Service.

**Access Contract Terms and Conditions** means the terms and conditions for the Reference Services contained in Annexure 1 as may be altered or varied by Operator from time to time.

**Access Request** means a request for access to a service provided by means of the DBNPG as described in clause 5.2 of this Current Access Arrangement.

**Access Request Form** means the Access Request forms for lodging Access Requests for Reference Service and Non-Reference Service in accordance with the Access Arrangement as specified from time to time by Operator and made available on Operator's nominated website, or as the context requires, the Access Request Form forming part of an Access Contract Terms and Conditions.

**Alcoa** means Alcoa of Australia Limited ABN 93 004 879 298.

**Annexure** means an annexure to this Current Access Arrangement.

**B1 Capacity Reservation Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.5(c) of this Current Access Arrangement.

**B1 Commodity Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.5(c) of this Current Access Arrangement.

**B1 Service** means the Service described in clause 3.5(a) of this Current Access Arrangement.

**B1 Tariff** has the meaning provided for in clause 3.5(b) of this Current Access Arrangement.

**Back Haul** means the haulage of Gas from inlet point which is downstream of the outlet point.

**Back Haul Service** means a service to provide Back Haul on the DBNGP.

**BEP Agreement** means an agreement between Operator and Nominees and the owner of the BEP pursuant to which Operator is granted a lease of the BEP Capacity.

**BEP Capacity** means the capacity on the BEP with respect to which the Operator and Nominees are granted a lease of the capacity, pursuant to the BEP Agreement.

**Capacity** means the capacity in the DBNGP, as it is configured at the commencement of the Access Arrangement, to transport quantities of Gas from an Inlet Point to an Outlet Point.

**Capacity Expansion Option** means an option for Capacity on the DBNGP which requires an expansion.

**Carbon Cost** means any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions in so far as the obligation or liability is connected to the DBNGP. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

**Change in Law** means the enactment or promulgation of any new Act of Parliament or regulation, the amendment of any existing Act or regulation, or a material change to the basis or method of calculation of any existing charge relating to:

- (a) the management or protection of the environment which is specifically directed at industries which consume hydrocarbon fuels;
- (b) the health and safety of workers;
- (c) access to the DBNGP Corridor; or
- (d) the operation and management of gas pipelines.

**Change Request** has the meaning given to it in clause 8.1 of this Current Access Arrangement.

**Commencement Date** means 08:00 hours on the date for commencement of the Service set out in the Access Request executed by Operator.

**Compressor Station(s)** means the compressor stations located at various intervals on the DBNGP.

**Contributed Assets** has the meaning given to it in clause 12.2 of this Current Access Arrangement.

**Contributing Agreement** has the meaning given to it in clause 12.4(b)(ii) of this Current Access Arrangement.

**Corporations Act** means *Corporations Act 2001 (Cth)*.

**Cost Pass Through Event** has the meaning given to it in clause 11.4(a)(ii) of this Current Access Arrangement.

**Cost Pass Through Event Notice** has the meaning given to it in clause 11.4(c) of this Current Access Arrangement.

**Covered Pipeline** means the Dampier to Bunbury Natural Gas Pipeline which is described in clause 2.

**CPI Formula Variation** has the meaning given to it in clause 11.2 of this Current Access Arrangement.

**Current Access Arrangement** means the Access Arrangement for the services on the DBNGP, the revisions for which commence in accordance with clause 14.1 of this Current Access Arrangement.

**Current Access Arrangement Period** means the period for the Current Access Arrangement that commences under clause 14.1.

**Daily Bid** has the meaning given to it in clause 3.6(b)(i) of this Current Access Arrangement.

**Daily Spot Bid Price** has the meaning given to it in clause 3.6(b)(i) of this Current Access Arrangement.

**DBNGP** means the Covered Pipeline as it is configured at the commencement of the Access Arrangement Period and any extension or expansion of the DBNGP which becomes covered under the Current Access Arrangement pursuant to clause 11 of this Current Access Arrangement.

**Depreciation Schedule** means the schedule described in the Access Arrangement Information.

**Developable Capacity** means the difference between the Capacity and the capacity of the DBNGP which would be available if additions of plant and/or pipeline were made, but does not include any extension of the geographic range of the DBNGP.

**ERA** means the Economic Regulation Authority which is the independent economic regulator for Western Australia.

**FEED Proposal** has the meaning given to it in Clause 5.3(b)(ii) of this Current Access Arrangement.

**Forward Haul** means the haulage of Gas on the DBNGP where the inlet point is upstream of the outlet point.

**Full Haul** means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.

**Funded Capital Expenditure** has the meaning given to it in clause 12.2 of this Current Access Arrangement.

**Funding Shipper** has the meaning given to it in clause 12.1 of this Current Access Arrangement.

**Haulage Service** means a Pipeline Service involving the contracting of capacity on the DBNGP;

**Included Taxes and Carbon Costs** has the meaning given to it in clause 11.3(a) of this Current Access Arrangement.

**Incremental Capacity** means Capacity over and above T1 Service Capacity.

**Incremental Shippers** means any Shipper utilising Incremental Capacity.

**Inlet Point** means a flange joint or other point at which any shipper on the DBNGP has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator.

**Minimum Bid Price** has the meaning given to it in clause 3.6(b)(iv).

**New Costs Pass Through Variation** has the meaning given to it in clause 11.4 of this Current Access Arrangement.

**Next Access Arrangement** means the Access Arrangement for the services on the DBNGP which will incorporate revisions and which will commence in accordance with clause 14.3.

**Next Access Arrangement Period** means the period for the Next Access Arrangement.

**NGA** means the *National Gas Access (WA) Act 2009 (WA)*.

**NGL** means the *National Gas Access (Western Australia) Law* being the provisions which apply because of section 7 of the NGA.

**NGR** means the National Gas Rules which are referred to in section 294 of the NGL.

**Nominees** means DBNGP (WA) Nominees Pty Limited ACN 081 609 289.

**Non-Reference Service** means any of the services referred to in clause 3.1(b) of this Current Access Arrangement.

**Opening Capital Base** has the meaning given in rule 77 of the NGR.

**Operator** means DBNGP (WA) Transmission Pty Limited ACN 081 609 190

**Operator Entity** means Operator, all of Operator's Related Bodies Corporate and all entities controlled (as that word is defined in the Corporations Act as at the Commencement Date) by any of the foregoing.

**P1 Capacity Reservation Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.4(c) of this Current Access Arrangement.

**P1 Commodity Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.4(c) of this Current Access Arrangement.

**P1 Service** means the Service described in clause 3.4(a) of this Current Access Arrangement.

**P1 Tariff** has the meaning provided for in clause 3.4(b) of this Current Access Arrangement.

**Park and Loan Service** is a service where Operator agrees that a Shipper may deliver a quantity of Gas into the DBNGP at a Inlet Point on a Gas Day, without the Shipper taking delivery of that Gas at a Outlet Point on the same Gas Day (**Park Service**) or where Operator agrees that a Shipper may take a quantity of Gas at a Outlet Point without supplying an equivalent quantity of Gas at a Inlet Point on the same Gas Day and consequently that Gas is delivered to Shipper out of linepack (**Loan Service**).

**Part Haul Service** means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point

is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

**Pipeline Service** means either a Reference Service or a Non-Reference Service.

**Prior AA Access Requests** has the meaning given to it in clause 5.4(i) of this Current Access Arrangement.

**Prior Access Arrangement** means the Access Arrangement as in force before the commencement of the Current Access Arrangement.

**Prospective Shipper** means an entity who wishes to be a Shipper on the DBNGP.

**Public Register** means the register of spare capacity that a scheme pipeline service provider must establish and maintain under Rule 111 of the NGR.

**Queue** has the meaning given to it in clause 5.4(b) of this Current Access Arrangement.

**Reference Service** means the T1 Service, P1 Service or B1 Service.

**Reference Tariff** means Operator's reference tariff for a Reference Service.

**Regulator** has the meaning given in the NGA.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Seasonal Service** means the Gas haulage service made available by Operator in relation to a particular Gas Month out of Incremental Capacity available due to seasonal factors.

**Shipper** means the Shipper specified in the Access Request.

**Shipper Specific Facilities Charge** has the meaning provided in clause 12.4(b) of this Current Access Arrangement.

**Spare Capacity** has the meaning given to that term in the NGA.

**Spot Capacity** means any capacity on the DBNGP on a Gas Day (being the capacity available after all Nominations for Reserved Capacity for that Gas Day have been allocated by Operator for that Gas Day), which capacity, is, according to Operator (acting in good faith) available for purchase.

**Spot Capacity Service** means a service for Spot Capacity by way of one or more Spot Transactions.

**Spot Market Rules** means the rules published by Operator from time to time to apply to Spot Capacity Service and the market for Spot Capacity, which Operator will make available on its website.

**Spot Transaction** means a transaction for a Spot Capacity Service between Operator and Shipper in accordance with the Spot Transaction Terms and Conditions.

**Spot Transaction Terms and Conditions** means the terms and conditions for the Spot Capacity Service as determined by negotiation with Shippers and Prospective Shippers, which terms and conditions are consistent with the principles and objectives in clause 3.6(a) of this Current Access Arrangement.

**System Use Gas** means Gas used by the Operator for the following purposes:

- (a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:
  - (i) compressor fuel;
  - (ii) gas engine alternator fuel;
  - (iii) heater fuel; and
  - (iv) increases to linepack, other than:
    - (A) when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
    - (B) repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
- (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.

**T1 Capacity Reservation Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.3(c) of this Current Access Arrangement.

**T1 Commodity Tariff** has the meaning provided for in the Access Contract Terms and Conditions and, as at 1 January 2012 is the amount provided for in clause 3.3(c) of this Current Access Arrangement.

**T1 Service** means the Service described in clause 3.3(a) of this Current Access Arrangement.

**T1 Tariff** has the meaning provided for in clause 3.3(b) of this Current Access Arrangement.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax, capital gains tax, fines or penalties).

**Tax Change** means:

- (a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
- (b) any Carbon Cost is incurred in relation to the DBNGP by the Operator or any of its Related Bodies Corporate;
- (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or
- (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date,

**Tax Change Notice** has the meaning given to it in clause 11.3(c) of this Current Access Arrangement.

**Tax Changes Variation** has the meaning given to it in clause 11.3 of this Current Access Arrangement.

**Third Party** has the meaning given to it in clause 6.1(b).

**Total Revenue** means revenue calculated in the manner described in the Access Arrangement Information.

**WestNet** means WestNet Infrastructure Group Ltd ACN 087 857 001.

15.2. Unless the context otherwise requires, terms used in capitals in this Current Access Arrangement have:

- (a) the meaning given above in this section 15;
- (b) if no meaning is given above in this section 15, the meaning given in the Access Contract Terms and Conditions; and
- (c) if no meaning is given above in this section 15 or in the Access Contract Terms and Conditions, the meaning given in the NGA, NGL, or the NGR.

15.3. Terms used in capitals in the Access Arrangement Information have the same meaning as if they were included in the Current Access Arrangement, unless the context otherwise requires.

# Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline

Appendix 1 – Terms and Conditions for reference services

T1 Service Terms and Conditions

P1 Service Terms and Conditions

B1 Service Terms and Conditions

Revised by reason of and pursuant to orders of the Australian  
Competition Tribunal made on 26 July 2012

5 October 2012

**Economic Regulation Authority**

WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at  
[www.erawa.com.au](http://www.erawa.com.au).

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## Contents

<b>Appendix 1 Access Contract Terms and Conditions</b>	<b>1</b>
<b>Terms and Conditions for the T1 Service</b>	<b>1</b>
Interpretation (clause 1)	1
General provisions (clause 2)	21
Capacity service (clause 3)	23
Duration of the contract (clause 4)	24
Receiving and Delivering Gas (clause 5)	25
Inlet and outlet points (clause 6)	30
Operating Specifications (clause 7)	40
Nominations (clause 8)	44
Imbalances (clause 9)	50
Peaking (clause 10)	54
Overrun (clause 11)	57
Additional Rights and Obligations of Operator (clause 12)	60
Control, Possession and Title to Gas (clause 13)	60
Relocation (clause 14)	62
Metering (clause 15)	65
Un-used clause (clause 16)	75
Curtailment (clause 17)	75
Maintenance and Major Works (clause 18)	84
Force Majeure (clause 19)	85
Charges (clause 20)	86
Invoicing and Payment (clause 21)	89
Default and Termination (clause 22)	91
Liability (clause 23)	94
Dispute Resolution and Independent Experts (clause 24)	96
Assignment (clause 25)	100
General Right of Relinquishment (clause 26)	103
Trading or Transferring Contracted Capacity (clause 27)	105
Confidential Information (clause 28)	108
Notices (clause 29)	115
Representations and Warranties (clause 30)	117
Records and Information (clause 31)	120
Insurances (clause 32)	120
No Waiver (clause 33)	122
Entire Agreement (clause 34)	122
Severability (clause 35)	122
Entry and Inspection (clause 36)	122
Ownership, Control, Maintenance and Risk (clause 37)	123
Revocation, Substitution and Amendment (clause 38)	123
No Common Carriage (clause 39)	124
Operator not a Supplier of Gas (clause 40)	124

Stamp Duty (clause 41)	124
No Third Party Benefit (clause 42)	124
Governing Law (clause 43)	124
General (clause 44)	124
Non-discrimination clause (clause 45)	125
Pipeline Trustee's Limitation of Liability (clause 46)	125
Unused Clause (clause 47)	126
Schedule 1 – Access Request Form	127
Schedule 2 – Charges	132
Schedule 3 – Operating Specifications	133
Schedule 4 – Not Used	134
Schedule 5 – Existing Stations	135
Schedule 6 – Curtailment Plan	136
Schedule 7 – Form of Tripartite Deed	138
<b>Terms and Conditions for the P1 Service</b>	<b>162</b>
Interpretation (clause 1)	162
General provisions (clause 2)	182
Capacity service (clause 3)	184
Duration of the contract (clause 4)	185
Receiving and Delivering Gas (clause 5)	186
Inlet and outlet points (clause 6)	191
Operating Specifications (clause 7)	202
Nominations (clause 8)	205
Imbalances (clause 9)	211
Peaking (clause 10)	215
Overrun (clause 11)	218
Additional Rights and Obligations of Operator (clause 12)	221
Control, Possession and Title to Gas (clause 13)	221
Relocation (clause 14)	223
Metering (clause 15)	226
Un-used clause (clause 16)	236
Curtailment (clause 17)	236
Maintenance and Major Works (clause 18)	245
Force Majeure (clause 19)	246
Charges (clause 20)	247
Invoicing and Payment (clause 21)	250
Default and Termination (clause 22)	252
Liability (clause 23)	255
Dispute Resolution and Independent Experts (clause 24)	257
Assignment (clause 25)	261
General Right of Relinquishment (clause 26)	264
Trading or Transferring Contracted Capacity (clause 27)	266
Confidential Information (clause 28)	269
Notices (clause 29)	276

Representations and Warranties (clause 30)	278
Records and Information (clause 31)	281
Insurances (clause 32)	281
No Waiver (clause 33)	283
Entire Agreement (clause 34)	283
Severability (clause 35)	283
Entry and Inspection (clause 36)	283
Ownership, Control, Maintenance and Risk (clause 37)	284
Revocation, Substitution and Amendment (clause 38)	284
No Common Carriage (clause 39)	285
Operator not a Supplier of Gas (clause 40)	285
Stamp Duty (clause 41)	285
No Third Party Benefit (clause 42)	285
Governing Law (clause 43)	285
General (clause 44)	285
Non-discrimination clause (clause 45)	286
Pipeline Trustee's Limitation of Liability (clause 46)	286
Unused Clause (clause 47)	287
<b>Terms and Conditions for the B1 Service</b>	<b>288</b>
Interpretation (clause 1)	288
General provisions (clause 2)	307
Capacity service (clause 3)	309
Duration of the contract (clause 4)	311
Receiving and Delivering Gas (clause 5)	312
Inlet and outlet points (clause 6)	317
Operating Specifications (clause 7)	327
Nominations (clause 8)	331
Imbalances (clause 9)	337
Peaking (clause 10)	341
Overrun (clause 11)	344
Additional Rights and Obligations of Operator (clause 12)	347
Control, Possession and Title to Gas (clause 13)	347
Relocation (clause 14)	349
Metering (clause 15)	352
Un-used clause (clause 16)	361
Curtailment (clause 17)	361
Maintenance and Major Works (clause 18)	371
Force Majeure (clause 19)	372
Charges (clause 20)	372
Invoicing and Payment (clause 21)	376
Default and Termination (clause 22)	378
Liability (clause 23)	381
Dispute Resolution and Independent Experts (clause 24)	383
Assignment (clause 25)	386

General Right of Relinquishment (clause 26)	389
Trading or Transferring Contracted Capacity (clause 27)	392
Confidential Information (clause 28)	395
Notices (clause 29)	402
Representations and Warranties (clause 30)	404
Records and Information (clause 31)	407
Insurances (clause 32)	407
No Waiver (clause 33)	408
Entire Agreement (clause 34)	409
Severability (clause 35)	409
Entry and Inspection (clause 36)	409
Ownership, Control, Maintenance and Risk (clause 37)	410
Revocation, Substitution and Amendment (clause 38)	410
No Common Carriage (clause 39)	410
Operator not a Supplier of Gas (clause 40)	410
Stamp Duty (clause 41)	411
No Third Party Benefit (clause 42)	411
Governing Law (clause 43)	411
General (clause 44)	411
Non-discrimination clause (clause 45)	411
Pipeline Trustee's Limitation of Liability (clause 46)	412
Unused Clause (clause 47)	413

## Appendix 1 Access Contract Terms and Conditions

### Terms and Conditions for the T1 Service

#### *Interpretation (clause 1)*

##### 1. Interpretation

In this Contract:

**ACCC** means the Australian Competition and Consumer Commission.

**Access Arrangement** means the access arrangement from time to time for the DBNGP under the Access Regime, as changed, varied or replaced from time to time (including by the change made by the Corrigenda of 12 January 2004).

**Access Arrangement Information** means the access arrangement information forming part of an access arrangement proposal from time to time in accordance with the provisions of the National Gas Access (Western Australia) Law.

**Access Regime** means any legislative, legislative and administrative or administrative regime from time to time governing the terms and conditions of third party access to Capacity Services or Spot Capacity on the DBNGP, and at the time of this Contract includes the *National Gas Access (WA) Act 2009 (WA)*, the National Gas Access (Western Australia) Law and the Rules, and any access arrangement approved under the National Gas Access (Western Australia) Law and in force for the DBNGP.

**Access Request Form** means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.

**Accumulated Imbalance** means the accumulated imbalance calculated under clause 9.3 and, if applicable, adjusted under clause 9.8.

**Accumulated Imbalance Limit** has the meaning given in clause 9.5(a).

**Accumulated Imbalance Notice** has the meaning given in clause 9.4.

**Accurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be.

**Actual Mass Flow Rate** means either:

- (a) a directly measured variable; or
- (b) a Derived Variable computed by multiplying the instantaneous actual volume flow of Gas, as measured by the Primary Metering Equipment, by the density of the Gas, the density being either:
  - (i) measured as the instantaneous measured density of the Gas; or
  - (ii) calculated in accordance with the full detail method defined in AGA Report No. 8 Compressibility Factor of Natural Gas and Related Hydrocarbon Gasses (1994) standards, as the Operator determines, or

in accordance with such other Gas industry standards as the Parties may agree.

**Advance Nomination** means a Nomination by the Shipper under clause 8.18.

**Affected Party** has the meaning given in clause 19(a).

**Alcoa** means Alcoa of Australia Limited ABN 93 004 879 298.

**Alcoa's Exempt Capacity** means the Gas Transmission Capacity necessary to transport the quantity of Gas which the Operator is required to Deliver from time to time to Alcoa under the Alcoa Exempt Contract (including Alcoa's Exempt Delivery Entitlement).

**Alcoa Exempt Contract** means the contract originally between the State Energy Commission of Western Australia and Alcoa and now between the Operator and Alcoa dated 7 February 1983 as amended from time to time, and including any changes to the quantities of Alcoa's entitlements under that contract taking effect after the date of execution of the Deed of Amendment No 5 of that contract which result from an exercise of rights by Alcoa under that contract which existed upon the execution of Deed of Amendment No 5 of that contract, but excluding any amendments having effect after the date of execution of Deed of Amendment No 5 of that contract which in any way relate to the Capacity the Operator must provide to Alcoa under that contract including for the purposes for which that Capacity may be used and the prices Alcoa pays for that Capacity if it uses that Capacity for other than a purpose specified in that contract.

**Alcoa's Exempt Delivery Entitlement** means the quantity of Gas (including Alcoa's Priority Quantity) of which Alcoa is entitled to take Delivery under the Alcoa Exempt Contract during a Curtailment, which may exceed Alcoa's Priority Quantity.

**Alcoa's Priority Quantity** means 40 TJ/d of Alcoa's Exempt Delivery Entitlement.

**Appointed Agent** means a person appointed by the Shipper by way of a written agreement to act as agent of the Shipper in respect of some or all of those matters this Contract contemplates may be performed by a Producer or an Appointed Agent on behalf of the Shipper.

**Approved Prospective Shipper** means a person who is not a shipper but who has satisfied the Operator of its creditworthiness such that, in the Operator's reasonable opinion, that person would be capable of meeting the obligations imposed under any relevant contract for Gas Transmission Capacity on the DBNGP.

**Approved Tradeable Capacity** has the meaning given in clause 27.4(g).

**AS** followed by a designation, refers to the text from time to time amended and for the time being in force of the document so designated issued by Standards Australia.

**ASX** means ASX Limited ABN 98 008 624 691.

**Associate** has the meaning given in section 11 of the Corporations Act as at the Execution Date.

**Associated**, when used to describe the relationship between:

- (a) an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and
- (b) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point.

**Authorisation** means:

- (a) any authorisation, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption of any Governmental Authority; and
- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Authority intervenes or acts in any manner within a specified period after notification to it, the expiry of that period without intervention or action of the relevant Governmental Authority.

**Authorised Relocation** means a Requested Relocation that has been authorised by the Operator under clause 14.2.

**B1 Service** means a Back Haul transportation Reference Service provided under the terms and conditions set out in the Access Arrangement for the B1 Service which gives the shipper a right, subject to the terms and conditions of the Access Arrangement, to access capacity of the DBNGP and which:

- (a) can only be Curtailed in the circumstances specified in clause 17.2;
- (b) is treated the same in the Curtailment Plan as all other shippers with a T1, P1 or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (c) is treated the same in the Nominations Plan as all other shippers with a T1, P1 or B1 Service, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.9.

**Back Haul** means a Gas transportation service on the DBNGP where the Inlet Point is downstream of the Outlet Point.

**Bank Bill Rate** means, for the day of calculation, the average mid rate for bills having a tenor closest to 90 days, as displayed on the "BBSY" page of the Reuters Monitor System on that day. However, if the average mid rate is not displayed by 10:30am (Sydney time) on that Day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate (expressed as a yield to maturity) set by the Operator in good faith and acting reasonably at approximately 10:30am on that day, having regard, to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the "BBSW" page of the Reuters Monitor System). The rate set by the Operator must be expressed as a percentage rate per annum and be rounded up to the nearest sixth decimal place.

**Blended Gas** means all Gas Delivered at a Multi-shipper Inlet Point in a commingled inlet stream.

**Blended Specifications** has the meaning given in clause 7.13.

**Capacity** means:

- (a) at an Inlet Point or a proposed Inlet Point - the capacity of the DBNGP to take delivery at and to transport Gas from that Inlet Point; and
- (b) at an Outlet Point or a proposed Outlet Point - the capacity of the DBNGP to transport and deliver Gas to that Outlet Point,

and must be expressed in TJ/d. For the avoidance of doubt, unless otherwise expressly stated, a reference in this Contract to Capacity is a reference to Capacity averaged across a Gas Day.

**Capacity End Date** means 08:00 hours on the date determined in accordance with clause 4 and is 08:00 hours on the date on which the Shipper's access to the particular Contracted Capacity is to end.

**Capacity Reservation Charge** means a component of the price for Gas Transmission Capacity to which the Shipper has access under this Contract, calculated in accordance with clause 20.2.

**Capacity Service** means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided.

**Capacity Start Date** means 08:00 hours on the date specified in clause 4.1 of this Contract as the date at which the Shipper's access to the particular Contracted Capacity is to start or has started.

**Carbon Cost** means any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

**Charges** means the Capacity Reservation Charge, Commodity Charge and Other Charges.

**Check Metering Equipment** means any Metering Equipment or other equipment installed, maintained or operated by a Party under clause 15.8(a) for checking measurements of Gas quality and quantity.

**Commodity Charge** means the charge set out in clause 20.3.

**Confidential Information** has the meaning given in clause 28.1.

**Contract** means this contract as revoked, substituted or amended from time to time under clause 38, including the queuing policy of the Access Arrangement, Access Request Form and these terms and conditions and the Schedules attached hereto.

**Contracted Capacity** has the meaning given in clause 3.3 and, in the context of any other contract in respect of a particular Capacity Service, has the meaning given in that contract.

**Contracted Firm Capacity** means Alcoa's Exempt Capacity and Capacity under a T1 Service, B1 Service or P1 Service or a Firm Service.

**Contract Year** means the period from the Capacity Start Date until 31 December in the same calendar year and thereafter the period commencing 1 January in a calendar year and ending on 31 December in the same calendar year, with the last Contract Year ending on the earlier of the Capacity End Date and the sooner termination of this Contract.

**Contribution Agreement** has the meaning given to it in clause 6.13(b).

**Control** has the meaning given in the Corporations Act as at the Execution Date.

**Controller** has the meaning given in the Corporations Act as at the Execution Date.

**Corporations Act** means the Corporations Act 2001 (Cth).

**CPI** means the Consumer Price Index, all groups; weighted average of eight capital cities as published for each quarter by the Australian Bureau of Statistics or, if the Consumer Price Index, all groups; weighted average of eight capital cities ceases to be

published, such alternative index as the Operator as a Reasonable and Prudent Person may determine.

**CRS** means the Operator's electronic customer reporting system.

**CS7** means compressor station no.7 on the DBNGP.

**Cubic Metre** or m<sup>3</sup> means a cubic metre at MSC.

**Current Verification** means the Verification at which the Primary Metering Equipment is found to be Inaccurate.

**Curtail** means reduce, interrupt or stop, or any combination of them, completely or in part.

**Curtailment Area** means, in relation to a particular Curtailment, the area affected by the relevant Curtailment and unless the Curtailment is a Point Specific Curtailment, includes all areas of the DBNGP downstream of that area.

**Curtailment Notice** has the meaning given in clause 17.6(a).

**Curtailment Plan** means the regime governing Curtailments of Capacity set out in Schedule 6 and clause 17.9.

**Daily Imbalance** means, for a particular Gas Day, the Shipper's Total Inlet Quantity minus the Shipper's Total Outlet Quantity for that Gas Day across all of its Capacity Services.

**Daily Nomination** means:

- (a) in respect of a Type of Capacity Service at an Inlet Point on a Gas Day – the Capacity for the quantity of Gas that the Shipper is to Deliver to the Operator at the Inlet Point on a Gas Day under that Type of Capacity Service; and
- (b) in respect of a Type of Capacity Service at an Outlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is to Receive from the Operator at the Outlet Point on a Gas Day under that Type of Capacity Service,

in each case as set out in the Initial Nomination for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled under a Renomination process.

**DBNGP** means the Gas transmission pipeline system that runs between Dampier and Bunbury in Western Australia, described in Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015) as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists at the Execution Date.

**DBNGP Corridor** has the meaning given in the DBP Act.

**DBNGP Operating Agreement** means the document so titled dated 25 March 1998 between the Operator and the Pipeline Trustee as amended and extended from time to time, under which the Pipeline Trustee grants to the Operator a sublicense of the pipeline licence for the DBNGP and the right and obligation to operate the DBNGP.

**DBNGP Trustee** means DBNGP Holdings Pty Ltd ABN 16 110 721 081.

**DBP Act** means the *Dampier to Bunbury Pipeline Act 1997 (WA)*.

**Deliver** means to deliver or supply Gas and includes Gas deemed by this Contract to be delivered or supplied at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Derived Variable** means a value computed by electronic, analogue or digital means from primary measurements or other derived variables or a combination of both.

**Direct Damage** means loss or damage which is not Indirect Damage.

**Dispute** means any dispute or difference concerning:

- (a) the construction of;
- (b) anything contained in or arising out of; or
- (c) the rights, obligations, duties or liabilities of a Party under,

this Contract and includes any issue which a provision of this Contract contemplates may be referred to dispute resolution under clause 24.

**Distribution Network** means any Gas distribution system which receives Gas from the DBNGP and includes any Gas distribution system owned or operated by Networks which receives Gas from the DBNGP.

**Distribution Networks' IPQ** means 40 TJ/d or such greater or lesser amount as may be agreed between the Parties.

**Distribution Networks Shipper** means any shipper delivering Gas into a Distribution Network (subject to any Law which excludes that shipper from participating in a share of the Distribution Networks' IPQ), from time to time, and may include the Shipper.

**Duty Equipment** means the Metering Equipment in service at a particular time.

**Electronic Data Collection System** means the system and equipment for collecting, receiving and transferring electronic signals and data from Metering Equipment, used for the measurement of Gas delivered to shippers and for billing.

**Environmental and Safety Law** means a Law relating to environmental, building, construction, engineering, planning, health, safety or occupational health and safety matters.

**Equity** means the body of law referred to as equity in section 24 of the *Supreme Court Act 1935 (WA)*.

**ERA** means the Economic Regulatory Authority established by the *Economic Regulation Authority Act 2003 (WA)*.

**Excess Imbalance Charge** means the charge payable by the Shipper identified in clause 9.5(c).

**Excess Imbalance Rate** means the rate set out in row 1 of Schedule 2.

**Execution Date** means the date on which this Contract is signed by the last of the Parties to sign it.

**Existing Gas Supply Contract** means a contract between a shipper and a customer for the sale and or transport of Gas to a customer of a shipper under which the Gas is or will be supplied to the customer at or immediately downstream of an Outlet Point, which was in existence as at the date of the relevant change in Law as contemplated in

clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Inlet Point** means an Inlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Inlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Outlet Point** means an Outlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Outlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Producer Contract** means a contract between a shipper and a Producer for the sale of Gas to the shipper under which the Gas is or will be supplied to the shipper at or immediately upstream of an Inlet Point, which was in existence as at the date of the relevant change in Law as contemplated in clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Station** means:

- (a) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that was installed and commissioned on or before 1 January 1995; or
- (b) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that is the subject of a Facility Agreement (which has the meaning given in clause 6.14) or similar agreement, as at the Capacity Start Date,

all of which are listed in Schedule 5.

**Expansion** means all work required to be undertaken to or in connection with the DBNGP in order to expand the Gas Transmission Capacity of the DBNGP, including to provide additional Capacity for Alcoa pursuant to the Alcoa Exempt Contract, but excluding (subject to the following sentence) any expansion which causes the DBNGP to exceed the geographical confines of the DBNGP Pipeline Corridor created under Part 4 of the DBP Act as at the date of this Contract. The preceding exclusion does not apply to expansion within the extended corridor as contemplated by the expansion project of the easement for the corridor under the DBP Act which was occurring at or about 27 October 2004.

**Facility** has the meaning given in clause 6.14.

**Facility Agreement** has the meaning given in clause 6.14.

**Financial Matter** has the meaning given in clause 24.7.

**Firm Service** has the meaning given in the Access Arrangement in the form the Access Arrangement was in on 13 January 2004.

**Force Majeure** means any event or circumstance not within a Party's control and which the Party, by the exercise of the standards of a Reasonable and Prudent Person, is not able to prevent or overcome, including (provided the foregoing tests are satisfied):

- (a) acts of God, including epidemics, land slides, lightning, earthquakes, fires, storms, floods, wash outs and cyclones;
- (b) strikes, lock outs, stoppages, restraints of labour and other industrial disturbances;

- (c) acts of the enemy including wars, blockades and insurrection;
- (d) acts of terror, terrorism or terrorists;
- (e) riots and civil disturbances;
- (f) valid Laws of the Commonwealth or any Commonwealth statutory authority;
- (g) valid Laws of the State or a local government or any State statutory authority;
- (h) shortage of necessary equipment, materials or labour;
- (i) [deleted]
- (j) refusal or delay in obtaining any necessary consent or approval from any Commonwealth, State or local government or a Commonwealth or State statutory authority;
- (k) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the Party's operations;
- (l) any DBNGP shutdown or interruption which is validly required or directed by any Commonwealth, State or local government agency or any Commonwealth or State statutory authority having authority to so require or direct;
- (m) any DBNGP shutdown or interruption required to conform with design or regulatory limits on DBNGP facilities, whether arising due to environmental conditions or circumstances or otherwise;
- (n) DBNGP ruptures; and
- (o) collisions or accidents.

**Forward Haul** means a gas transportation service on the DBNGP where the Inlet Point is upstream of the Outlet Point.

**Full Haul** means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.

**Gas** means any naturally occurring gas or mixture of gases, intended for use:

- (a) as a fuel; or
- (b) in any chemical process.

**Gas Day** means the period starting at 08:00 hours on a day and ending at 08:00 hours on the following day and the date of a Gas Day is the date on which it commences.

**Gas Hour** means a period of 60 minutes, commencing and ending on the hour.

**Gas Month** means the period starting at 08:00 hours on the first day of a calendar month and ending at 08:00 hours on the first day of the following calendar month.

**Gas Transmission Capacity** means the capacity of the DBNGP to transport Gas.

**Gas Year** means the period starting at 08:00 hours on 1 January and ending at 08:00 hours on the following 1 January.

**Good Gas Industry Practice** means the practices, methods and acts engaged in or approved by a firm or body corporate which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons engaged in providing services to the Australian gas industry under the same or similar circumstances and conditions, and includes complying with the terms of this Contract and taking reasonable steps to ensure that:

- (a) manufacturers' instructions and operating manuals are complied with;
- (b) adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;
- (c) sufficient experienced and trained operating personnel are available to undertake its responsibilities under this Contract;
- (d) appropriate monitoring and testing is carried out to ensure that the equipment will function properly under normal and emergency conditions;
- (e) equipment is operated and maintained in accordance with any Laws applicable to that equipment;
- (f) in accordance with all applicable Laws:
  - (i) it acts in a sound and workmanlike manner;
  - (ii) it acts with due skill, care and applying standards required or accepted by a company experienced in the delivery of similar works and the provision of similar services;
  - (iii) it acts with due expedition and without unnecessary or unreasonable delays; and
  - (iv) it acts in a manner which allows for the work to be efficiently and cost-effectively performed with due regard to safety.

**Governmental Authority** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, responsible minister, department, office, commission, delegate, authority, instrumentality, tribunal, board, agency, entity or organ of government, whether federal, state, territorial or local, statutory or otherwise.

**GST** means GST as that term is defined in the GST Law and as imposed by the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

**Higher Heating Value** means the gross amount of heat energy (measured in megajoules) produced by the complete combustion of one Cubic Metre of dry Gas with air of the same temperature and pressure, when the products of combustion are cooled to the initial temperature of the Gas and air and when all water formed by combustion is condensed to the liquid state, corrected to a water - vapour free basis and expressed at MSC, and determined using ISO 6974 for the analysis of natural Gas and using ISO 6976 for the calculations from that analysis.

**Hourly Peaking Charge** means the charge payable under clause 10.3(d).

**Hourly Peaking Limit** has the meaning given in clause 10.1.

**Hourly Peaking Rate** means the rate specified in row 2 of Schedule 2.

**Hourly Quantity** means, in respect of a particular shipper for a Gas Hour, the total quantity (across all Outlet Points in the relevant Pipeline Zone or Zones (as the case may be)) of Gas Received by the shipper from the Operator during that Gas Hour, expressed in terajoules.

**Inaccurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a greater extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii) (as the case may be).

**Independent Expert** means an expert chosen under clause 24.8.

**Indirect Damage** means, in respect of a person:

- (a) any indirect loss or damage suffered by that person, however caused, including any:
  - (i) consequential loss or damage;
  - (ii) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
  - (iii) business interruption,  
whether or not the indirect loss or damage was foreseeable; and
- (b) any liability of that person to any other person, or any claim, demand, action or proceeding brought against that person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding.

**Inert Gases** means any one or any mixture of helium, neon, argon, krypton, xenon, radon, nitrogen and carbon dioxide.

**Initial Nomination** means a Nomination by the Shipper under clause 8.6, unless no such Nomination has been made, in which case it means an Advance Nomination (if the Shipper has made an Advance Nomination).

**Initial Notice** has the meaning given to it in clause 17.6(b)(i)(A).

**Inlet Metering Equipment** means the Metering Equipment referred to in clause 15.1(a).

**Inlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator and, where the context requires, means a flange, joint or other point specified in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

**Inlet Point Connection Facilities** means that part of the DBNGP that comprises facilities and equipment between an Inlet Point and the main trunkline structure of the pipeline, and includes:

- (a) any facilities to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
- (b) all standby, emergency and safety facilities; and
- (c) all ancillary equipment and services,  
constituting that part of the DBNGP.

**Inlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Inlet Sales Agreement** means the form of inlet sales agreement which is published on the Operator's website from time to time.

**Inlet Station** means the Metering Equipment site Associated with an Inlet Point, and includes:

- (a) any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
- (b) all standby, emergency and safety facilities; and
- (c) all ancillary equipment and services.

**Insolvency Event** means, in respect of a Party (the *first person*) any one or more of:

- (a) any execution or other process of any court or authority being issued against or levied upon any material part of the first person's property or assets being returned wholly or partly unsatisfied;
- (b) an order being made or a resolution being passed for the winding up or dissolution without winding up of the first person otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other Party has given consent;
- (c) a Controller being appointed in respect of the whole or a material part of the first person's property, undertaking or assets;
- (d) the first person entering into any arrangement, reconstruction or composition with or for the benefit of its creditors;
- (e) an administrator of the first person being appointed or the board of directors of the first person passing a resolution to the effect of that specified in section 436A(1) of the Corporations Act;
- (f) the first person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand for an amount in excess of \$1 million; or
- (g) an event having a substantially similar effect to an event described in any of paragraphs (a) to (f) (inclusive) which happens in connection with the first person under the law of any jurisdiction.

**ISO** means an International Standards Organisation standard.

**Kwinana Junction** has the meaning given in the pipeline description document that forms Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015).

**Law:**

- (a) means any statute, subsidiary legislation, ordinance, code, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order; and
- (b) includes:

- (i) the terms and conditions of any licence, permit, consent, certificate, authority, approval or assurance or bond or similar requirements issued under any of the things referred to in paragraph (a); and
  - (ii) all applicable standards and obligations under the common law and Equity; but
- (c) excludes:
- (i) any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this Contract); and
  - (ii) any requirements of the Regulator (except for requirements which apply by force of law to prevail over any inconsistent clause of this Contract).

**Load Characteristics** means the relationships between Gas flow and time.

**LPG** means the sum of propane and butane components of Gas.

**Maintain** includes, where necessary, renew or replace.

**Maintenance Charge** has the meaning given in clause 6.11.

**Major Works** means any enhancement, expansion, connection, pigging or substantial work that the Operator needs to undertake on the DBNGP and that:

- (a) cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and
- (b) by its nature or magnitude would require a Reasonable and Prudent Person to wholly or partially reduce Gas Transmission Capacity.

**Metering Equipment** means all equipment used to measure either or both the physical quantity or quality of Gas entering the DBNGP at an Inlet Point or exiting the DBNGP at an Outlet Point and all ancillary equipment required to compute Derived Variables and to produce printed reports at the Inlet Station or Outlet Station and to test and Maintain the reliability and calibration accuracy of that equipment (including any metering facilities or equipment that are or could be used for proving, testing and calibration of the equipment).

**Metering Information** has the meaning given in clause 15.5(d).

**MHQ** for an Outlet Point on a particular Gas Day in respect of a shipper, means (subject to clause 17.7(c)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Outlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper.

**MSC** means metric standard conditions, being a pressure of 101.325 kPa and a temperature of 15°C.

**Multi-shipper Agreement** means an agreement under clause 6.3(d).

**Multi-shipper Inlet Point** means an Inlet Point at which more than one shipper Delivers Gas to the Operator.

**Multi-shipper Outlet Point** means an Outlet Point at which more than one shipper Receives Gas from the Operator.

**National Gas Access (Western Australia) Law** means the provisions applying because of section 7 of the *National Gas Access (WA) Act 2009* (WA).

**Networks** means ATCO Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd and before that AlintaGas Networks Pty Ltd).

**New Inlet Point** means an Inlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**New Outlet Point** means an Outlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**Nominated Day** means a Gas Day in respect of which an Advance Nomination or Initial Nomination is made.

**Nominated Inlet Point** means an Inlet Point specified in an Initial Nomination as one at which the Shipper proposes to Deliver Gas to the Operator during the Nominated Day.

**Nominated Outlet Point** means an Outlet Point specified in an Initial Nomination as one at which the Shipper proposes to Receive Gas from the Operator during the Nominated Day.

**Nominations** means Initial Nominations or Advance Nominations, and where other contracts for Capacity are being referred to, includes the material equivalent of Initial Nominations or Advance Nominations (as the case may be) under those other contracts.

**Nominations Plan** means the process for allocating Nominations set out in clause 8.8 which is based upon the priorities set out in the Curtailment Plan.

**Notice** includes a Tax Invoice, statement, demand, consent, request, application, notification and any other written communication, and includes such a notice communicated by means of facsimile or (if the Parties so agree) by the CRS.

**Notional Gate Point** has the meaning given in clause 6.10.

**Operate** includes to Maintain, test, or repair.

**Operating Specification** means the Gas quality specification specified in Item 1 of Schedule 3, and includes each component of the specification.

**Operationally Feasible** means operationally feasible in the Operator's opinion (acting as a Reasonable and Prudent Person) in the circumstances prevailing at the relevant time including:

- (a) the configuration and status of the DBNGP at the relevant time;
- (b) the individual and collective Reserved Capacities and Load Characteristics of all shippers;
- (c) Gas Transmission Capacity generally; and
- (d) the Operator's relevant entitlements and obligations under any contract or written Law.

**Operator** means DBNGP (WA) Transmission Pty Ltd ABN 69 081 609 190 and includes its successors and permitted assigns.

**Operator Default Notice** has the meaning given in clause 22.6.

**Operator Entity** means the Operator, all of the Operator's Related Bodies Corporate and all entities Controlled by any of the foregoing.

**Operator Owned Point** means an Outlet Point described in clauses 6.13(a)(ii)(A) or 6.13(a)(ii)(B).

**Option** has the meaning given in clause 4.3.

**Original Capacity has** the meaning given in clause 4.3.

**Other Charges** has the meaning given in clause 20.4.

**Other Reserved Service** means a Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, P1 Service, B1 Service, a Firm Service and Capacity under a Spot Transaction).

**other shipper** means any shipper other than:

- (a) Alcoa as a shipper under the Alcoa Exempt Contract (but not otherwise); and
- (b) the Shipper.

**Outlet Metering Equipment** means Metering Equipment which the Operator is required by clause 15.2(a) to supply, install, Operate and Maintain at an Outlet Station at the Shipper's expense.

**Outlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Receipt by it of Gas from the Operator and, where the context requires, means a flange, joint or other point referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

**Outlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Outlet Station** means either the Metering Equipment site associated with an Outlet Point, and includes any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services.

**Out-of-Specification Gas** means Gas which does not comply with one or more of the temperature or pressure specifications in this Contract or with one or more components of the Operating Specification, or where relevant with clause 7.2 or 7.3 (as the case may be).

**Overrun Charge** has the meaning given in clause 11.1(a).

**Overrun Gas** means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including T1 Services and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

**Overrun Rate** has the meaning given in clause 11.1(b).

**P1 Service** has the meaning given in clause 3.4(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**Part Haul** means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

**Party** means the Operator or the Shipper or, where the context requires, the Pipeline Trustee or the DBNGP Trustee (as the case may be) and, if the Shipper comprises more than one person, includes each such person.

**Period** means in respect of the Shipper's Capacity, a Season or a Gas Month as the case may be for which the Shipper's Capacity is quantified.

**Period of Supply** means in respect of particular Contracted Capacity the time period between:

- (a) the relevant Capacity Start Date; and
- (b) the relevant Capacity End Date.

**Physical Gate Point** means a flange, joint or other point marked in the description of the DBNGP system in the Access Arrangement Information as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point.

**Pipeline Trust** has the meaning given in clause 25.5(b).

**Pipeline Trustee** means DBNGP (WA) Nominees Pty Ltd ABN 78 081 609 289.

**Pipeline Zone 1** means the area of the DBNGP immediately downstream of the Dampier Inlet Point and upstream of 1 kilometre downstream of the CS2 Station Downstream Isolating Valve (MLV30).

**Pipeline Zone 2** means the area of the DBNGP immediately downstream of 1 kilometre downstream of CS2 Station Downstream Isolating Valve and immediately upstream of 1 kilometre downstream of the CS3 Station Downstream Isolating Valve (MLV42).

**Pipeline Zone 10** means the area of the DBNGP which is downstream of:

- (a) the upstream flange of Kwinana Junction valve V4; and
- (b) the upstream flange of Kwinana Junction valve HV401A.

**Pipeline Zone 10B** means the area of the DBNGP on mainline South, being downstream of the outlet flange of compressor station 10.

**Planned Maintenance** means maintenance of the DBNGP which is scheduled in advance and of which the Shipper is given reasonable, and in any event not less than 3 Gas Days, written notice.

**Point Specific Curtailment** means a Curtailment as it affects or applies to a particular Inlet Point or Outlet Point.

**Possession** includes custody, control, and an immediate right to possession, custody, or control.

**Prescribed Interest Rate** means the Bank Bill Rate plus an annual interest rate of 3 percent per annum.

**Prescribed Limits of Uncertainty** means the limits of metering uncertainty prescribed by clause 15.3.

**Previous Verification** means the Verification at which the Primary Metering Equipment was last found to be Accurate.

**Primary Metering Equipment** means the Inlet Metering Equipment or the Outlet Metering Equipment, as the case may be.

**Producer** means a producer or supplier of Gas with whom the Shipper has entered into a Gas supply contract or contracts under which Gas is or will be Delivered at an Inlet Point.

**Reasonable and Prudent Person** means a person acting in good faith with the intention of performing his or her contractual obligations and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable Laws engaged in the same type of undertaking under the same or similar circumstances and conditions.

**Receive** means to accept or receive Gas into or from the DBNPG (as the case requires) and includes Gas deemed by this Contract to be received at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Reference Tariff Variation Mechanism** means the mechanism for varying the T1 Tariff as set out in section 11 of the Access Arrangement.

**Regulator** means *local Regulator* as this term is defined in section 11 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA), being the ERA.

**Related Body Corporate** has the meaning given in the Corporations Act as at the Execution Date.

**Related Entity** has the meaning given to that expression in the Corporations Act as at the Execution Date.

**Relative Density** is expressed at MSC and means the molar mass of a Gas in g/mol divided by 28.9641 g/mol (being the molar mass of dry air as defined in ISO 6976) and corrected for the effect of deviation from ideal Gas behaviour upon both air and Gas.

**Relevant Company** means the direct and indirect shareholders of the Operator, service providers to the Operator (including the System Operator) and all Related Bodies Corporate of those entities.

**Relevant Construction Costs** means the Relevant Outlet Station Construction Costs (as the case may require).

**Relevant Contracts** has the meaning given in clause 7.13.

**REMCo** means the company established to administer and operate the approved retail market scheme for the retail gas market in Western Australia and includes any company, person or authority from time to time undertaking that role, being Retail

Energy Market Company Limited ACN 103 318 556 of Level 40, 140 William Street, Melbourne, Victoria 3000.

**Remote Data** is defined in clause 15.4(d).

**Renomination** has the meaning given in clause 8.11.

**Replacement Contract** means the contract which is deemed to arise between the Operator and a Replacement Shipper by clause 27.7 following the Transfer of Tradeable Capacity to the Replacement Shipper.

**Replacement Shipper** has the meaning given in clause 27.3.

**Request for Approval** has the meaning given in clause 27.4(a).

**Requested Relocation** has the meaning given in clause 14.1.

**Reserved Capacity** means, subject to any changes from time to time made pursuant to the Curtailment Plan:

- (a) the Distribution Networks IPQ, Alcoa's Priority Quantity, Alcoa's Exempt Delivery Entitlement;
- (b) Capacity referred to in any contract for a Type of Capacity Service as "Contracted Capacity" where such "Contracted Capacity" may, at the relevant time, be nominated for delivery to the relevant Inlet Point or Outlet Point (if any) pursuant to that Capacity Service (regardless of the level of interruptibility of the service at an Inlet Point or an Outlet Point (as the case may be)).

**Resumption** means a resumption by the Shipper of all or part of Traded Capacity in accordance with the Transfer Terms.

**Resumption Notice** means a notice issued by the Shipper that the Shipper intends to Resume all or part of Traded Capacity.

**Retail Market Rules** means the retail market rules that govern the retail gas market in Western Australia.

**Rules** means the National Gas Rules referred to in section 294 of the National Gas Access (Western Australia) Law.

**Season** means either Summer or Winter.

**Share of the Distribution Networks' IPQ** means a shipper's pro-rata share of the Distribution Networks' IPQ, based on its Nominations into the Distribution Networks, unless the Distribution Networks Shippers all agree to a different allocation policy and advise the Operator thereof.

**Shipper** means any person who, from time to time, has a contract with the Operator for access to Gas Transmission Capacity, and includes the Shipper.

**Shipper** means the party so described where the parties to this Contract are named on its first page.

**Shipper Default Notice** has the meaning given in clause 22.2.

**SI Units** means units of *Le Système International d'Unités* established by the *Conférence Générale des Poids et Mesures* set out in AS1000-1979.

**Spot Capacity** means any Gas Transmission Capacity on a Gas Day (being the Gas Transmission Capacity available after all Nominations for Reserved Capacity for that Gas Day has been scheduled by the Operator for that Gas Day), which Gas Transmission Capacity, is, according to the Operator (acting in good faith) available for purchase.

**Spot Transaction** means a transaction for the sale and purchase of Spot Capacity between the Operator and a shipper.

**Standard Shipper Contract** means the contract of that nature required to be made available on the Operator's website.

**State** means the State of Western Australia.

**Storage Service** means a service to store Gas on the DBNGP which is provided on terms and conditions as published on the Operator's website from time to time.

**Sub-network** means that part of a Distribution Network which operates at a nominal pressure in excess of 300 kPa, which for the purposes of gas flow is not directly connected with any other part of the Distribution Network which operates at a nominal pressure in excess of 300 kPa.

**Summer** means the period from 08:00 hours on 1 November of a year to 08:00 hours on 1 May of the following year.

**Surcharges** means the charges referred to in clauses 20.4(a)(i) to 20.4(a)(iv) inclusive.

**System Curtailment** means a Curtailment which affects more than one Inlet Point or Outlet Point.

**System Operator** has the meaning given in clause 2.5(a).

**System Use Gas** means Gas used by the Operator for the following purposes:

- (a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:
  - (i) compressor fuel;
  - (ii) gas engine alternator fuel;
  - (iii) heater fuel; and
  - (iv) increases to linepack, other than:
    - A. when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
    - B. repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
- (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.

**T1 Capacity** has the meaning given in clause 3.3(b).

**T1 Capacity Reservation Tariff** has the meaning given in clause 3.3(b) of the Access Arrangement.

**T1 Commodity Tariff** has the meaning given in clause 3.3(b) of the Access Arrangement.

**T1 Contract** means any contract between the Operator and a shipper for a T1 Service, and to avoid doubt includes this Contract.

**T1 Permissible Curtailment Limit** has the meaning given in clause 17.3(c).

**T1 Service** has the meaning given in clause 3.2(a) and clause 3.3(a) of the Access Arrangement.

**T1 Tariff** means the reference tariff for T1 Service set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax, capital gains tax, fines or penalties).

**Tax Change** means:

- (a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
- (b) any Carbon Cost is incurred in relation to the DBNGP by the Operator or any of its Related Bodies Corporate;
- (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or
- (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date.

**Tax Change Notice** has the meaning given to it in clause 20.7(c).

**Tax Invoice** has the meaning given to it in the GST Law.

**Technical Matter** has the meaning given to it in clause 24.7.

**Technically Practicable** means technically feasible and practicable consistent with the safe and reliable operation of the DBNGP, in the view of a Reasonable and Prudent Person.

**Terminated Capacity** has the meaning given in clause 22.11(c).

**TJ/d** means terajoules per Gas Day.

**Total Contracted Capacity** means in respect of a particular shipper in respect of one or more particular Capacity Services (as the case may be) at a particular time:

- (a) in relation to Inlet Points, the sum of the shipper's Contracted Capacity for all Inlet Points; and
- (b) in relation to Outlet Points, the sum of the shipper's Contracted Capacity for all Outlet Points.

**Total Current Physical Capacity** means the total physical Gas throughput Capacity at the relevant time (having regard to all associated facilities) of an Inlet Point or an Outlet Point and operating within its technical design parameters, as the case may be, in the Operator's opinion as a Reasonable and Prudent Person.

**Total Inlet Quantity** means the total quantity (across all Inlet Points) of Gas Delivered to the Operator by the Shipper on a Gas Day across all contracts (including Spot Transactions).

**Total Outlet Quantity** means the total quantity (across all Outlet Points) of Gas Received by the Shipper from the Operator on a Gas Day across all contracts (including Spot Transactions).

**Total Physical Capacity** means the Total Current Physical Capacity as at the Execution Date.

**Tp Service** is an Other Reserved Service.

**Tradeable Capacity** has the meaning given in clause 27.4(a).

**Traded Capacity** is any Tradeable Capacity which has been Transferred to a Replacement Shipper following the approval or deemed approval of the Transfer Terms of that Tradeable Capacity.

**Transfer** includes transfer, assign to or otherwise grant an interest in or entitlement to Tradeable Capacity.

**Transfer Terms** means the terms and conditions, set out in a Request for Approval, on which a shipper is prepared to Transfer Tradeable Capacity to a Replacement Shipper.

**Transmission Outlet Point** means an Outlet Point which is not a Notional Gate Point.

**Type of Capacity Service** has the meaning given in clause 8.8(b).

**Unavailable Overrun Charge** means the charge payable under clause 11.6 and clause 17.8(e).

**Unavailable Overrun Rate** means the rate specified in row 4 of Schedule 2.

**Unavailability Notice** has the meaning given in clause 11.2(a).

**Verification** means the process of testing all Metering Equipment and all components of Metering Equipment to establish its calibration accuracy.

**WestNet** means WestNet Infrastructure Group Ltd (ABN 40 087 857 001) (formerly Alinta 2000 Limited).

**Winter** means the period from 08:00 hours on 1 May in a year to 08:00 hours on 1 November of the same year.

**WLPG Plant** means the LPG extraction plant fronting Leath and Mason Roads, Kwinana, which is operated by Wesfarmers LPG Pty Ltd.

**Wobbe Index** means the number obtained by the formula:

$$\text{Wobbe Index} = \frac{\text{Higher Heating Value}}{\sqrt{\text{Relative Density}}}$$

**Working Day** means any Monday, Tuesday, Wednesday, Thursday or Friday which is not gazetted as a public holiday in the Perth metropolitan area.

## General provisions (clause 2)

### 2. General

#### 2.1 Construction generally

In the construction of this Contract, unless the context requires otherwise:

- (a) a reference to a clause or Schedule is a reference to a clause or Schedule of this Contract;
- (b) words indicating the singular number include the plural number and vice versa;
- (c) words of one gender include the corresponding words of all other genders;
- (d) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (e) a reference to any statutory Law extends to and includes any regulations under that Law and any amendment of, modification of, or substitution for, that Law;
- (f) a reference to any contract or agreement is a reference to that contract or agreement as amended, varied, novated or substituted from time to time;
- (g) references to dollars or \$ are references to Australian dollars;
- (h) a reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in Perth, Western Australia, even if the obligation must be performed elsewhere;
- (i) all time is expressed in a 24-hour format, with each day (but not a Gas Day) commencing at 00:00 hours and ending at 24:00 hours;
- (j) unless specified otherwise, reference to a quantity of Gas is a reference to that quantity of Gas measured in GJ;
- (k) all units of measurement used in this Contract are SI Units as they are applied as Australian legal units of measurement under the *National Measurement Act 1960* (Cth);
- (l) unless the contrary intention appears, the interpretation provisions of the *Interpretation Act 1984* (WA) apply to this Contract;
- (m) any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (n) any specific reference to or listing of items following the words **including, for example or such as** is without limitation and does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (o) **under** includes **by, by virtue of, pursuant to and in accordance with**;
- (p) a reference to rights, entitlements, obligations or terms "materially equivalent" or the "same" (in comparison to rights, entitlements, obligations or terms in this Contract or in comparison to other rights, entitlements, obligations or terms (as the case may be)) or any similar expressions is deemed to mean

rights, entitlements, obligations or terms that are, in the opinion of a Reasonable and Prudent Person, materially equivalent to the relevant rights, entitlements, obligations or terms in this Contract or those other rights, entitlements, obligations or terms (as the case may be).

## 2.2 Headings

Headings are inserted for convenience and do not affect the interpretation of this Contract.

## 2.3 Rounding to a certain number

Any number calculated under this Contract which exceeds six decimal places must be rounded to six decimal places. For the purposes of such rounding, if the digit at the seventh decimal place is:

- (a) between zero and four (inclusive), the number must be rounded down to the nearest sixth decimal place; and
- (b) between five and nine (inclusive), the number must be rounded up to the nearest sixth decimal place.

## 2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including [RT1](#) Service, Other Reserved Service, Contracted Capacity, and Total Contracted Capacity) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

## 2.5 System Operator

- (a) The Operator's rights and powers under this Contract may be delegated to a contractor (**System Operator**) who is entitled to exercise, on behalf of the Operator, all such rights and powers conferred on the Operator.
- (b) The Operator may from time to time give notice in writing to the Shipper as to the details of the System Operator.
- (c) Any act, matter or thing done by the System Operator in respect of this Contract or in the performance of obligations related to this Contract in either its own name or in the name of the Operator is deemed to have been done by the Operator and the Operator agrees to ratify and confirm whatsoever the System Operator does or causes to be done by virtue of, or purportedly by virtue of, the powers contained in this Contract.
- (d) Without limiting clause 2.5(c), any communication or notice given, or document signed, by the System Operator in respect of this Contract is deemed to have been given or signed by the Operator and will bind the Operator. Similarly, any communication, notice or document given to the System Operator in respect of this Contract is deemed to have been given to the Operator and will bind the Operator.
- (e) The Operator must procure that the System Operator complies with the requirements of the Ring Fencing Arrangements of Part 2 of Chapter 4 of the *National Gas Access (Western Australia) Law* as if it were a 'Service Provider' for the purposes of that section.

## 2.6 Access Regime and Regulator's requirements as Laws

To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract.

## Capacity service (clause 3)

### 3. Capacity Service

#### 3.1 Operator to provide T1 Service to Shipper

During the Period of Supply, the Operator will provide the T1 Service to the Shipper and the Shipper agrees to accept the T1 Service from the Operator on the terms and conditions of this Contract.

#### 3.2 Capacity Service

(a) The T1 Service is the Full Haul Gas transportation service provided under this contract which gives the Shipper a right, subject to the terms and conditions of this Contract, to access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9):

- (i) can only be Curtailed in the circumstances specified in clause 17.2;
- (ii) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (iii) is treated the same in the Nominations Plan as all other shipper with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.

(b) The Operator acknowledges and agrees:

- (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
- (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP is 98% for each Period of a Gas Year;
- (iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator, acting as a Reasonable and Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and
- (iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:
  - (A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and
  - (B) Alcoa's Exempt Capacity,

does not materially exceed the amount of T1 Capacity in the DBNGP.

- (c) Shipper acknowledges and agrees that, subject to clause 14, the T1 Service is a Full Haul Service and cannot be:
  - (i) Back Haul; or
  - (ii) Part Haul.
- (d) In this clause 3.2 probability of supply means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.
- (e) For the avoidance of doubt, Alcoa's Exempt Capacity is provided by Operator out of Tranche 1 Capacity in the DBNGP.

### 3.3 Contracted Capacity

The Shipper's **Contracted Capacity** for each Gas Day within a Period under this Contract:

- (a) at an Inlet Point specified in the Access Request Form - is the amount for T1 Service set out in the Access Request Form for that Period; and
- (b) at an Outlet Point specified in the Access Request Form - is the amount for T1 Service set out in the Access Request Form for that Period.

### 3.4 Operator must deliver Gas up to Contracted Capacity

During the Period of Supply, subject to this Contract (including clauses 5 and 17), the Operator must deliver on each Gas Day (aggregated across all Outlet Points) the quantity of Gas required by the Shipper up to the Shipper's Total Contracted Capacity.

## ***Duration of the contract (clause 4)***

### 4. Duration of the Contract

#### 4.1 Capacity Start Date

- (a) The Capacity Start Date is 08:00 hours on the date specified in the Access Request Form as the Requested Reference Service Start Date.
- (b) Requests from the Shipper for any amendment to the Capacity Start Date will be considered by the Operator with terms and conditions for any such amendment to be agreed between the parties giving regard to the Operator's circumstances at the time of the request.

#### 4.2 Term

- (a) Subject to the terms and conditions of this Contract the Capacity End Date is 08:00 hours on the date specified in the Access Request Form. (b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates as the Requested Reference Service End Date.

#### 4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6 and 4.7, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (*Original Capacity*) each for a period of 1 year (*Option*).

**4.4 Conditions to be satisfied before exercising an Option**

Shipper may only validly give notice exercising an Option if Shipper:

- (a) is not in default (within the meaning of clause 22.1) under this Contract in a way which is material in the context of this Contract as a whole at the time Shipper gives notice; and
- (b) complies with the requirements of clause 4.5 of this Contract.

**4.5 Notice exercising an Option**

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

**4.6 First Option Period**

If Shipper gives a notice in accordance with clause 4.5 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year and:

- (a) the Capacity End Date for the Original Capacity (as defined in clause 4.1) is amended to 08:00 hours on that date; and
- (b) this clause 4.6 (relating to the exercise of the Option) will have no effect after 08:00 hours on the date originally specified in the Access Request Form as the Capacity End Date.

**4.7 Second Option Period**

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clause 4.5 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year and:

- (a) the Capacity End Date for the Original Capacity (as amended by the previous operation of clause 4.6(a)) is amended to 08:00 hours on that date; and
- (b) clauses 4.3, 4.4, 4.5 and this clause 4.7 (all relating to the exercise of the Option) will have no effect after 8:00 hours on the date that is one year after the date that was originally specified in the Access Request Form as the Capacity End Date.

## ***Receiving and Delivering Gas (clause 5)***

**5. Receiving and Delivering Gas**

**5.1 Shipper may Deliver and Receive Gas**

Subject to any other provision of this Contract, the Shipper, on each Gas Day during the Period of Supply:

- (a) may Deliver to the Operator at the Inlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Inlet Points on the DBNRP, and
- (b) may Receive from the Operator at the Outlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Outlet Points on the DBNRP.

## 5.2 Operator must Receive and Deliver Gas

Subject to any other provision of this Contract, the Operator, on each Gas Day during the Period of Supply:

- (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
- (b) must Deliver to the Shipper at Nominated Outlet Points the quantities of Gas required by the Shipper up to the Shipper's Contracted Capacity aggregated across all Outlet Points.

## 5.3 Operator may refuse to Receive Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Receive Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limits); and
  - (iv) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Receive that Gas;
- (d) to the extent that Receipt by the Operator of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure;
- (e) subject to determination by the Operator as a Reasonable and Prudent Person, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;
- (f) to the extent that the Shipper has not entered into any agreement in relation to that Inlet Point required by clause 6.13; and
- (g) to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

## 5.4 Notification of refusal to Receive Gas

Without affecting the Operator's rights under clause 5.3, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Receive Gas;

- (b) if it does not give the Shipper advance notice under clause 5.4(a) of a refusal to Receive Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) as soon as practicable, notify the Shipper (in reasonable detail) of the reasons for a refusal to Receive Gas.

#### 5.5 Refusal to Receive Gas is a Curtailment in limited circumstances

To the extent that a refusal to Receive such Gas under clauses 5.3(c) and 5.3(d) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Receive Gas, a refusal to Receive Gas under clauses 5.3(c) and 5.3(d):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.

#### 5.6 No liability for refusal to Receive Gas

Subject to clause 23.2 and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Receive Gas under clause 5.3.

#### 5.7 Operator may refuse to Deliver Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may refuse to Deliver Gas to the Shipper at an Outlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Deliver Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limit);
  - (iv) clause 10.3(a)(iii) (Consequences of exceeding Hourly Peaking Limit);
  - (v) clause 10.5(c) (Remedies for breach of Peaking Limits);
  - (vi) clause 11.5 (Operator may refuse to Deliver Overrun Gas); and
  - (vii) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;
- (c) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);

- (d) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point; and
- (e) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13.

#### 5.8 Notification of refusal to Deliver Gas

When the Operator refuses to Deliver Gas to the Shipper under clause 5.~~7~~<sup>6</sup>, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Deliver Gas;
- (b) if it does not give the Shipper advance notice under clause 5.~~8~~<sup>7</sup>(a) of a refusal to Deliver Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) notify the Shipper of the reasons for a refusal to Deliver Gas in sufficient detail to explain the refusal.

#### 5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances

To the extent that a refusal to Deliver such Gas under clause 5.7(c) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Deliver Gas, a refusal to Deliver Gas under clause 5.7(c):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.

#### 5.10 No liability for refusal to Deliver Gas

Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7.

#### 5.11 No change to Contracted Capacity

- (a) Unless deemed a Curtailment under clause 5.9 and subject to the requirement to refund the Capacity Reservation Charge under clause 17.4, a refusal to Deliver Gas under clause 5.7 does not affect the calculation of the Charges payable by the Shipper under clause 20, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form.
- (b) Unless deemed a Curtailment under clause 5.9, when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) for a particular shipper, no reduction is to be made for any capacity not made available as a result of any refusal to Deliver Gas, either generally or in respect of any specific Capacity Service, Inlet Point or Outlet Point, under any of the shippers' contracts for Capacity Service pursuant to that clause which is the material equivalent of clause 5.7.

#### 5.12 System Use Gas

The Operator must supply all system use gas which is reasonably necessary to supply services to the Shipper under this Contract.

#### 5.13 Additional Rights to Refuse to Receive or Deliver Gas

- (a) In addition to any other rights and remedies that may be available to it under this Contract or under any Law, if:
  - (i) the Governor or any other person, regulatory authority or body declares a state of emergency under the *Fuel, Energy and Power Resources Act 1972* (WA) or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
  - (ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the *Energy Coordination Act 1994* (WA) or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
  - (iii) the Minister or any other person, regulatory authority or body declares a state of emergency under the *Emergency Management Act 2005* (WA) or any successor, supplementary or similar Law and the Minister or any other person, regulatory authority or body makes regulations or exercises any power under that act which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP, (any and all of these being a **Declaration**), then the Operator may, with prior notice to the Shipper wherever practicable, refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point (or both) to the extent that the Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.
- (b) To the extent that the exercise of rights and remedies under clause 5.13(a) would not have occurred had the Operator taken the steps expected of a Reasonable and Prudent Person to prevent the relevant event occurring, or failing such prevention, to minimise the magnitude and duration of the need to refuse to Receive or Deliver Gas, the exercise of rights and remedies under clause 5.13(a):
  - (i) is a Curtailment for the purposes of this Contract; and
  - (ii) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.
- (c) If the Operator exercises any rights under clause 5.13 (a), it must:
  - (i) promptly give notice to the Shipper of the occurrence giving rise to the right of the Operator to exercise such rights, and the steps that the Operator intends to take under clause 5.13 (a); and

- (ii) resume full performance of its obligations under this Contract as soon as reasonably practicable.

#### 5.14 Shipper's gas installations

- (a) The terms "inspector", "gas installation" and "Type B gas appliance" used in this clause 5.14 have the meanings given in the *Gas Standards Act 1972* (WA) or other relevant Law.
- (b) The Shipper must, at its cost:
  - (i) in accordance with the *Gas Standards Act 1972* (WA) appoint an inspector to inspect:
    - (A) any gas installation installed by the Shipper after the Execution Date, prior to the commencement of any Delivery of Gas by the Operator; or
    - (B) any gas installation that has been altered by the Shipper after the Execution Date by the installation of a Type B gas appliance, prior to any Delivery of Gas by the Operator;
  - (ii) provide evidence of the completion of an inspection under clause 5.14(b)(i) to the Operator, including confirmation that the gas installation is compliant with the *Gas Standards Act 1972* (WA); and
  - (iii) ensure that once installed its gas installations comply at all times with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972* (WA) and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA).
- (c) If, on an inspection under clause 5.14(b)(i), the inspector makes an order under section 18(2)(a) of the *Energy Coordination Act 1994* (WA) or issues a notice under the *Gas Standards Act 1972* (WA), the Shipper must provide a copy of such order or notice to the Operator within 10 days of the completion of the inspection.
- (d) If any gas installation is installed by the Shipper after the Execution Date, the Operator is not obliged to commence Delivery of Gas until the gas installation is inspected in accordance with clause 5.14(b)(i) and evidence confirming compliance with the *Gas Standards Act 1972* (WA) is provided to the Operator in accordance with clause 5.14(b)(ii).

### Inlet and outlet points (clause 6)

#### 6. Inlet Points and Outlet Points

##### 6.1 Inlet Points and Outlet Points

- (a) The Inlet Points for this Contract are set out in the Access Request Form.
- (b) The Outlet Points for this Contract are set out in the Access Request Form.

##### 6.2 Multi-shipper Agreement

The Shipper is taken to be a party to a current Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if at the Capacity Start Date there is an agreement, arrangement or understanding, whether or not in writing, between all shippers which use that Inlet Point or Outlet Point (which agreement, arrangement or understanding

may include other parties which are not shippers, such as a Producer or REMCo), under which the Operator is notified of how the Gas Delivered to or Received from that Inlet Point or Outlet Point is allocated between those shippers, for as long as that agreement, arrangement or understanding continues in force.

### 6.3 Multi-shipper Inlet Point and Multi-shipper Outlet Point

- (a) For the purposes of this clause 6.3, the Gas streams delivered to a Multishipper Inlet Point by or on behalf of the Shipper and all other shippers delivering Gas at that Inlet Point are taken to be commingled at a point immediately upstream of that Inlet Point.
- (b) For any purpose under this Contract, the Shipper's proportional share of the Blended Gas at a Multi-shipper Inlet Point must be determined immediately upstream of the Inlet Point after all Gas streams are taken to have been commingled, and the Shipper's proportional share of the commingled outlet stream at a Multi-shipper Outlet Point must be determined immediately downstream of the Outlet Point.
- (c) Subject to any contrary provisions in a Multi-shipper Agreement, the Shipper's nominations, obligations and liabilities under this Contract in respect of any quantity, quality, temperature or pressure of Gas at a Multishipper Inlet Point must be determined solely in respect of the Shipper's proportional share of the Blended Gas determined under clause 6.4, and not by reference to any quantity, quality, temperature or pressure of any Gas delivered by or on behalf of the Shipper into the Blended Gas.
- (d) All shippers using an Inlet Point or an Outlet Point (as the case may be) may enter into (with or without other parties which are not shippers, such as a Producer or REMCo) a written agreement (**Multi-shipper Agreement**) with the Operator dealing with, amongst other things, the way in which Gas Delivered by them to an Inlet Point or Received by them from an Outlet Point must be allocated between them.
- (e) The Operator must promptly enter into a Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if all of the following apply to the Multi-shipper Agreement:
  - (i) if any one of A, B or C apply:
    - (A) the agreement contains a formula or mechanism for allocating Gas deliveries to the Inlet Point or Outlet Point (as the case may be) for each Gas Hour between the shippers in a manner which enables the Operator to determine the allocation by applying the formula or mechanism once it knows the total quantity of Gas delivered at that Inlet Point or Outlet Point (as the case may be) during the relevant Gas Hour;
    - (B) if the agreement relates to an Inlet Point and it provides that Gas deliveries at the Inlet Point are allocated between the shippers for each Gas Hour by a notice to the Operator from the Producer that delivers Gas into the Inlet Point on behalf of all shippers using that Inlet Point; or
    - (C) if the agreement relates to an Outlet Point and it provides that Gas deliveries at that Outlet Point are allocated between the shippers for each Gas Hour by a notice provided to the Operator from one of the shippers at that Outlet Point or from a third party nominated by one of the shippers at that Outlet Point;

- (ii) the agreement allocates deliveries to the Inlet Point or Outlet Point (as the case may be) between the shippers for each Gas Hour;
  - (iii) the agreement is between all shippers who use the Inlet Point or Outlet Point (as the case may be) and the Operator;
  - (iv) the agreement provides that, as between each shipper and the Operator, for the purposes of each shipper's Gas transportation contract the Operator may rely upon the allocation of Gas delivered by the shippers at an Inlet Point, or received by the shippers at an Outlet Point, determined in accordance with the agreement, as being the quantity of Gas delivered by each of those shippers at the Inlet Point and the quantity of Gas received by each of those shippers at the Outlet Point;
  - (v) the agreement provides that the Operator may, in order to give effect to a Curtailment of the Capacity of one or more of the shippers using the Outlet Point, physically reduce the Capacity of the Outlet Point by an amount up to the Contracted Capacity (or the equivalent under that shipper's contract) at that Outlet Point for the shipper to be Curtailed;
  - (vi) the Operator is reasonably satisfied with the metering arrangements for any meters being used for the purpose of allocating Gas deliveries at the Inlet Point or Outlet Point (as the case may be);
  - (vii) the agreement provides that the Operator is not liable to shippers where it acts in accordance with the provisions of the agreement; and
  - (viii) the agreement does not impose any other obligations or liabilities upon the Operator (other than in relation to the provision of Metering Information) and does not directly or indirectly vary or amend this Contract or any other contract between a shipper and the Operator other than as specifically contemplated above.
- (f) A Multi-shipper Agreement (including a deemed Multi-shipper Agreement under the Retail Market Rules) in relation to a Notional Gate Point, may provide that:
- (i) whilst the Retail Market Rules are in force, Gas deliveries at that point are allocated by REMCo, on behalf of all shippers using that Notional Gate Point, by:
    - (A) REMCo providing the Operator with an algorithm for doing so which can be applied by the Operator; or
    - (B) REMCo providing the Operator a notice by electronic means within a reasonable period after each Gas Hour and after the end of each Gas Day.
- (g) Any Dispute relating to clause 6.3(e) is a Dispute on a Technical Matter and may be referred by any Party to an Independent Expert under clause 24.

#### 6.4 Allocation of Gas at Inlet Points

- (a) On any Gas Day when the Shipper is the only shipper Delivering Gas to the Operator at an Inlet Point, the Shipper is deemed to have Delivered all Gas Received by the Operator at the Inlet Point for that Gas Day and clauses 6.4(b) and 6.4(c) do not apply.

- (b) If the Shipper and any other shipper Delivers Gas to the Operator at an Inlet Point on a Gas Day then, unless the Operator duly receives written confirmation under clause 6.4(c) from or on behalf of the Shipper and every other shipper that so Delivers Gas of some other allocation of those Gas Deliveries:
  - (i) if there is a relevant Multi-shipper Agreement, the Shipper's proportional share of Gas Received by the Operator at the Inlet Point on that Gas Day will be as determined pursuant to that Multishipper Agreement; or
  - (ii) if there is no relevant Multi-shipper Agreement, the Operator (acting as a Reasonable And Prudent Person) must determine the Shipper's proportionate share of Gas Received by the Operator at that Inlet Point on that Gas Day which determination may be by (inter alia) reference to Daily Nominations at the Inlet Point for that Gas Day across all Capacity Services and Spot Transactions across all relevant shippers. The Shipper is deemed to have Delivered the proportionate share so determined of the Gas Received by the Operator at that Inlet Point on that Gas Day at a constant rate over that Gas Day.
- (c) If, by no later than 11:30 hours on the next Gas Day, the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper that Delivers Gas to that Inlet Point on a Gas Day of the quantity of Gas supplied by those shippers at that Inlet Point on that Gas Day, then whether or not there is a relevant Multi-shipper Agreement, and in the absence of evidence to the contrary, that confirmation is deemed to show the quantity of Gas Delivered by the Shipper and each such other shipper to the Operator at that Inlet Point on that Gas Day and may be relied upon by the Operator accordingly.
- (d) Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:
  - (i) first, Gas for any available T1 Service which includes Gas for any available Aggregated T1 Service;
  - (ii) second, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.8(a);
  - (iii) third, Gas for any available Capacity under any Spot Transaction; and
  - (iv) fourth, other gas.

## 6.5 Allocation of Gas at Outlet Points

- (a) On any Gas Day when Shipper is the only person taking Delivery of Gas from Operator at an Outlet Point, Shipper shall be deemed to have taken Delivery of all Gas Delivered by Operator at the Outlet Point for that Gas Day and clauses 6.5(b) and 6.5(c) shall not apply.
- (b) If Shipper and any other shipper take Delivery of Gas from Operator at the Outlet Point on a Gas Day then, if there is a Multi-shipper Agreement in relation to the Outlet Point, Shipper's proportional share of Gas at the Outlet Point must be determined under the Multi-shipper Agreement.
- (c) If there is no Multi-shipper Agreement in relation to an Outlet Point or if Shipper fails to otherwise reach agreement with other shippers at the Outlet

Point in respect of the allocation of Gas Receipts or fails to provide Operator with a copy of a Multi-shipper Agreement referred to in clause 6.5(b) prior to the commencement of the relevant Gas Day, then Shipper's proportional share of Gas at the Outlet Point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Outlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper will be deemed to have Received that proportionate share so determined of the Gas Delivered to that Outlet Point on that Gas Day.

- (d) Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:
  - (i) first, Gas for any available T1 Service (which shall include any available Aggregated T1 Service);
  - (ii) second, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.8(a);
  - (iii) third, Gas for any available Capacity under any Spot Transaction; and
  - (iv) fourth, other gas.

#### 6.6 Design and installation of Inlet Stations

- (a) The Shipper must, at its own expense, design and install or procure the design and installation of all those parts of any required Inlet Station that are upstream of the Inlet Point.
- (b) If and whenever the Shipper and other shippers Deliver Gas to the Operator at an Inlet Point on the DBNPG, the Shipper and those other shippers must, at their joint expense allocated on such basis as they may agree, collectively design and install or procure the design and installation of all those parts of the Associated Inlet Station that are upstream of the Inlet Point.
- (c) The Shipper or, where applicable, the Shipper and other shippers must ensure that all those parts of any required Inlet Station that are upstream of the Inlet Point meet the requirements set out in clauses 6.9(a) to 6.9(f).

#### 6.7 Design and installation of Inlet Point Connection Facilities

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Inlet Point Connection Facilities. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Inlet Point Connection Facilities Works Agreement) by which the Shipper must agree either:
  - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Inlet Point Connection Facilities), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Inlet Point Connection Facilities Construction Costs); or

- (ii) to include the Relevant Inlet Point Connection Facilities Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Inlet Point.
  - (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Inlet Point Connection Facilities Works Agreement, but otherwise an Inlet Point Connection Facilities Works Agreement may be on such terms as the Operator and the Shipper agree.
  - (c) The Operator must ensure that Inlet Point Connection Facilities meet the requirements set out in clauses 6.9(a) to 6.9(f).
  - (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Inlet Point Connection Facilities to which the Operator has no rights of access for the purpose of maintaining and operating those Inlet Point Connection Facilities.
- 6.8 Design and installation of Outlet Stations**
- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Outlet Station. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Outlet Station Works Agreement) by which the Shipper must agree either:
    - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Outlet Station), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Outlet Station Construction Costs); or
    - (ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station.
  - (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Outlet Station Works Agreement, but otherwise an Outlet Station Works Agreement may be on such terms as the Operator and the Shipper agree.
  - (c) The Operator must ensure that an Outlet Station meets the requirements set out in clauses 6.9(a) to 6.9(f).
  - (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Outlet Station to which the Operator has no rights of access for the purpose of maintaining and operating that Outlet Station.

**6.9 Requirements relating to Inlet Stations and Outlet Stations**

- (a) (i) The site for an Inlet Station or Outlet Station must:
  - (A) be within a security fenced enclosure;
  - (B) provide suitable vehicular access and an alternative means of personnel access;

- (C) provide adequate space for the installation of all equipment; and
  - (D) have a concrete, sealed, or gravel surface to enable access in all weather conditions.
- (ii) Telemetry, power supply and other sensitive equipment at an Inlet Station or Outlet Station must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.
- (b) (i) Every Inlet Station or Outlet Station must provide a means, to a standard acceptable to a Reasonable and Prudent Person, of automatically:
- (A) preventing the reverse flow of Gas through the Inlet Station or Outlet Station; and
  - (B) stopping or restricting Gas flow in the event of any excessive pressure upstream of, or any failure, leak or rupture within or downstream of, the Inlet Station or Outlet Station.
- (ii) The Operator, whenever it is permitted by any written Law or a contract to stop or reduce Gas flow (and whether or not there has been a failure, leak or rupture), may utilise for that purpose any mechanism installed under clause 6.9(b)(i).
- (iii) The Operator may at any time, for, or in anticipation of, the purposes of clause 6.9(b)(i), make any necessary connections, modifications or additions to any mechanism installed under clause 6.9(b)(i) to enable it to be utilised for the purposes of clause 6.9(b)(ii).
- (iv) The Operator must not charge the Shipper for any mechanism installed under clause 6.9(b)(i) or 6.9(b)(iii).
- (c) (i) Every Inlet Station must include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
- (ii) An Outlet Station must, whenever the Operator as a Reasonable and Prudent Person determines it to be necessary, include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
- (iii) The Operator may make a determination under clause 6.9(c)(ii) at any time, including after an Outlet Station is commissioned.
- (iv) For the purposes of clause 15.4, neither filters nor separators may be regarded as Metering Equipment.
- (d) All facilities upstream of an Inlet Point or downstream from an Outlet Point must be electrically isolated from the DBNGP by an isolating joint or flange located either:
- (i) at the Inlet Point or Outlet Point; or
  - (ii) sufficiently close to the Inlet Point or Outlet Point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 6.9(d)(i), which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.

- (e) All facilities at an Inlet Station or Outlet Station must be connected to an effective earthing system of a type acceptable to a Reasonable and Prudent Person.
- (f) Any new equipment installed at an Inlet Station or Outlet Station must be compatible with existing equipment and systems.
- (g)
  - (i) The quantity of Gas passing through a Notional Gate Point in any period of time is taken to be the sum of the quantities metered as passing through all associated Physical Gate Points in that period of time.
  - (ii) Nothing in clause 6.9(g)(i) prevails over the deeming in clause 6.5 of the quantity of Gas taken by the Shipper or any other shippers at a Notional Gate Point.

#### 6.10 Notional Gate Point

- (a) There is a notional gate point for each Sub-network, at which all Outlet Point Contracted Capacity in respect of that Sub-network is taken to be located (Notional Gate Point).
- (b) All Curtailments of Capacity utilised to Deliver Gas into the Sub-network are taken to occur at the Notional Gate Point.
- (c) The Operator may, in its reasonable discretion in accordance with good industry practice, manage whether, at what times, to what extent and in what manner Gas deemed delivered at a Notional Gate Point is physically transported into the Associated Sub-network.

#### 6.11 Maintenance Charge for Inlet Stations and Outlet Stations

- (a) For the purposes of this clause 6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who use the Inlet station or Outlet station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:
  - (i) maintaining;
  - (ii) operating;
  - (iii) refurbishing;
  - (iv) upgrading;
  - (v) replacing; and
  - (i) decommissioning,

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

- (b) The Operator may only include costs associated with refurbishing or upgrading an Inlet Station or Outlet Station in accordance with clause 6.11(a) if:
  - (i) the Shipper requests the relevant refurbishment or upgrade; or
  - (ii) the Operator determines, acting reasonably, that the refurbishment or upgrade is required in order to meet a statutory or contractual obligation.
- (c) At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.
- (d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that:
  - (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause 6.11(d)(ii); and
  - (ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper does not have Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month.
- (e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a Outlet Station that is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point for the time being bears to the sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point for the time being.
- (f) Whenever a new Outlet Station is installed, or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who receive Gas from the Operator at the Notional Gate Point or Outlet Station, including shippers with grants of Capacity at the Notional Gate Point or Outlet Station made before the date of installation or enhancement.
- (g) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point or an Outlet Station, the Operator may have regard to the likely impact of clause 6.11(f).

## 6.12 Provisions relating both to Relevant Construction Costs and Maintenance Charge

- (a) Nothing in clauses 6.6, 6.8 or 6.11 affects or derogates from charges payable under any other agreement between the Operator and the Shipper with respect to the installation, operation and maintenance of Inlet Stations and Outlet Stations and any upgrades, modifications and expansions to Inlet Points or Outlet Points.
- (b) The Operator is not entitled to impose any charges under clauses 6.6, 6.8 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995. Where such incremental costs are incurred, the Operator is entitled to impose charges on the Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause 6.11(d).

#### 6.13 Contribution Agreement

- (a) The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point, to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date if:
  - (i) the Inlet Point or Outlet Point is Associated with an Existing Station;
  - (ii) in the case of an Outlet Point, it is:
    - (A) owned by the Operator or an Operator Entity; or
    - (B) leased by the Operator or an Operator Entity under an equipment lease, and the Shipper has entered into a Contribution Agreement in respect of that Outlet Point; or
  - (iii) the Inlet Point or Outlet Point is not of a type referred to in clauses 6.13(a)(i) or 6.13(a)(ii)(A) or 6.13(a)(ii)(B) and the Shipper has reached an agreement, arrangement or understanding with the owner of the Inlet Point or Outlet Point, whether or not in writing, to use that Inlet Point or Outlet Point.

For the purposes of clause 6.13(a)(ii), an Operator Entity excludes any Related Bodies Corporate of Alcoa or Alinta Limited.

- (b) (i) a Contribution Agreement in respect of an Outlet Point is an agreement between the Operator and the Shipper by which the Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point, determined in accordance with clause 6.11;
  - (ii) the Shipper's proportion of the Maintenance Charge is determined under clause 6.11(d), or is otherwise agreed in the Contribution Agreement; and
  - (iii) the Shipper agrees that another shipper (New Shipper) may Receive Gas from the relevant Outlet Point, if:
    - (A) the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause 6.11(d); and
    - (B) the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper

under clause 6.13(b)(iii)(A) so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.

- (c) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, a Contribution Agreement.
- (d) Nothing in this clause 6.13 requires the Shipper to enter into an agreement with any person other than the Operator.

#### 6.14 Shipper Specific Facility Agreement

The Operator must not grant to any shipper (New Shipper) access to or use of (or enter into any agreement or arrangement to do so) any Inlet Point, Outlet Point, Associated Inlet Station or Associated Outlet Station, or related equipment (Facility) which is or has been the subject of an agreement or arrangement under which the Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility (Facility Agreement) without ensuring that:

- (a) subject to clause 6.14(b), the New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.13(b)(iii); and
- (b) the Operator agrees to rebate to the Shipper the contributions it receives from the New Shipper under clause 6.14(a) in a manner consistent with clause 6.13(b)(iii).

#### 6.15 Total Physical Capacity

- (a) The Operator must not reduce or allow the reduction of the Total Physical Capacity of an Inlet Point or an Outlet Point, or a New Inlet Point or a New Outlet Point or any Inlet Point or Outlet Point to which or from which the Shipper is regularly Receiving Gas.
- (b) Subject to the terms of any Multi-shipper Agreement, and subject to the rights of other shippers with a contracted Capacity Service at an Inlet Point or Outlet Point, the Shipper may use all the Total Current Physical Capacity of an Inlet Point or Outlet Point.

#### 6.16 Certain installations taken to comply

Despite any other provisions of this Contract:

- (a) each Existing Station;
- (b) all facilities, ancillary equipment and services at each Existing Station; and
- (c) the metering arrangements entered into with the State Energy Commission of Western Australia prior to 1 January 1995 in respect of each Existing Station, are taken to comply in all respects with the provisions of this Contract, including clauses 6.6 to 6.10.

### ***Operating Specifications (clause 7)***

#### 7. Operating Specifications

##### 7.1 Gas must comply with Gas specifications

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must comply with the Gas specifications set out in Item 1 of Schedule 3.

#### 7.2 Gas to be free from certain substances

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must be free, by normal commercial standards (as reasonably determined by the Operator), from dust and other solid or liquid matters, waxes, gums and gum forming constituents, aromatic hydrocarbons, hydrogen, mercury and any other substance or thing which might cause injury to or interfere with the proper operation of any equipment through which it flows.

#### 7.3 Gas to be free from objectionable odours

Gas Delivered by the Shipper to the Operator at an Inlet Point must be free, by normal commercial standards, from objectionable odours.

#### 7.4 Gas temperature and pressure

(a) The minimum and maximum temperatures and the minimum and maximum pressures at which the Shipper may Deliver Gas to the Operator at the Inlet Points, and the Operator may Deliver Gas to the Shipper at the Outlet Points, are those set out in Item 2 of Schedule 3.

(b) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Item 2 of Schedule 3.

(c) If at any time:

(i) the minimum and the maximum temperature and the minimum and maximum pressure of an Inlet Point or an Outlet Point are not set out in Item 2 of Schedule 3; and

(ii) the Shipper Delivers Gas to the Operator at that Inlet Point or the Shipper Receives Gas from the Operator at that Outlet Point,

then the Shipper is entitled to Deliver Gas at that Inlet Point or obliged to Receive Gas at that Outlet Point under this Contract,

(iii) if the Operator is then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator is Receiving Gas from or Delivering Gas to those other shippers; or

(iv) if the Operator is not then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator was last entitled to Deliver Gas or obliged to Receive Gas at that Inlet Point or Outlet Point under the terms of a contract with any other shipper.

#### 7.5 Notice of Out-of-Specification Gas

If either Party becomes aware that any Out-of-Specification Gas is to enter or has entered the DBNGP at an Inlet Point or is to leave or has left the DBNGP at an Outlet Point, it must as soon as reasonably practicable notify the other Party in accordance with clause 29.1(a).

#### 7.6 Operator and Shipper may refuse to Receive Out-of-Specification Gas

- (a) Subject to any agreement under clauses 7.7 and 7.9, the Operator may at any time without penalty refuse to Receive from the Shipper at an Inlet Point, and the Shipper may at any time without penalty refuse to Receive from the Operator at an Outlet Point, any Out-of-Specification Gas.
- (b) The Shipper is entitled to a refund of Capacity Reservation Charges for any Capacity it is unable to use on a Gas Day as a result of the Shipper refusing any Out-of-Specification Gas under clause 7.6(a) to the extent that the Operator caused the Gas in the DBNGP to be Out-of-Specification Gas.

#### 7.7 Operator may Receive Out-of-Specification Gas

The Operator may, at its own risk, agree to Receive Out-of-Specification Gas from the Shipper at an Inlet Point on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.

#### 7.8 Shipper's Liability for Out-of-Specification Gas

If any Out-of-Specification Gas Delivered by or on behalf of the Shipper enters the DBNGP without the Operator's agreement under clause 7.7:

- (a) the Shipper is liable to the Operator for any loss or damage arising in respect of the Out-of-Specification Gas; and
- (b) Without limitation on any of its other rights under any Law, the Operator is, to the extent necessary to allow it to deal with that entry of Out-of-Specification Gas:
  - (i) entitled to vent the Out-of-Specification Gas, and the Shipper is deemed not to have Delivered a quantity of Gas at the Inlet Point equivalent to the quantity of all Gas necessarily vented by the Operator; and
  - (ii) relieved of any obligation to Deliver Gas to the Shipper by an amount no greater than the quantity of Gas vented by the Operator under clause 7.8(b)(i) on the basis that the Shipper is deemed not to have Delivered that quantity of Gas at the Inlet Point.
- (c) The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Shipper's liability under clause 7.8(a).

#### 7.9 Shipper may Receive Out-of-Specification Gas

- (a) The Shipper may at its own risk, agree to Receive Out-of-Specification Gas from the Operator at an Outlet Point, on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.
- (b) If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9(a), then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas by delivering Out-of-Specification Gas to the Inlet Point, the Operator is liable to the Shipper for Direct Damage arising in respect of the Out-of-Specification Gas.

#### 7.10 Change of Law

- (a) If:
  - (i) at any time during the term of this Contract there is a change in any Law which requires the Operator to Receive Gas with an operating

specification for one or more components outside the Operating Specifications applying to the component or those components of the Operating Specifications (as may be amended from time to time pursuant to this clause 7.10) (Permissible Specifications);

- (ii) there is no shipper with an Inconsistent Existing Contractual Specification; and
- (iii) the Operator actually Receives Gas outside the Operating Specifications but within the Permissible Specifications to such an extent that it is unable to comply with the Operating Specifications for an Outlet Point set out in Schedule 3, then the Operator must notify the Shipper that:
  - (iv) the Inlet Point Operating Specifications (and Item 1 of Schedule 3) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Inlet Point Operating Specification, for the operating specification of that component of the Inlet Point Operating Specification; and
  - (v) the Outlet Point Operating Specifications (and Item 1 of Schedule 3) is amended so as to broaden the specification for each component which has been amended in respect of the Inlet Point Operating Specification, by the same amount as the Inlet Point Operating Specification has been broadened by the operation of this clause 7.10.
- (b) In this clause 7.10 Inconsistent Existing Contractual Specification means:
  - (i) in relation to an Inlet Point, if the amendments to the Inlet Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Producer Contract; or
  - (ii) in relation to an Outlet Point, if the amendments to the Outlet Point Operating Specifications were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Gas Supply Contract.

#### 7.11 Amendment Notice

The notice under clause 7.10 must:

- (a) contain details of the change in Law;
- (b) specify the amended operating specification for each component of the Inlet Point Operating Specification;
- (c) specify the amended operating specification for each component of the Outlet Point Operating Specification; and
- (d) specify the amendments to Item 1 of Schedule 3 which are made to give effect to the amended operating specifications for each component of the Inlet Point Operating Specification and the Outlet Point Operating Specification.

#### 7.12 Odorisation

The Operator will Deliver Gas to the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004 odoured to the specification set out in the Gas Standards Regulations 1983 (WA).

### 7.13 Weighted average gas flows

- (a) If on a Gas Day the Individual Gas Delivered by the Shipper to an Inlet Point that is a Multi-shipper Inlet Point is included in Blended Gas that meets the Blended Specifications then, despite clause 7.6, the Operator must Receive the Individual Gas from the Shipper even if the Individual Gas is Out-of-Specification Gas.
- (b) For the purpose of this clause 7.13:
  - (i) Blended Gas means all Gas Delivered to an Inlet Point under Relevant Contracts as a commingled stream and which is taken for the purposes of clause 6.3 to have been commingled at a point immediately upstream of that Inlet Point;
  - (ii) Blended Specifications means the notional operating specifications applying to the Blended Gas determined as a weighted average of the operating specifications for the relevant Inlet Point applying under all Relevant Contracts calculated by weighting:
    - (A) the value of each component comprising the Operating Specifications for the Inlet Point under each Relevant Contract; by
    - (B) the scheduled Nominations at the Inlet Point for the Gas Day across all Capacity Services under each Relevant Contract;
  - (iii) Individual Gas means Gas Delivered into a Blended Gas Stream immediately prior to it becoming Blended Gas; and
  - (iv) Relevant Contracts means the contracts for each shipper who is delivering Gas to the Inlet Point on that day.

## Nominations (clause 8)

### 8. Nominations

#### 8.1 Shipper may delegate to a Producer or an Appointed Agent

To the extent that this Contract prescribes certain things to be done by the Shipper which relate to Gas being Received by the Operator at an Inlet Point, the Shipper may by agreement with a Producer or an Appointed Agent, appoint the Producer or the Appointed Agent (as the case may be) to do those things, but nothing in any such agreement relieves the Shipper of its obligations to the Operator under this Contract.

#### 8.2 Requests for advance information

- (a) To assist in its planning and forecasting, the Operator may from time to time, acting as a Reasonable and Prudent Person, request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) in good faith of the Shipper's likely Nominations which information will be governed by the provisions of clause 28.
- (b) The Shipper must in good faith make reasonable endeavours to comply with any request made by the Operator under clause 8.2(a).
- (c) Except as provided in clause 8.2(d) below, the Shipper may, without penalty, make Nominations which differ materially from any estimates provided by it under clause 8.2(a).

- (d) Nothing in clause 8.2(c) limits any action against the Shipper if the Shipper fraudulently or negligently provides materially false information to the Operator under clause 8.2(a).

#### 8.3 Shipper's Daily Nominations do not affect Contracted Capacities

The scheduling of a Daily Nomination under this clause 8 does not affect or otherwise change the Shipper's Contracted Capacity.

#### 8.4 Nominations and Renominations must be in good faith

- (a) If the Shipper makes an Advance Nomination, an Initial Nomination, or a Renomination, it must do so in good faith, and must nominate for an amount of the Capacity Service which is the Shipper's best estimate as a Reasonable and Prudent Person of the amount of the Capacity Service it proposes to utilise.
- (b) The Operator and the Shipper acknowledge that the purpose of the Shipper making an Advance Nomination, an Initial Nomination or a Renomination is to:
  - (i) assist the Operator schedule compressor use on the DBNGP; and
  - (ii) provide a basis for the Operator to manage any Point Specific Curtailments.

#### 8.5 Operator to make available bulletins of available Capacity

- (a) The Operator must, on regular occasions during each Gas Day (sufficient to assist the Shipper in making its Initial Nomination, and any Renomination), make available on the CRS a bulletin specifying:
  - (i) for at least that Gas Day and the following Gas Day, the amount of Capacity available or anticipated to be available for Nomination or Renomination;
  - (ii) subject to obtaining the relevant shipper's consent, details of any Tradeable Capacity to be made available under clause 27.5; and
  - (iii) disclosures required by Law.
- (b) No obligation to schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's **RT1** Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

#### 8.6 Shipper's Initial Nomination

- (a) The Shipper must, by notice to the Operator given no later than 14:00 hours on any Gas Day, nominate for the following Gas Day the quantity of Gas that the Shipper requires to Deliver to the Operator at each Nominated Inlet Point, and the quantity of Gas that the Shipper requires to Receive from the Operator at each Nominated Outlet Point in the **RT1** Service (Initial Nomination).
- (b) In addition to the information required by clause 8.6(a), the Shipper's Initial Nomination must:
  - (i) set out:

(A) the sum of those Nominations across all Inlet Points; and

(B) the sum of those Nominations across all Outlet Points,

which sums must be equal, except where the Shipper seeks to reduce any Accumulated Imbalance in accordance with clause 9.

- (ii) for each Nominated Inlet Point, identify the Producer or Producers which is or are to supply Gas to the Shipper for Delivery to the Operator and, if there is more than one, the quantity to be provided by each.

#### 8.7 Default provision for Daily Nomination

If the Shipper does not make an Initial Nomination complying with clause 8.6 or an Advance Nomination complying with clause 8.16 for a Gas Day for Capacity at an Inlet Point or at an Outlet Point, then the Shipper's Daily Nomination for that Gas Day for the Inlet Point or the Outlet Point (as the case may be) is taken as equal to the Shipper's Daily Nomination for the previous Gas Day at that Inlet Point or Outlet Point (as the case may be).

#### 8.8 Nominations priority

- (a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services (from superior to inferior) is, so far as is relevant to the Inlet Point or Outlet Point, set out in the column of Schedule 6 headed "Point Specific Curtailment" as supplemented by this clause 8 and clause 17.9.
- (b) Each category of Capacity Service described in a row of the Curtailment Plan (as relevant to the particular circumstance) refers separately to a **Type of Capacity Service** such that, for example, Alcoa's Priority Quantity is a **Type of Capacity Service**.

#### 8.9 Scheduling of Daily Nominations

- (a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9, for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for T1 Capacity for each Nominated Inlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for T1 Service at that Inlet Point; and
  - (ii) subject to clauses 8.9(c) and 8.10, may not be less than the Shipper's Initial Nomination for T1 Service at that Inlet Point.
- (c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for T1 Service across all Inlet Points exceed the Shipper's Total Contracted T1 Capacity across all Inlet Points.
- (d) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for T1 Service may exceed the Shipper's Total Contracted T1 Capacity across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose,

or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.

- (e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for T1 Capacity at each Nominated Outlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for T1 Service at that Outlet Point; and
  - (ii) subject to clauses 8.9(f) and 8.10, may not be less than the Shipper's Initial Nomination for T1 Service at that Outlet Point.
- (f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for T1 Service across all Outlet Points exceed the Shipper's Total Contracted T1 Capacity across all Outlet Points.
- (g) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for T1 Service may exceed the Shipper's Total Contracted T1 Capacity across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

#### 8.10 Scheduling where there is insufficient available Capacity

- (a) In all cases, subject to it being Operationally Feasible, and unless this Contract provides otherwise (for example without limitation in clauses 8.9(b)(i), 8.9(b)(ii), 8.9(e)(i) and 8.9(e)(ii)), if for any Gas Day more than one shipper has made Nominations under different Types of Capacity Service or under the same Type of Capacity Service for delivery or receipt of Gas at an Inlet Point or an Outlet Point and the Operator determines that it is not Operationally Feasible to meet all those Nominations, the Operator must Curtail the shippers' Contracted Capacities and the available Capacity (if any, as determined by the Operator, acting as a Reasonable and Prudent Person) must be scheduled in respect of Capacity Services relating to those Nominations for that Inlet Point or Outlet Point (as the case may be) in accordance with the provisions of clause 17.9.
- (b) Subject to clause 17.9, if the Operator schedules a Capacity Service for T1 Service to the Shipper which is less than the Shipper's Initial Nomination for T1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference between the Shipper's Contracted T1 Capacity and the Capacity Service scheduled by the Operator for T1 Service for that Gas Day.

#### 8.11 Shipper may give Renomination notice

The Shipper may once in respect of each Renomination time (as set out in clause 8.12) for a Gas Day request a variation of its Daily Nomination for the Gas Day (Renomination) for one or more Inlet Points or for one or more Outlet Points, by giving notice to the Operator specifying the amount and duration (which may be any duration up to and including the balance of the Gas Day in respect of which the Renomination is made) of the requested variation.

#### 8.12 Times for Renomination and scheduling of revised Daily Nominations

- (a) Subject to clause 8.12(c), the Renomination times for each Gas Day are 07:00 hours (at which time Renominations may be given for the Gas Day just about to begin, not the Gas Day just about to end), and 12:00 hours and 20:00 hours in the Gas Day.
- (b) Subject to clause 8.12(c), if under clause 8.14 the Operator is required to schedule the Capacity Service in respect of a revised Daily Nomination in response to the Shipper's Renomination received prior to a Renomination time, the Operator must use reasonable endeavours to effect that scheduling within 1 hour after the Renomination time.
- (c) The Operator may, acting as a Reasonable and Prudent Person, from time to time by notice to the Shipper (which same notice must be given to all shippers) supplement or vary any one or more of the times prescribed in clause 8.12(a) or the period prescribed in clause 8.12(b).
- (d) A notice under clause 8.12(c) may be expressed to continue indefinitely or for a specified time, and may revoke, substitute or amend a previous notice.

#### 8.13 Renominations reducing Daily Nomination

If a Renomination seeks to reduce the Shipper's Daily Nomination, the Operator must, by notice to the Shipper, schedule the relevant Capacity Service in respect of the Shipper's Daily Nomination in accordance with the Renomination.

#### 8.14 Renominations increasing Daily Nomination

- (a) The Operator may only refuse to schedule the increased Capacity Service required in respect of the Shipper's Daily Nomination in response to a Renomination:
  - (i) if accommodating that increase is not Technically Practicable; or
  - (ii) to the extent that, after applying clauses 8.14(d) and 8.14(e) there is insufficient unscheduled Capacity to satisfy the Renomination for that Inlet Point or Outlet Point.
- (b) Subject to clause 8.14(a), if the Shipper's Renomination seeks to increase its Daily Nomination, the Operator must within the period prescribed in clause 8.12(b) (as varied, if applicable, by notice under clause 8.12(c)) by notice to the Shipper schedule the increased Capacity Service required in respect of revised Daily Nominations.
- (c) A notice under clause 8.14(b) must specify the period in respect of which the revised Daily Nominations are to apply.
- (d) Clause 8.9 applies (with appropriate modifications) to the Operator's scheduling of the increased Capacity Service required in respect of revised Daily Nominations under clause 8.14(b).
- (e) Without otherwise limiting the Operator's discretion in relation to Curtailment, the Operator must, to the extent practicable and Operationally Feasible in the circumstances, Curtail any Capacity in a Type of Capacity Service (the first Type of Capacity Service), whenever it is necessary to do so in order to satisfy any shipper's Renomination for Reserved Capacity in relation to a Type of Capacity Service which has priority over the first Type of Capacity Service according to the order of priority set out in the column of the Curtailment Plan headed "Point Specific Curtailment".

#### 8.15 Default provision for Renomination process

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by the Operator not providing information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then the Shipper's Daily Nominations are to remain unchanged from the previous Gas Day's nomination (but if the Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.12(b) it must do so).

#### 8.16 Aggregated T1 Service

Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for T1 Service which is, according to clause 8.16, deemed to be Aggregated T1 Service, shall be deemed to be a Nomination for a separate Type of Capacity Service which service ranks equally in priority with all other Aggregated T1 Service. For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated T1 Service shall be excluded from the T1 Service.

#### 8.17 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

Subject to this clause 8, Shipper is entitled to nominate that Gas be Delivered under Shipper's T1 Service:

- (a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for T1 Services; and
  - (b) in excess of Shipper's Contracted Capacity for T1 Services at an Inlet Point or Outlet Point,
- (being Aggregated T1 Service).

#### 8.18 Shipper's Advance Nomination

- (a) The Shipper may nominate in advance for each Gas Day in any week or any month by giving notice complying with the requirements of clause 8.6 (with appropriate changes) for each of those Gas Days (**Advance Nomination**).
- (b) The Advance Nomination must be given:
  - (i) no later than 17:00 hours on the Wednesday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) at least 6 Working Days before the start of the nominated month (in the case of a Nomination a month in advance).
- (c) The Operator must, in response to an Advance Nomination, schedule a Daily Nomination for each nominated day determined in accordance with the provisions of clauses 8.9, and 8.8:
  - (i) no later than Friday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) within 5 Working days of receipt of the Advance Nomination (in the case of a Nomination a month in advance).
- (d) The Shipper may submit an Initial Nomination for a Gas Day in respect of which it has made an Advance Nomination and been scheduled a Daily Nomination, in which case:

- (i) the Initial Nomination is not a Renomination; and
  - (ii) the Shipper's Advance Nomination for the Gas Day is of no effect.
- 8.19 Use of Full Haul capacity upstream of CS9

Where Shipper nominates for and is allocated Aggregated T1 Service at an outlet point which is upstream from Compressor Station 9 on the DBNGP and the Contracted Capacity for T1 Service from which that Aggregated T1 Service derives is at an outlet point located downstream of Compressor Station 9 on the DBNGP:

- (a) the Aggregated T1 Service is to be regarded as a Full Haul T1 Service for the purposes of this Contract; and
- (b) the Charges for the Aggregated T1 Service are to be calculated and paid on the basis that the Aggregated T1 Service is Full Haul and not Part Haul.

## **Imbalances (clause 9)**

9. Imbalances

9.1 Operator to maintain balance

The Operator may do all things expected of a Reasonable and Prudent Person to maintain a balance between total Gas inputs to, and total Gas outputs from, the DBNGP, including (subject to the provisions of this clause and this Contract) restricting the quantity of Gas it Delivers to the Shipper at an Outlet Point, and restricting the quantity of Gas it Receives from the Shipper at an Inlet Point in accordance with this Contract.

9.2 Shipper to maintain balance

On each Gas Day, the Shipper must endeavour to maintain an Accumulated Imbalance of zero, including restricting the quantity of Gas it Delivers to the Operator at an Inlet Point, and restricting the quantity of Gas it Receives from the Operator at an Outlet Point.

9.3 Shipper's Accumulated Imbalance

At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus the Shipper's Daily Imbalance on the Gas Day. The Accumulated Imbalance at the Capacity Start Date is zero.

9.4 Notice of the Shipper's imbalances

Before 13:30 hours on each Gas Day, except the Contract Commencement Date, the Operator must provide to the Shipper notice (Accumulated Imbalance Notice) of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day, and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate.

9.5 Accumulated Imbalance Limit

- (a) The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions) for that Gas Day.

- (b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished then, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition:
- (i) will have a material adverse impact on the integrity or operation of the DBNPG; or
  - (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for T1 Capacity, B1 Capacity, P1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,
- then the Operator (acting as a Reasonable And Prudent Person) may, subject to clause 9.5(f):
- (iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or (ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and/or
  - (iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.
- (c) If the Operator issues a notice under this clause 9.5 and the Shipper's Accumulated Imbalance is:
- (i) positive, the Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or
  - (ii) negative, the Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit.
- (d) If, after the Operator issues a notice under clause 9.5(b)(iii):
- (i) subject to clause 9.5(d)(ii), the absolute value of the Shipper's Accumulated Imbalance is reducing each Gas Day, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and
  - (ii) where the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii).
- (e) If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the

Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

- (f) The Operator may not:
  - (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
  - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).
- (g) The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit in accordance with clause 20 in respect of each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).
- (h) No Excess Imbalance Charge under clause 9.5(e)(g) is payable in respect of that part (if any) of the imbalance that is attributable to:
  - (i) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
  - (ii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
  - (iii) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(h)(i) or 9.5(h)(ii),

#### 9.6 Balancing in particular circumstances

- (a) If the Parties anticipate a failure of the Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit, in order to enable the Shipper to deposit additional Gas in the DBNGP in advance of that failure.
- (b) The Parties may, during a period in which the Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow the Shipper to exceed the Accumulated Imbalance Limit, whether or not the Shipper has deposited additional Gas under clause 9.6(a) in anticipation of the failure of the Shipper's Gas supply.

- (c) Subject to clause 9.6(d), an agreement under clauses 9.6(a) or 9.6(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate. The agreement must be in writing (which may be contained in an email) and must be in place before the Shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.
- (d) The Operator may require an agreement under clause 9.6(b) to contain any reasonable provisions it sees fit, including any or all of the following provisions:
  - (i) that the Operator may from time to time during the duration of that agreement, by notice to the Shipper, specify a limit for the Shipper's Accumulated Imbalance, beyond which limit the Operator may refuse to Receive Gas from the Shipper at an Inlet Point or Deliver Gas to the Shipper at an Outlet Point, or both; and
  - (ii) that upon resumption of the Shipper's Gas supply, the Operator may require the Shipper to restore the absolute value of its Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.
- (e) Nothing in this clause compels a Party to enter into an agreement under clauses 9.6(a) or 9.6(b).

#### 9.7 Remedies for breach of imbalance limits

Except as provided in clause 9.9, the Operator may not exercise any rights or remedies against the Shipper for exceeding the Accumulated Imbalance Limit, other than:

- (a) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
- (b) to refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
- (c) any combination of the rights and remedies in clauses, 9.7(a) and 9.7(b).

The Parties agree that, because the rights and remedies set out in this clause 9.7 apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.7, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

#### 9.8 Trading in imbalances

- (a) The Shipper may exchange all or part of its Accumulated Imbalances with another shipper on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts the Shipper has with the Operator for Capacity Services, in accordance with this clause 9.8.
- (b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator by 12:00 hours on the next Working Day following receipt from the Operator of the Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.

- (c) On receipt of a notice under clause 9.8(b), the Operator must calculate adjustments in the Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.
- 9.9 Cashing out imbalances at end of each Gas Month
- (a) The balancing process prescribed in this clause 9.9 is to be undertaken at the Capacity End Date.
  - (b) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a positive number then, the Operator is to pay a fair market price to the Shipper for that Gas.
  - (c) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a negative number, the Shipper is to pay a fair market price to the Operator for that Gas.
- 9.10 Charges do not affect Daily Delivery

Nothing in this clause 9 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

## **Peaking (clause 10)**

### 10. Peaking

#### 10.1 Hourly Peaking Limits

The Hourly Peaking Limits are:

- (a) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points on the DBNGP;
- (b) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10; and
- (c) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10B, (each of the limits in (a), (b) and (c) being an Hourly Peaking Limit).

#### 10.2 Shipper to stay within Hourly Peaking Limit

On each Gas Day, the Shipper must do all things expected of a Reasonable and Prudent Person to ensure that:

- (a) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points on the DBNGP does not exceed the relevant Hourly Peaking Limit described in clause 10.1(a);
- (b) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10 does not exceed the relevant Hourly Peaking Limit described in clause 10.1(b); and
- (c) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10B does not exceed the relevant Hourly Peaking Limit described in clause 10.1(c).

### 10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time the Shipper exceeds an Hourly Peaking Limit the Operator (acting as a Reasonable and Prudent Person), considers that a continuation of that condition:
  - (i) will have a material adverse impact on the integrity or operation of the DBNPG; or
  - (ii) will adversely impact, or is likely to adversely impact, on any other Capacity, or any Other Reserved Service,
 the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:
  - (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or (ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or procure compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and
  - (iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Quantity is within the Hourly Peaking Limit.
- (b) If the Operator issues a notice to the Shipper under clause 10.3(a)(iii) and the Hourly Peaking Limit being exceeded relates to Outlet Points:
  - (i) on the DBNPG generally, the Operator must issue a similar notice to all shippers;
  - (ii) in Pipeline Zone 10, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10; or
  - (iii) in Pipeline Zone 10B, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10B,
 which are exceeding their Hourly Peaking Limit or the equivalent under their relevant contracts.
- (c) If, after Operator issues a notice under clause 10.3(a)(iii):
  - (i) subject to clause 10.3(b), Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and
  - (ii) Shipper's Hourly Quantity calculated across the relevant outlet points is not within the Hourly Peaking Limit by the end of the following Gas Hour, Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).
- (d) If the Shipper does not comply and is not deemed pursuant to clause 10.3(c) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that the Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, the

Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:

- (i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause 10.5(e)); or
- (ii) in excess of the Hourly Peaking Limit up to the Outer Hourly Peaking Limit (if a notice has been issued pursuant to clause 10.5(e)), in accordance with clause 20.
- (e) If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which the Shipper is no longer exceeding any of the Hourly Peaking Limits (after which the Shipper is not liable to pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii)).
- (f) If the Shipper exceeds more than one Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.3(d) is calculated using only the amount of the largest excess.
- (g) No Hourly Peaking Charge is payable in respect of any Gas Hour in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.
- (h) The Operator may not:
  - (i) issue a notice pursuant to clause 10.3(a)(iii) or refuse to Deliver Gas pursuant to clause 10.3(a)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Hourly Peaking Limit; or
  - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Deliver Gas pursuant to clause 10.3(a)(iv) without having issued a notice in accordance with clause 10.3(a)(iii).

#### 10.4 Charges do not affect Daily Delivery

Nothing in this clause 10 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

#### 10.5 Outer Hourly Peaking Limit

- (a) The Shipper's Outer Hourly Peaking Limits are:
  - (i) 140% of the aggregate MHQ calculated across all outlet points on the DBNPG;
  - (ii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10; and
  - (iii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10B,

(each of the limits in (i), (ii) and (iii) being an **Outer Hourly Peaking Limit**).

- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.5(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.
- (c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.5(b) is calculated using only the amount of the largest excess.
- (d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.5(b) in respect of a Gas Hour, then the Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.5(b).
- (e) If at any time the Shipper's take of Gas is such that the Operator, acting as a Reasonable And Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.5(e) is only valid for the purposes of clause 10.5(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

#### 10.6 Remedies for breach of peaking limits

The Operator must not exercise any rights or remedies against the Shipper for exceeding an Hourly Peaking Limit, other than:

- (a) for breach of clause 10.3(a)(iii) limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 10.3(a)(iii) is reduced by any Hourly Peaking Charge or Hourly Peaking Charges paid by the Shipper in respect of that failure;
- (b) to recover the Hourly Peaking Charge or Hourly Peaking Charges where permissible by and in accordance with this clause 10;
- (c) to refuse to Deliver Gas to the Shipper at an Outlet Point (in accordance with clause 10.3(a)(iv)); or
- (d) any combination of clauses 10.6(a), 10.6(b) and 10.6(c).

The Parties agree that, because the rights and remedies set out in this clause 10.6 apply across all of the Shipper's Capacity Services, when in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 10.6, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

## **Overrun (clause 11)**

#### 11. Overrun

##### 11.1 Overrun Charge

- (a) In respect of each GJ of Overrun Gas Received by the Shipper on a Gas Day, the Shipper must pay an Overrun Charge calculated by applying the Overrun

Rate to the total Overrun Gas Received by the Shipper on that Gas Day in accordance with clause 20.

- (b) The Overrun Rate is the greater of:
  - (i) 115% of the T1 Tariff; and
  - (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,
- (c) All Overrun Gas Delivered on a Gas Day must be included in the calculation of the Shipper's Hourly Quantities, Total Inlet Quantity and Total Outlet Quantity for that Gas Day.

#### 11.2 Unavailability Notice

- (a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.
- (b) The Operator must use reasonable endeavours to give the Shipper and all other shippers advance notice (which may be by written notice or otherwise) which is reasonable in the circumstances of any unavailability or limited availability of Overrun Gas.
- (c) Any Curtailment Notice issued under clause 17 for any period is taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:
  - (i) is a Point Specific Curtailment;
  - (ii) does not affect Gas Transmission Capacity generally; and
  - (iii) does not affect the Inlet Point or Outlet Point at which the Overrun Gas is being Received by the Shipper.

#### 11.3 Content of an Unavailability Notice

An Unavailability Notice:

- (a) may apply to the Gas Day on which the Unavailability Notice is issued even though, in order to comply with such an Unavailability Notice, the Shipper must cease taking Delivery of Overrun Gas upon receipt of the notice in accordance with clause 11.4;
- (b) must identify the Gas Day or Gas Days to which the notice applies;
- (c) may be expressed to continue indefinitely or for a specified period;

- (d) may revoke, substitute or amend a previous Unavailability Notice; and
- (e) must state the quantity of Overrun Gas which is available to the Shipper.

#### 11.4 Compliance with Unavailability Notice

- (a) The Shipper must use its best endeavours to comply immediately, and must:
  - (i) as soon as practicable and in any event no later than one hour after receipt of the notice to comply, or procure compliance, with an Unavailability Notice, by ensuring that the total of its Overrun Gas for each Gas Day to which the Unavailability Notice applies does not exceed the quantity of Overrun Gas (if any) indicated by the Unavailability Notice to be available to the Shipper; and
  - (ii) as soon as practicable after receipt of the notice to comply, provide notice to the Operator advising of the measures being taken to ensure compliance with 11.4(a)(i).

#### 11.5 Operator may refuse to Deliver Overrun Gas

In addition to any other rights the Operator has to refuse to Deliver Gas under clause 5.7, the Operator may refuse to Deliver Overrun Gas to the Shipper at an Outlet Point if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4.

#### 11.6 Unavailable Overrun Charge

In addition to any charge payable under clause 11.1, if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4, the Shipper must pay, in accordance with clause 20, an Unavailable Overrun Charge at the Unavailable Overrun Rate for each GJ of Gas taken by the Shipper in excess of the quantity of Overrun Gas specified in the Unavailability Notice as being available to the Shipper.

#### 11.7 Saving and damages

- (a) Nothing in this clause 11 limits, affects or prejudices the Operator's right to refuse to Receive Gas under clause 5.3 or to refuse to Deliver Gas under clause 5.7.
- (b) The Shipper's liability to the Operator for any Direct Damage suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with an Unavailability Notice is reduced by any Unavailable Overrun Charge paid by the Shipper under clause 11.6 in respect of that failure.
- (c) The Shipper is not liable to pay the Overrun Charge under clause 11.1 and the Unavailable Overrun Charge under clause 11.6 in respect of the same quantity of Overrun Gas.
- (d) The Shipper is not liable to pay the Unavailable Overrun Charge with respect to any Gas Day in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect but only to the extent that the information is incorrect, but is liable to pay the Overrun Charge in

respect to the relevant quantity of Overrun Gas as if an Unavailability Notice had not been issued.

- (e) The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.

## ***Additional Rights and Obligations of Operator (clause 12)***

### 12. Additional Rights and Obligations of Operator

#### 12.1 Commingling of Gas

The Operator will have the right to commingle the Gas Delivered by the Shipper at an Inlet Point with other Gas in the DBNGP during transportation and is entitled to Deliver different molecules to the Shipper at the Outlet Points from those received at the Inlet Points.

#### 12.2 Processing

Subject to its obligations under this Contract, the Operator may (but is not obliged to) compress, cool, heat, clean and apply other processes to Gas during transportation acting as a Reasonable and Prudent Person consistent with its operation of the DBNGP.

#### 12.3 Operation of Pipeline System

- (a) In operating, maintaining or expanding the DBNGP, the Operator must:
  - (i) comply with all its obligations under this Contract; and
  - (ii) use Good Gas Industry Practice.
- (b) Except as provided in clause 12.3(a), the Operator may decide the manner in which it will operate the DBNGP.
- (c) In acting under this Contract, the Shipper must use Good Gas Industry Practice.

#### 12.4 Delivery of Gas

The Operator may (but only if the Operator chooses to do so) satisfy its obligation to enable gas to be Delivered to the Shipper by using any means other than the DBNGP, provided that the Operator otherwise meets its obligations under this Contract.

## ***Control, Possession and Title to Gas (clause 13)***

### 13. Control, Possession and Title to Gas

#### 13.1 Warranty of Title

- (a) The Shipper warrants that, at the time it Delivers Gas to the Operator at an Inlet Point, the Shipper has good title to the Gas free and clear of all liens,

encumbrances and claims of any nature inconsistent with the Operator's operation of the DBNGP.

- (b) Subject to clause 13.1(a) being true and correct at all times, the Operator warrants that at the time it Delivers Gas to the Shipper at an Outlet Point, the Operator has good title to the Gas free and clear of all liens, encumbrances and claims of any nature whatsoever.

### 13.2 Control, Possession, Responsibility and Title of Shipper

The Shipper warrants to the Operator at each relevant time that the Shipper:

- (a) is in Possession of the Gas immediately prior to its Delivery to the Operator at an Inlet Point and immediately after its Delivery to the Shipper at an Outlet Point; and
- (b) has legal responsibility and liability for Gas while it is within the Possession of the Shipper.

### 13.3 Title, Custody, Control and Responsibility of Operator

- (a) The Operator must:
  - (i) take title to, and is taken to be in Possession of, Gas from the Receipt of Gas from the Shipper at an Inlet Point until Delivery of Gas to the Shipper at an Outlet Point; and
  - (ii) have legal responsibility and liability for Gas while it is within the Operator's Possession.
- (b) (i) The Operator must Deliver good title to Gas Delivered to the Shipper at an Outlet Point; and
  - (ii) the Shipper must take title to Gas immediately after its Delivery to the Shipper at an Outlet Point,

free and clear of all liens, encumbrances and claims of any nature whatsoever.

### 13.4 Entitlements to Receive Gas

- (a) Subject to clause 13.4(c), upon the transfer from the Shipper to the Operator of title to and possession of a quantity (in terajoules) of Gas Delivered at an Inlet Point, the Shipper becomes entitled to:
  - (i) Receive Gas from the Operator at an Outlet Point other than a Notional Gate Point; or
  - (ii) subject to clause 13.5(b), Receive Gas from the Operator at an Outlet Point that is a Notional Gate Point.
- (b) The quantity of Gas that the Shipper becomes entitled to Receive in aggregate under clause 13.4(a) is a quantity equivalent (in terajoules) to the quantity of Gas Delivered at the Inlet Point.
- (c) Clauses 13.4(a) and 13.4(b) do not affect a provision of this Contract entitling the Operator to Curtail wholly or partially or interrupt the Shipper's use of Capacity or to refuse wholly or partially to Deliver Gas to the Shipper and do not affect the obligations of the Shipper to Deliver Gas and Receive Gas in such a manner as complies with this Contract, including so as to ensure the

Shipper remains within the limits prescribed by this Contract in clauses 9 and 10.

### 13.5 Title at Outlet Points

- (a) Unless the Delivery is at an Outlet Point that is a Notional Gate Point, the Delivery of the Gas by the Operator to the Shipper at an Outlet Point is a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Outlet Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.
- (b) If the Delivery is at an Outlet Point that is a Notional Gate Point, then:
  - (i) the Delivery of the Gas by the Operator is followed immediately by a Delivery of the Gas from the Shipper back to the Operator at the Outlet Point (for transport to a Physical Gate Point associated with the Notional Gate Point) and no transfer of title to and possession of the Gas is involved;
  - (ii) the Operator may in its discretion as a Reasonable and Prudent Person manage the times, extent and manner that Gas deemed to be delivered at a Notional Gate Point is physically transported into the Associated sub-network; and
  - (iii) subject to any Law or any other agreement to which both the Operator and the Shipper are parties, the Delivery of Gas by the Operator at a Physical Gate Point is, by force of this clause 13.5, a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Physical Gate Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.

## ***Relocation (clause 14)***

### 14. Relocation

#### 14.1 Request for relocation of Contracted Capacity

The Shipper may, by notice in writing to the Operator, request a relocation of all or any part of its Contracted Capacity from an Existing Inlet Point to a New Inlet Point or from an Existing Outlet Point to a New Outlet Point (Requested Relocation).

#### 14.2 Assessment of Requested Relocation

- (a) The Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable and Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to, among other things, the order, relative to its receipt of equivalent notices received from other shippers, in which the Shipper's Requested Relocation was received, (but for the avoidance of doubt the Parties intend this priority to apply only to the extent that requested relocations compete or conflict with each other for utilisation of capacity).
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:
  - (i) the Requested Relocation would cause the sum (after the relocation) of all shippers':

- (A) quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including RT1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Inlet Point is located; or
  - (B) quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including RT1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located;
  - (ii) in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible; or
  - (iii) the Requested Relocation is such that the Inlet Point would be downstream of the Outlet Point and it would change the normal direction of Gas flow in the DBNGP.
- (c) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:
- (i) the Requested Relocation would result in the New Inlet Point being downstream of the Existing Inlet Point;
  - (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements; and
  - (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.
- (d) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:
- (i) the Requested Relocation would result in the New Outlet Point being upstream of the Existing Outlet Point;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements;
  - (iii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located; and

- (iv) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

#### 14.3 Operator to notify Shipper

As soon as practicable after completing its assessment under clause 14.2(a), the Operator must give notice in writing to the Shipper advising either that the Requested Relocation is:

- (a) not an Authorised Relocation; or
- (b) an Authorised Relocation.

#### 14.4 Requested Relocation is an Authorised Relocation

If the Operator gives notice that the Requested Relocation is an Authorised Relocation under clause 14.3(b):

- (a) the Operator and the Shipper must negotiate in good faith regarding the cost to the Shipper (which in no case may be less than the Operator's out-of-pocket costs and must include a reasonable charge for the Operator's management time) in respect of any new facilities (including the New Inlet Point or New Outlet Point) which the Shipper will be wholly or partially utilising.
- (b) If such agreement is not reached, the matter must be regarded as a Dispute to be resolved as a Technical Matter and will be dealt with in accordance with clause 24.
- (c) the Shipper must pay the charges specified in clause 14.7 in accordance with clause 20.

#### 14.5 Requested Relocation is not an Authorised Relocation

If the Operator gives notice that the Requested Relocation is not an Authorised Relocation under clause 14.3(a), the Operator and the Shipper (acting reasonably) may agree (on any fair and reasonable terms and conditions, including terms and conditions as to price) the operational restrictions which will apply to the use by the Shipper of the New Inlet Point or New Outlet Point which will enable the Parties to implement the Requested Relocation of Contracted Capacity.

#### 14.6 Relocated Contracted Capacity to be on same terms and conditions

Subject to clauses 14.7 and 14.8 and unless the Parties agree in writing to the contrary, any Contracted Capacity relocated under this clause 14 must be on the same terms and conditions as the Contracted Capacity at the Existing Inlet Point or the Existing Outlet Point (as the case may be).

#### 14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.
- (b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point

of the DBNGP as at 30 December 2003 (being Clifton Road), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.

- (c) If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated:
  - (i) remains on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
  - (ii) is treated under this Contract as though it was Full Haul Capacity.

#### 14.8 Pressures at New Inlet Point and New Outlet Point

The Operator may in its discretion as a Reasonable and Prudent Person specify the range of pressures within which the Shipper may Deliver Gas to the Operator at a New Inlet Point, and within which the Operator may Deliver Gas to the Shipper at a New Outlet Point but in no case may the specified range of pressures be substantially different from the DBNGP operating pressure range at that point.

#### 14.9 Contract amended to reflect relocation

If the Parties reach agreement under clause 14.4 or 14.5, the Requested Relocation and the terms and conditions so agreed must be given effect to by an amendment of the Access Request Form in accordance with clause 38.

### **Metering (clause 15)**

#### 15. Metering

##### 15.1 Shipper's responsibility

The Shipper must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense, supply, install, Operate and Maintain Inlet Metering Equipment at each Inlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) ensure that at all times all data required by the Operator from Inlet Metering Equipment is electronically accessible by the Operator.

##### 15.2 Operator's responsibility

The Operator must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense supply, install, Operate and Maintain Outlet Metering Equipment at each Outlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) calculate and record:
  - (i) the quantity of Gas Delivered to the Operator by the Shipper; and

- (ii) the quantity of Gas Delivered to the Shipper by the Operator.

### 15.3 Metering uncertainty

- (a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:
  - (i) measurement to within a maximum uncertainty of:
    - (A) plus or minus 0.75% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of 5 TJ/d or greater; and
    - (B) plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and
  - (ii) measurement to within a maximum uncertainty of plus or minus one quarter of one percent of Higher Heating Value at a minimum of the 95% confidence level.
- (b) Subject to clauses 15.3(a), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.
- (c) In this clause 15, **95% confidence level** has the meaning given to that expression by ISO 5168.

### 15.4 Primary Metering Equipment

- (a) Primary Metering Equipment must:
  - (i) continuously compute and record:
    - (A) (in the case of Inlet Metering Equipment) the quantity and quality of Gas Delivered by the Shipper to the Operator under this Contract; and
    - (B) (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by the Operator to the Shipper under this Contract; and
    - (C) any information reasonably required by the Operator from time to time to assist the Operator to comply with any Law.
  - (ii) be of a standard of manufacture acceptable to the Operator acting as a Reasonable and Prudent Person;
  - (iii) comply with AS 2885 and any Australian or international standards required from time to time by the Operator;
  - (iv) subject to clauses 15.4(b) and 15.4(c), encompass newest proven technology;
  - (v) be able in all streams to withstand Gas flows of up to 120% of the design flow;
  - (vi) provide data signals in the form of galvanically isolated 4-20 milliamp current loops or potential free contacts, as appropriate, or in such other

- form as the Parties as Reasonable and Prudent Persons may agree; and
- (vii) include facilities to enable electronic data collection by the Operator's Electronic Data Collection System.
- (b) Primary Metering Equipment with a design maximum flow rate of 5 TJ/d or more must include:
- (i) alternative Metering Equipment capable of measuring Gas quantity and (for Inlet Metering Equipment) Gas quality;
  - (ii) a means for detecting a fault in Duty Equipment which is likely to materially affect the accuracy of any measurements produced by the Duty Equipment, and a means in the event of such a fault for automatically switching metering from the faulty Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i); and
  - (iii) a means for manually switching metering from Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i).
- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
- (i) delivery and metering temperature;
  - (ii) delivery and metering pressure;
  - (iii) instantaneous energy flow rate in TJ/d;
  - (iv) instantaneous mass flow rate in Tonnes per day
  - (v) totalised energy flow in GJ;
  - (vi) totalised mass flow in Tonnes;
  - (vii) Relative Density;
  - (viii) Higher Heating Value in megajoules per cubic metre and megajoules per kilogram;
  - (ix) Wobbe Index;
  - (x) nitrogen content in mole percent;
  - (xi) carbon dioxide content in mole percent;
  - (xii) hydrocarbon content in mole percent for each of the fractions;
  - (xiii) sulphur content in milligrams per Cubic Metre;
  - (xiv) oxygen content in mole percent;
  - (xv) moisture level in milligrams per Cubic Metre;
  - (xvi) instantaneous hydrocarbon dew point in degrees Celsius; and

- (xvii) all primary measurements and Derived Variables used in any computation required by clauses 15.4(c)(i) to 15.4(c)(xvi).
- (d) Unless the Operator and the Shipper as Reasonable and Prudent Persons agree to the contrary, Outlet Metering Equipment may utilise Gas quality data from equipment which is not located at the Outlet Station in question (the **Remote Data**), in which case:
  - (i) the Operator may as a Reasonable and Prudent Person adopt procedures relating to that utilisation, including relating to the use of preset Gas quality values when the Remote Data is unavailable for any reason; and
  - (ii) clauses 15.9 and 15.12 apply, with appropriate modifications, to any procedures adopted under clause 15.4(d)(i).
- (e) Outlet Metering Equipment must provide digital signals Associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables Associated with Gas quantity:
  - (i) delivery temperature;
  - (ii) delivery pressure;
  - (iii) instantaneous energy flow rate in terajoules per day derived using the Higher Heating Value;
  - (iv) totalised energy flow in GJ;
  - (v) all primary measures and Derived Variables used in any computation required by clauses 15.4(e)(i) to 15.4(e)(iv); and
  - (vi) Higher Heating Value in megajoules per cubic metre.
- (f) The Inlet Metering Equipment, and any building erected for such equipment, is the property of the Shipper (or its nominee), and the Outlet Metering Equipment, and any building erected for such equipment, is (subject to clause 15.4(g)) the property of the Operator.
- (g) To the extent that:
  - (i) the Shipper has paid for the Outlet Metering Equipment and any building erected for such equipment;
  - (ii) the Outlet Metering Equipment is detachable from the DBNGP without any damage to or effect on the DBNGP;
  - (iii) no third party has any interest in or title to the Outlet Metering Equipment or the building; and
  - (iv) no third party (including any other shipper) is deriving any benefit from the Outlet Metering Equipment,

the Outlet Metering Equipment and any building erected for such equipment is, at the end of this Contract, to become the property of the Shipper, and may be detached and removed at the expense and risk of the Shipper.

## 15.5 Provision of information to Shipper

- (a) The Operator must, on request by and at the expense and risk of the Shipper, make available to the Shipper access to:
  - (i) the galvanically isolated analogue or digital data signals in a form agreed by the Parties from any Outlet Metering Equipment at the Outlet Station Associated with the Outlet Point at which the Shipper has Contracted Capacity; and
  - (ii) any other form of metering data requested by the Shipper from time to time and consented to by the Operator acting reasonably and taking into account, inter alia, the commercial sensitivity of the data, whether the data relates solely to the Shipper, any requirements of confidentiality, any Law, and provided that such disclosure does not materially or directly detrimentally affect other shippers in the context of their dealings with the Operator, but only insofar as that data relates solely to the Shipper.
- (b) The Operator takes no responsibility for the accuracy of any data obtained by the Shipper under clause 15.5(d)(i) and is not liable for any Direct Damage or Indirect Damage suffered by the Shipper as a result of any reliance placed by the Shipper on any data obtained by the Shipper under clause 15.5(d)(i).
- (c) In complying with clause 15.5(a), the Operator must allow the Shipper access to unverified delivery data signals insofar as is relevant to the information referred to in clause 15.5(a).
- (d) The Operator must make available to the Shipper via the CRS or a similar communications system:
  - (i) within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by the Shipper at each Outlet Point during that Gas Hour;
  - (ii) within 3 hours after the end of each Gas Day, the unverified quantities of Gas in that Gas Day Delivered by the Shipper to each Inlet Point and Delivered by the Operator to the Shipper at each Outlet Point excluding all Physical Gate Points; and
  - (iii) within three Working Days after the end of the Gas Month, the verified quantities of Gas Delivered by the Shipper at each Inlet Point and each Outlet Point for each Gas Day during the previous Gas Month,

collectively **Metering Information**.
- (e) The Operator must make available to the Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:
  - (i) Received by the Shipper in a Gas Day at each Physical Gate Point; and
  - (ii) Received by the Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.
- (f) The Operator must make available to the Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:

- (i) Received by the Shipper in that Gas Day at each Physical Gate Point; and
  - (ii) Received by the Shipper aggregated across all outlet points including all Physical Gate Points.
- (g) Clauses 15.5(e) and (f) only apply for as long as the Shipper is a Distribution Networks Shipper.

#### 15.6 Changes to requirements for Metering Equipment

The Operator may by notice in writing require the Shipper to modify, or to allow and arrange for the Operator to modify, existing Metering Equipment to comply with requirements or standards specified by the Operator after that equipment was installed, and if the modification is necessary to comply with safety Laws of general application, or to comply with the standard required by an amendment to this Contract implementing such Laws, the modification must be made at the Shipper's expense, and otherwise the modification must be made at the Operator's expense.

#### 15.7 Approval of Inlet Metering Equipment

- (a) The Shipper must obtain, or must procure that a third party obtains:
  - (i) prior to commencing the construction, installation or modification of any Inlet Metering Equipment or any component thereof; and also
  - (ii) prior to the commissioning of any newly constructed, installed or modified Inlet Metering Equipment or any component thereof, the Operator's written approval (which may not be unreasonably withheld) of, or of any amendment to, the design, location and construction of, and the proposed Operating and Maintenance procedures in relation to, that equipment or component.
- (b) For the purposes of clause 15.7(a), the Shipper must give to the Operator not less than one month's notice of the anticipated date of commencement of the relevant construction, installation or modification.
- (c) The Operator must, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to the Shipper of the Operator's approval of or refusal to approve the Inlet Metering Equipment.
- (d) Without limiting the generality of clause 37, the Shipper must, for the purposes of clause 15.7(a), prior to and during the construction, installation, modification or commissioning of any Inlet Metering Equipment or any component thereof, afford all reasonable rights of entry and inspection (including all relevant data, drawings and components) to the Operator and its agents at the Operator's expense and risk.

#### 15.8 Check Metering Equipment

- (a) The Shipper may at its own expense at an Outlet Station, and the Operator may at its own expense at an Inlet Station, supply, install, Maintain and Operate Check Metering Equipment for the purpose of monitoring the accuracy of the Primary Metering Equipment.
- (b) Check Metering Equipment (and any associated pressure or quantity control regulators or other equipment) must be located downstream of, and must not interfere with the operation of, the Primary Metering Equipment.

- (c) Check Metering Equipment at the Outlet Station is the Shipper's property, and Check Metering Equipment at the Inlet Station is the Operator's property.
- (d) The expenses of any Verification of the accuracy of Check Metering Equipment must be borne by the Party owning that equipment.
- (e) Subject to clause 15.14(d)(i), data from Check Metering Equipment may not be used for billing purposes.

#### 15.9 Preservation of accuracy

- (a) All Primary Metering Equipment must be installed in a manner which permits an Accurate measurement of the quantity and, for Inlet Metering Equipment, the quality of Gas Delivered, and a ready Verification of the Accuracy of measurement.
- (b) Each Party must, in the installation, Maintenance and Operation of any Metering Equipment, exercise the care of a Reasonable and Prudent Person to prevent any inaccuracy in the measurement of the quantity of Gas Delivered under this Contract.

#### 15.10 Presumptions of accuracy

- (a) Subject to clause 15.13, a measurement of the quantity or quality of Gas from any Primary Metering Equipment is presumed to be correct.
- (b) If any 2 consecutive Verifications show any Metering Equipment to be operating within the Prescribed Limits of Uncertainty, the Metering Equipment is presumed to have been operating within the Prescribed Limits of Uncertainty throughout the intervening period.
- (c) The presumptions in clauses 15.10(a) and 15.10(b) apply until the contrary is shown.
- (d) If either or both of the presumptions in clauses 15.10(a) and 15.10(b) is, or are, shown to be incorrect in respect of any period or periods, clauses 15.13 and 15.14 apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

#### 15.11 Verification of Primary Metering Equipment

- (a) The Operator:
  - (i) must, at least once each month (or other period agreed between the parties) during the duration of this Contract; and
  - (ii) may, at such greater frequency or on any occasion that either Party may request,

verify the accuracy of any Primary Metering Equipment in accordance with a procedure described in clause 15.11(b).
- (b) The Verification procedure consists of:
  - (i) a comparison between simultaneous independent measurements of Gas flows;
  - (ii) the physical substitution of the Primary Metering Equipment to be Verified with similar Metering Equipment having a demonstrated accuracy within the Prescribed Limits of Uncertainty; or

- (iii) any Metering Equipment testing procedure complying with applicable Australian or International standards that the Parties agree in writing to use.
- (c) Each Party may have representatives present at the time of any Verification of the Accuracy of any Primary Metering Equipment (unless the number of persons present must be restricted for safety or logistical reasons, in which case the Parties are to agree on which representatives must be present), and the Operator must give the Shipper sufficient notice of an intended Verification to enable the Shipper's representative to be present.
- (d) The results of any Verification are binding on both Parties unless within 7 Working Days after Verification either Party gives notice to the other Party that it disputes the conduct of the Verification, in which case:
  - (i) the provisions of clause 24 apply; and
  - (ii) any reference in this clause 15.11 to accuracy figures produced by Verification means the accuracy figures finally determined for that Verification under a dispute resolution process adopted in accordance with clause 24.
- (e) Subject to clause 15.11(f), the Shipper must bear the expense of any Verification under clause 15.11(a), provided that the Operator must bear the cost of attendance of the Operator's representatives.
- (f) If a Verification requested by the Operator under clause 15.11(a)(ii) reveals that the accuracy of the Primary Metering Equipment is within the Prescribed Limits of Uncertainty, the Operator must bear the expense of the Verification and must also pay to the Shipper the Shipper's reasonable expenses of that Verification, in accordance with clause 20.

#### 15.12 Adjustment or replacement of defective equipment

- (a) Subject to clause 15.12(b), if at any time any component of Primary Metering Equipment is found to be defective or otherwise out of service or operating outside the Prescribed Limits of Uncertainty, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, forthwith either:
  - (i) adjust it to measure within the Prescribed Limits of Uncertainty; or
  - (ii) if such adjustment is not possible, replace it with a serviceable component.
- (b) If at any time Primary Metering Equipment with a design maximum flow rate of less than 5 TJ/d is found to be operating outside the Prescribed Limits of Uncertainty for any reason, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, cause the Primary Metering Equipment to Operate within the Prescribed Limits of Uncertainty within 48 hours.

#### 15.13 Inaccurate equipment

- (a) If any Verification reveals that any Primary Metering Equipment is operating outside the Prescribed Limits of Uncertainty but is measuring the quantity of Gas with an inaccuracy of less than or equal to:

- (i) plus or minus 1.5% for Metering Equipment with a design flow of 5 TJ/d or greater; and
- (ii) plus or minus 3% for Metering Equipment with a design flow of less than 5 TJ/d,

then the measurements from that Primary Metering Equipment are taken to be correct.

- (b) If any Verification reveals that any Primary Metering Equipment is measuring the quantity of Gas with an inaccuracy of greater than the relevant limit prescribed by clause 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) or agreed under clause 15.3(b), then (unless the Parties agree otherwise) all measurements affected or potentially affected by that inaccuracy must be determined in accordance with clause 15.14.
- (c) If the Parties have agreed under clause 15.3(b) to limits of uncertainty for a component or components of Primary Metering Equipment, then the Parties may agree to limits which are to apply in substitution for the limits prescribed in clauses 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) for that Primary Metering Equipment, and clause 15.13(a) has effect accordingly.

#### 15.14 Correction of measurements

- (a) All measurements made prior to the Previous Verification are taken to be correct.
- (b) The period between the Previous Verification and the Current Verification must be divided into an earlier period and a later period, being:
  - (i) if the time at which the Primary Metering Equipment became Inaccurate can be established, respectively the period before and the period after that time; or
  - (ii) if the time at which the Primary Metering Equipment became Inaccurate cannot be established, 2 equal periods.
- (c) The measurements produced by the Primary Metering Equipment for the earlier period must be taken to be correct.
- (d) The measurements for the later period must be estimated:
  - (i) if Check Metering Equipment is installed and is established to the reasonable satisfaction of both Parties to have been operating during the later period within the Prescribed Limits of Uncertainty, by using the measurements recorded by that Check Metering Equipment;
  - (ii) if clause 15.14(d)(i) does not apply and if the percentage of error in the measurements is ascertainable to the reasonable satisfaction of both Parties by calibration test or mathematical calculation, by calculating a correction for that percentage error; or
  - (iii) in any other circumstance, by reference to measurements made under similar conditions when the Primary Metering Equipment was registering accurately.
- (e) Following the correction of any measurements in accordance with this clause 15.14, the Parties will determine the relevant overpayment or underpayment that has resulted under this Contract from the measurement error and the

appropriate Party must make an adjusting payment to the other in accordance with clause 21.6.

#### 15.15 Metering records

- (a) Any record produced by Primary Metering Equipment:
  - (i) in paper form must be retained for 2 years after the date of production; and
  - (ii) in electronic form must be retained for 5 years after the date of production,

by and at the expense of the Party owning the equipment which produces the record.
- (b) The records and other information produced by, and any calculations and other information derived from, any Primary Metering Equipment or Check Metering Equipment remain the property of the Party owning that equipment.
- (c) Each Party must use reasonable endeavours to, within 20 Working Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by its Primary Metering Equipment which solely relate to the other Party, for inspection and verification by that other Party and the other Party may make and return any copies of those records and other information and must return the originals within 10 Working Days of their receipt.

#### 15.16 Unused Outlet Points

- (a) If:
  - (i) the Shipper has no Contracted Capacity at an Outlet Point; and
  - (ii) such point has not been used, or is, in the Operator's opinion (acting reasonably and after consulting with the Shipper), unlikely to be used, to Deliver Gas to the Shipper for a period, in aggregate, greater than 12 continuous months,

then the Operator may, at the cost of the Operator, decommission, remove and deal with or dispose of as it sees fit (including selling for its own benefit) any part or the whole of that Outlet Point and any Associated Outlet Station. Upon the commencement of such decommissioning, such Outlet Point, subject to clause 15.16(b), ceases to be an Outlet Point for the purpose of this Contract.

- (b) If requested by the Shipper, the Shipper and the Operator will discuss in good faith deferring the decommissioning of the Outlet Point and any Associated Outlet Station on the basis that the Shipper will pay ongoing maintenance charges incurred by the Operator in maintaining the Outlet Point and any Associated Outlet Station.
- (c) If subsequent to the commencement of such decommissioning, the Shipper wishes to use such point as an Outlet Point under this Contract, the Shipper must give at least 10 months written notice to the Operator and must fully indemnify the Operator for all costs, losses, liabilities and expenses incurred by the Operator in respect of such recommissioning of the point as an Outlet Point for the purposes of this Contract and in respect of recommissioning any Associated Outlet Station.

- (d) An Outlet Point recommissioned in accordance with clause 15.16(c) is subject to Charges in accordance with clause 6.11.

## **Un-used clause (clause 16)**

16. Not Used

## **Curtailment (clause 17)**

17. Curtailment

### 17.1 Operator's obligations and Curtailment principles

- (a) The Operator must use its best endeavours to minimise the magnitude and expected duration of any Curtailment of the RT1 Service.
- (b) A Curtailment may affect one or more Inlet Points or Outlet Points on the DBNRP. Unless the Curtailment affects only one Inlet Point or Outlet Point, it is a System Curtailment.
- (c) Curtailment occurs in two stages, although in some instances the Operator will not need to move to the second stage:
  - (i) **Stage 1:** the Operator identifies that a Curtailment is necessary and, acting as a Reasonable and Prudent Person, determines how much Capacity needs to be Curtailed. In most circumstances this will be a System Curtailment.
  - (ii) **Stage 2:** If it is necessary (at the same time or subsequently) for the Operator to resolve incompatible demands by shippers for the use of a single Inlet Point or Outlet Point, the Operator undertakes a Point Specific Curtailment at each such point.
- (d) In a Curtailment, whether System Curtailment or in any Point Specific Curtailments, Contracted Capacity at a particular point (**incumbent capacity**) has priority for the use of that point above capacity relocated from another point for that Gas Day, unless the incumbent capacity has been fully curtailed by virtue of the application of the Curtailment Plan in a System Curtailment which affects a Curtailment Area greater than a Point Specific Curtailment.

### 17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

- (a) if there is an event of Force Majeure where the Operator is the Affected Party;
- (b) whenever it needs to undertake any Major Works; and
- (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;
- (d) for any Planned Maintenance; and
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat

of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

#### 17.3 Curtailment without liability

- (a) Subject to clause 17.3(b), the Operator is liable to the Shipper only for Direct Damage caused by or arising out of a Curtailment or interruption of the Shipper's T1 Service. For the avoidance of doubt, the giving of a Curtailment Notice constitutes a Curtailment and the provision by the Operator of Capacity equal to the Shipper's reduced Contracted Capacity under clause 17.7(e) during the currency of the Curtailment Notice which gave effect to that reduced Contracted Capacity is a Curtailment for the purposes of this clause 17.3(a).
- (b) The Operator has no liability to the Shipper whatsoever for a Curtailment under clause 17.2 in any of the following circumstances:
  - (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the T1 Service during the Gas Year does not cause the T1 Permissible Curtailment Limit to be exceeded;
  - (ii) where the Curtailment is in accordance with any of clauses 17.2(a), (b) or (c); or
  - (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

- (c) The T1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
  - (i) a Curtailment in circumstances set out in clause 17.2(a) or 17.2(b);
  - (ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and
  - (iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied, is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.

#### 17.4 Refund of Capacity Reservation Charge

To the extent that the Shipper's T1 Service is Curtailed for any reason other than:

- (a) an event of Force Majeure where the Shipper is the Affected Party; or
- (b) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment,

the Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.

#### 17.5 Operator's rights to refuse to Receive or Deliver Gas

Subject to clauses 5.5 and 5.9, where the Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (the Operator may refuse to Receive Gas);
- (b) clause 5.7 (the Operator may refuse to Deliver Gas),

such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(b).

#### 17.6 Curtailment Notice

- (a) The Operator must give the Shipper a notice (Curtailment Notice) setting out the matters referred to in clause 17.7(a) and the expected duration of an impending Curtailment and otherwise complying with this clause 17.
- (b)
  - (i) Where the reason for the Curtailment is Major Works, the Operator must give the Shipper:
    - (A) an initial notice (Initial Notice) at least 60 days in advance of the starting time of the Curtailment; and
    - (B) a Curtailment Notice no later than one Gas Day before the Gas Day on which the Curtailment commences.
  - (ii) In any case other than one described in clause 17.6(b)(i):
    - (A) subject to clause 17.6(b)(ii)(B), the Operator must use its reasonable endeavours to give the Shipper a Curtailment Notice a reasonable period in advance of the starting time of the curtailment but in any event at least one hour in advance of the starting time of the Curtailment; and
    - (B) where as a result of Force Majeure or by reason of an emergency it is not reasonably possible to give a Curtailment Notice at least one hour in advance of the starting time of the Curtailment, the Operator must give the Shipper a Curtailment Notice as soon as it is practicable to do so, whether that is before or after the starting time of the Curtailment.
- (c) The Operator must send a copy of the Curtailment Notice in accordance with clause 29.1(a) (Notices) and must also endeavour to telephone the Shipper to advise that the Curtailment Notice has been or will be provided.
- (d) The Operator is not required to inform all affected Producers and downstream entities that relate to the Shipper of the notification of the Curtailment or the Curtailment Notice.
- (e) The Operator must, on a reasonable request by the Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to explain the issue of a Curtailment Notice.

#### 17.7 Content of a Curtailment Notice and Initial Notice

- (a) A Curtailment Notice must specify the following details:
  - (i) the reasons for the Curtailment;

- (ii) the starting time of the Curtailment (which must not be any time before the Gas Day on which the Curtailment Notice is given), including the Gas Day or Gas Days to which the Curtailment Notice applies; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.
- (b) An Initial Notice must specify the Operator's estimate of:
- (i) the reasons for the Curtailment;
  - (ii) the starting time of the Curtailment; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.
- (c) A Curtailment Notice:
- (i) takes effect from the time specified in the Curtailment Notice;
  - (ii) may apply to the Gas Day on which the Curtailment Notice is issued even if, in order to comply with a Curtailment Notice, the Shipper must use best endeavours to, and to procure persons to whom the Shipper supplies Gas to, cease taking delivery of any Gas upon receipt of the Curtailment Notice in accordance with clause 17.8(a);
  - (iii) may be expressed to continue indefinitely or for a specified time;
  - (iv) may revoke, substitute or amend a previous Curtailment Notice;
  - (v) must not require the Shipper to reduce its Receipt of Gas for the Gas Day as a whole to a level less than the Shipper has already actually Received for the Gas Day before the Curtailment Notice takes effect (that is, the Curtailment Notice must not be impossible to comply with); and
  - (vi) does not retrospectively affect the Shipper's compliance with Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes the Shipper's compliance with those limits for an hour must be determined having regard to the Shipper's Contracted Capacity at the commencement of the hour).
- (d) The Operator may at any time, whether or not it has specified in a Curtailment Notice an end time for a Curtailment, give notice to the Shipper (in accordance with clause 29) wholly or partly terminating a Curtailment either immediately or from any time in the future.
- (e) A Curtailment Notice constitutes a variation of this Contract while the Curtailment Notice is in force reducing the Shipper's Contracted Capacity to the extent, and in accordance with the apportionment (if any), specified in the notice, except for the purposes of calculating the Charges payable by the Shipper under clause 20 and for ascertaining whether the Shipper has been Curtailed under this clause 17, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form. Further, in respect of a particular shipper when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) the amount must not include any capacity Curtailed under clause 17.8 either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point, and the material equivalent to such clause in any of the shipper's contracts for Capacity Service.

- (f) If a Curtailment Notice takes effect before the Shipper's next Nomination or Renomination under clause 8, the Shipper's Daily Nominations are taken to be reduced (if a reduction is required) to the same amount of Capacity Service as the Shipper is to have available under the Curtailment Notice given in respect of the Shipper's Contracted Capacity.
- (g) The Shipper may not:
  - (i) Nominate or Renominate under clause 8 for Contracted Capacity; or
  - (ii) Deliver Gas to or Receive Gas from the Operator, in excess of whichever is the lower of:
    - (iii) its reduced Contracted Capacity because of clause 17.7(f); or
    - (iv) the quantity specified in a Curtailment Notice as the maximum quantity which the Operator will Receive from, or Deliver to, the Shipper.

#### 17.8 Compliance with Curtailment Notice

- (a) Where the Curtailment is a Point Specific Curtailment, the Shipper must use its best endeavours to comply immediately, and must as soon as practicable and in any event no later than one hour after receipt of the notice comply, or procure compliance, with the requirements of a Curtailment Notice by:
  - (i) not Delivering any Gas at the Inlet Points; or
  - (ii) not Receiving any Gas delivered to the Shipper at the Outlet Points, in excess of the quantity specified for that Inlet Point or Outlet Point, as the case may be, in the Curtailment Notice.
- (b) Where the Curtailment is not a Point Specific Curtailment, the Shipper must comply, or procure compliance, with the requirements of the Curtailment Notice in accordance with its terms.
- (c) If the Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a), the Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from the Shipper at an Inlet Point or refusing to Deliver Gas to the Shipper at an Outlet Point.
- (d) If the Operator refuses to Receive or Deliver Gas under clause 17.8(c) in order to give effect to the requirements set out in a Curtailment Notice and the Operator incidentally refuses to Receive or Deliver Gas in excess of the requirements of the Curtailment Notice (Excess Curtailment), to the extent that such Excess Curtailment occurred despite the Operator acting as a Reasonable and Prudent Person in attempting to avoid or minimise (as the case may be) such Excess Curtailment is not to be regarded as a Curtailment under this Contract.
- (e) If the Curtailment is a Point Specific Curtailment and the Shipper Delivers Gas to the Operator at an Inlet Point or Receives Gas from the Operator at an Outlet Point in excess of the quantity specified in the Curtailment Notice for that Inlet Point or Outlet Point (as the case may be), then the Shipper must pay the Operator an Unavailable Overrun Charge under clause 11 at the Unavailable Overrun Rate in respect of each GJ of Gas which the Shipper's actual receipts or deliveries (or both) vary from those specified in the Curtailment Notice.

- (f) Other than when due to Force Majeure or by reason of an emergency it is unable to do so, the Operator must give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c).
- (g) The Shipper is not liable to pay the Unavailable Overrun Charge under clause 17.8(e) in respect of a Gas Day in respect of which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is materially inaccurate.

### 17.9 Priority of Curtailment

- (a) Any Curtailment of the Shipper's Total Contracted Capacity must be conducted in accordance with the Curtailment Plan. In applying the Curtailment Plan in a Point Specific Curtailment or System Curtailment, a Type of Capacity Service will only be Curtailed once all Types of Capacity Services listed below it in that column in the Curtailment Plan have been reduced to zero.
- (b) The general principle in clause 17.9(a) is subject to the following:
  - (i) Any Laws regulating the priority of Capacity Services (which for the purposes of this clause include capacity under a Spot Transaction) on the DBNGP.
  - (ii) Where the Curtailment is a Point Specific Curtailment, the Curtailment Plan will be subject to any Multi-shipper Agreement relating to that Inlet Point or Outlet Point.
  - (iii) Any Point Specific Curtailment of the Aggregated T1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded to the extent that the Shipper is entitled to give a Renomination Notice in respect of either of the following:
    - (A) (subject to clause 17.9(b)(iii)(B)) one or more inlet points or outlet points (as the case may be) where the Shipper has unutilised Contracted Capacity for the T1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the T1 Service at that or those inlet points or outlet points (as the case may be);
    - (B) one or more inlet points or outlet points (which may be points referred to in clause 17.9(b)(iii)(A) above) where the Shipper can otherwise utilise Capacity.
  - (iv) If and to the extent that, because of the default, negligence, breach of contractual term, or other conduct of a shipper (in this clause 17.9(b)(iv) the **defaulting shipper**):
    - (A) a reduction in Gas Transmission Capacity is caused that makes necessary any Curtailment of the use of Gas Transmission Capacity by any shipper; or

- (B) the Operator is entitled to refuse to Receive Gas from or Deliver Gas to any shipper (or, if applicable, to Curtail the use of Gas Transmission Capacity by any shipper),

the Operator must, to the extent that it is entitled to do so, wholly refuse to Receive Gas from or Deliver Gas to the defaulting shipper and must reduce the defaulting shipper's use of Gas Transmission Capacity of any kind (but only to the extent necessary to correct the default of the shipper) before it reduces any shippers' (other than the defaulting shipper's) use of Gas Transmission Capacity of any kind, and the Operator is not liable to the defaulting shipper for any Direct Damage or Indirect Damage (whatsoever) arising from that Curtailment or refusal.

- (v) To the extent that:

- (A) the use of Gas Transmission Capacity by a particular shipper would, but for this clause 17.9(b)(v), be included in an apportionment of a Curtailment; and
- (B) in the view of the Operator (acting fairly and reasonably) the inclusion of that Gas Transmission Capacity would because of the location of the particular shipper's Inlet Point or Inlet Points or Outlet Point or Outlet Points in relation to the circumstances which gave rise to the need to Curtail be unlikely to wholly or partially reduce the need to Curtail any other shipper's use of Gas Transmission Capacity,

the Operator may exclude that Gas Transmission Capacity from the apportionment of Curtailments (despite what would otherwise be the Operator's obligation to include that Gas in the apportionment).

- (vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the Shipper's:

- (A) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at the Outlet Points located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) not be included in the Aggregated T1 Service; and  
 (2) be included in the T1 Service,

available to the Shipper in the Curtailment Area; and

- (B) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at any Outlet Point located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) be included in the Aggregated T1 Service;  
 (2) not be included in the T1 Service,

available to the Shipper in the Curtailment Area.

- (vii) Despite any provision of the Curtailment Plan or any contract, the Delivery of Gas to the Shipper is at all times subject to the Operator's

absolute right to utilise part of the DBNGP's capability to transport Gas which is required by the Operator for operational purposes in relation to the DBNGP.

- (viii) The Operator must enforce any rights it may have under the Alcoa Exempt Contract in relation to allocating to, and Delivering to, Alcoa no more than Alcoa's Exempt Delivery Entitlement during a Curtailment, including taking the full benefit of any force majeure provisions of the Alcoa Exempt Contract when and to the extent that it is entitled to do so.
  - (ix) Nothing in this clause 17 limits or affects the Operator's right to refuse to Receive or Deliver Gas under clauses 5.3 or 5.7.
  - (x) This clause 17 is subject to any contrary agreement reached between Shipper and other shippers as to the manner of treating Curtailments between them.
- (c) (i) Subject to clause 17.9(c)(ii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

$$\text{Available Capacity} \times \frac{A}{B}$$

where:

**Available Capacity** = the total amount of relevant capacity which the Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

**A** = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of T1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day); and

**B** = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of T1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day)

- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service (other than a Tp Service or a Tx Service), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.

(iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.

#### 17.10 Apportionment of Shipper's Curtailments

- (a) Subject to clause 17.10(b), if the Shipper has:
  - (i) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one Inlet Point, the Operator must apportion any refusals to Deliver Gas across those Inlet Points in the manner required by the Shipper;
  - (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to Receive Gas across those Outlet Points; or
  - (iii) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points.
- (b) The Operator is not required to make the apportionment referred to in clause 17.10(a) if:
  - (i) acting as a Reasonable and Prudent Person, the Operator considers it is not Technically Practicable to do so;
  - (ii) acting as a Reasonable and Prudent Person, the Operator considers the circumstances do not reasonably allow the Operator to consult with Shipper as to the apportionment or wait for the Shipper's response following such consultation; or
  - (iii) the Operator has requested the Shipper notify the Operator of its apportionment, and the Shipper has not done so by the end of the relevant Gas Day,
 in which case the Operator may apportion the refusal across the relevant inlet points or outlet points (as the case may be) in the manner it considers appropriate.
- (c) The Shipper may at any time and from time to time propose to the Operator an apportionment mechanism which will operate as a standing requirement as to how the Operator must apportion any:
  - (i) refusals to Receive Gas across Inlet Points;
  - (ii) refusals to Deliver Gas across Outlet Points; or
  - (iii) Curtailments across Inlet Points and Outlet Points.
- (d) The Operator and the Shipper must, in good faith, attempt to agree any apportionment mechanism for the purposes of this clause 17.10. If the Operator and the Shipper have not agreed an apportionment mechanism for the purposes of this clause 17.10 within 1 month from the date of the Shipper's proposal, either Party may refer this Dispute to an Independent Expert under clause 24 for determination as a Technical Matter.

- (e) If the Operator and the Shipper have agreed an apportionment mechanism or an apportionment mechanism has been determined by an Independent Expert for the purposes of this clause 17.10, then the Operator must apportion any:
  - (i) refusals to Receive Gas;
  - (ii) refusals to Deliver Gas; or
  - (iii) Curtailments, in accordance with that mechanism.
- (f) If no apportionment mechanism has been proposed by the Shipper or agreed or determined under clause 17.10(d), and it becomes necessary to effect an apportionment of the kind referred to in clause 17.10(c), the apportionment may be effected by the Operator acting as a Reasonable and Prudent Person and must in that case be notified by the Operator to the Shipper as soon as practicable after the end of the relevant Gas Day.

## **Maintenance and Major Works (clause 18)**

### 18. Maintenance and Major Works

- (a) By 31 March of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 July (**Maintenance Year**) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) Within 30 days of receiving the schedule referred to in clause 18(a), the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works for the DBNGP for the Maintenance Year (**Annual DBNGP Maintenance Schedule**), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.
- (c) The Operator must issue a copy of the Annual DBNGP Maintenance Schedule to all shippers who provided the Operator with a schedule pursuant to clause 18(a).
- (d) At the Shipper's request, the Operator must provide the Shipper with its estimate of the Curtailment to Capacity available to the Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.
- (e) The Operator to the extent practical will notify the Shipper of changes to its schedule of Major Works and Planned Maintenance issued to shippers under clause 18(c).
- (f) The Operator must, as a Reasonable and Prudent Person, endeavour to:
  - (i) comply with the Annual DBNGP Maintenance Schedule; and
  - (ii) give the Shipper as much advance notice as is reasonably practicable (in the form of regular outage schedules or otherwise) of any material departure from the Annual DBNGP Maintenance Schedule that is likely to affect the Shipper. However, the Operator will not be bound by any notification it provides pursuant to this clause 18(f)(ii).

- (g) If the Shipper is affected by any planned Curtailment arising out of any Planned Maintenance, or any Major Works, the Operator must use its reasonable endeavours to:
  - (i) consult with the Shipper concerning the scheduling and duration of;
  - (ii) accommodate the needs of the Shipper in scheduling; and
  - (iii) minimise the duration and impact of,

the Curtailment.
- (h) Despite clause 18(b), but subject to clauses 17.6(b)(i)(A) 18(f) and 18(g), the Operator may determine the timing and extent of any Curtailment necessitated by Major Works in its discretion.

## **Force Majeure (clause 19)**

### 19. Force Majeure

- (a) A Party (the Affected Party) is excused from performance of, and is not liable for any failure in carrying out any of its obligations under this Contract, to the extent that it is prevented from doing so by Force Majeure.
- (b) Subject to clause 19(f), an obligation to pay money is not excused by Force Majeure.
- (c) Without prejudice to the Shipper's entitlement to a refund under clause 17.4 in circumstances where a Curtailment is other than as a result of an event of Force Majeure where the Shipper is the Affected Party, the Shipper is not relieved of its obligation to pay the Capacity Reservation Charge by the occurrence of an event of Force Majeure in respect of it however caused.
- (d) If a Party claims the benefit of Force Majeure, it must:
  - (i) promptly give notice to the other Party of the occurrence and circumstances in which the claim arises;
  - (ii) use its best endeavours to remedy the consequences without delay; and
  - (iii) resume full performance of its obligations under this Contract as soon as reasonably practicable.
- (e) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the Party claiming the benefit of this clause and the Party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
- (f) The Shipper is relieved from paying the Surcharges to the extent that it was unable to prevent such Surcharges accruing due to some event of Force Majeure affecting it.
- (g) For the avoidance of doubt, the Parties acknowledge that lack of finances, lack of funds or access to funds, or inability to borrow funds are not in any circumstances an event of Force Majeure under this Contract.

## **Charges (clause 20)**

### 20. Charges

#### 20.1 Obligation to pay Charges

The Shipper must pay the Charges and any other amounts payable under this Contract to the Operator in the manner and at the times set out in this Contract, including the charges set out in clauses 20.2, 20.3 and 20.4 (inclusive). The Charges must be invoiced and paid in accordance with clause 21.

#### 20.2 Capacity Reservation Charge

- (a) The Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by calculating the sum of Contracted Capacity for T1 Services at each Outlet Point multiplied by the T1 Capacity Reservation Tariff.
- (b) Subject to clause 17.4, the Capacity Reservation Charge is payable for each Gas Day during the Period of Supply regardless of whether the Shipper provides Gas at any Inlet Point and regardless of whether the Shipper takes Gas at any Outlet Point.

#### 20.3 Commodity Charge

The Commodity Charge will be calculated for each Gas Day during the Period of Supply by calculating the multiple of the T1 Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for T1 Services at all Outlet Points by the Operator on that Gas Day.

#### 20.4 Other Charges

- (a) The following charges apply to this Contract:
  - (i) Excess Imbalance Charge (clause 9.5(g));
  - (ii) Hourly Peaking Charge (clauses 10.3(d));
  - (iii) Overrun Charge (clause 11.1(a));
  - (iv) Unavailable Overrun Charge (clauses 11.6 and 17.8(e)); and
  - (v) any charges or other sums payable under clauses 6.6, 9.9(c), 14.7 and 15.11 or elsewhere in this Contract,

(together **Other Charges**).
- (b) The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by the Operator or is otherwise a penalty or constitutes penal damages.
- (c) To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers.

## 20.5 Adjustment to T1 Tariff

- (a) The Parties acknowledge that:
  - (i) as at the commencement of this Contract, the T1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism;
  - (ii) any adjustment of the T1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.

## 20.6 Goods and Services Tax

- (a) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST.
- (b) If a supply under this Contract is subject to GST then the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount must be reduced by any part of that loss, cost expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) The additional amount payable under clause 20.6(b) is payable at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it is payable within 10 days of a Tax Invoice being issued by the Party making the supply.
- (e) Where in relation to this Contract a Party makes a taxable supply, that Party must provide a Tax Invoice in respect of that supply at or before the time the payment to which the supply relates is payable.
- (f) If a Party becomes aware of an adjustment event, that party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the Supplier has satisfied itself that the adjustment event has occurred.
- (g) If an amount is paid by a Party under the Contract as an additional amount under clause 20.6(b) and the amount of GST is not payable or the amount of GST is less than or greater than the additional amount paid, the payer must pay the difference to the supplier or shall be entitled to recover the amount paid from the supplier by serving notice on the supplier (as the case may require).
- (h) For the purposes of this clause:
  - (i) **GST** means GST as that term is defined in the GST Law; and
  - (ii) the terms GST group, member, recipient, representative member, supply, consideration, input tax credit, taxable supply, adjustment,

adjustment event and adjustment note have the same meaning as in the GST Law.

## 20.7 Tax Changes Variation

- (a) The Operator has established the T1 Tariff for the T1 Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Access Arrangement applicable during the Term being included in the Operator's forecast operating expenditure (**Included Taxes and Carbon Costs**)
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Term, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNPG whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:
  - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services (Rule 91 Criteria) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator must vary the T1 Tariff to deal with the financial impact of the Tax Change; and
  - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator may vary the RT1 Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the T1 Tariff under clause 20.7(a), the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
  - (i) in the case of a Tax Change where the changed amount of the relevant included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;
  - (ii) outlines the amount of the relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure in the Access Arrangement applicable during the Term;
  - (iii) provides evidence of the amount of the Tax Change;
  - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;
  - (v) specifies the scope of the financial impact of the Tax Change;
  - (vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and

- (d) The Operator must not vary the T1 Tariff under clause 11.3(b)(ii) unless:
  - (i) the Operator provides a Tax Change Notice to the Regulator; and
  - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the T1 Tariff commences to have effect is 15 Business Days.
- (g) If the Tax Change Notice results in a reduction in the T1 Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a T1 Service an amount equal to the difference between:
  - (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the T1 Tariff commenced to have effect; and
  - (ii) the Charges that the Shipper would have paid for that period if the variation to the T1 Tariff had taken effect on the Date of the Tax Change.

## **Invoicing and Payment (clause 21)**

### 21. Invoicing and Payment

#### 21.1 Monthly payment of Capacity Reservation Charge

- (a) The Operator must, no later than 20 days before the start of each month, provide the Shipper a Tax Invoice in respect of the Capacity Reservation Charges payable by the Shipper for that Gas Month under this Contract. The Tax Invoice must separately show the Capacity Reservation Charges for each Capacity Service.
- (b) The Shipper must, no later than 3 days before the start of each month, pay to the Operator in advance all Capacity Reservation Charges payable by it for that Gas Month as specified in the Tax Invoice referred to in clause 21.1(a).

#### 21.2 Monthly invoicing

The Operator must, within 5 Working Days after the end of each month, provide the Shipper a Tax Invoice or Tax Invoices for that Gas Month showing:

- (a) the quantity of Gas Delivered by the Shipper at each Inlet Point and the quantity of Gas Delivered by the Operator at each Outlet Point on each Gas Day in the month for each Capacity Service;
- (b) the Commodity Charges for the month for each Capacity Service;
- (c) all Other Charges payable for the month for each Capacity Service;
- (d) any other amounts which under this Contract are payable in arrears or refundable for the month;

- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous months and the interest payable thereon;
- (f) in the case of the Tax Invoice for the final Gas Month in a Gas Year, any funds payable to the Shipper for that Gas Year by reason of any Curtailment of the Shipper's T1 Service; and
- (g) such other information as may be agreed between the Parties.

#### 21.3 Payment within 10 Working Days

Subject to clause 21.1(b), the Shipper must, within 10 Working Days of receipt of a Tax Invoice, pay to the Operator in the manner shown on the Tax Invoice all amounts shown on the Tax Invoice as payable under this Contract.

#### 21.4 Default in payment

- (a) If the Shipper fails by the relevant due date to make full payment of any:
  - (i) Capacity Reservation Charge;
  - (ii) Commodity Charge;
  - (iii) Other Charges; or
  - (iv) any other amount or amounts payable by it under this Contract and shown on a Tax Invoice,

then, without prejudice to the Operator's other rights and remedies under this Contract or in equity, the Shipper must (unless the Operator in its absolute discretion waives this requirement) pay interest on the unpaid amount (after as well as before judgment), calculated and compounded daily at the Prescribed Interest Rate from the due date until payment.

- (b) The Prescribed Interest Rate calculated for a day from which interest is payable on an amount referred in clause 21.4(a) or clause 21.5 applies until payment of that amount, and is not to be recalculated despite any change in the Bank Bill Rate during that period.
- (c) This clause 21.4 applies with appropriate changes to a default by the Operator in paying or allowing any credit, rebate or other sum under this Contract.

#### 21.5 Disputed Tax Invoices

- (a) If the Shipper disputes that any amount or amounts set out in a Tax Invoice is due or payable, then the Shipper must pay the undisputed portion (if any) of the amount shown on the Tax Invoice in accordance with clause 21.3, and must, within 10 Working Days of the date of the Tax Invoice, give notice in writing to the Operator that it disputes the amount or amounts and full details of the dispute.
- (b) Any amount withheld by the Shipper under this clause but subsequently found to have been payable is, without prejudice to the Operator's other rights, to attract interest calculated daily at the Prescribed Interest Rate from 10 Working Days after the date of the Tax Invoice until payment. The Shipper must pay any interest payable under this clause 21.5 at the same time as it pays the amount withheld.

#### 21.6 Correction of payment errors

- (a) If a Party detects any underpayment or overpayment by a Party of any amount and clauses 20.6(f) and 21.5 do not apply, then the detecting Party must within a reasonable time give notice to the other Party of the underpayment or overpayment. An adjusting payment must be made by the appropriate Party within 10 Working Days of that notice together with interest on the amount of the payment calculated and compounded daily at the Prescribed Interest Rate from the date of underpayment or overpayment until payment.
- (b) Subject to clauses 21.4 and 21.5, in circumstances where there has been an underpayment or overpayment to which clause 21.6(a) applies and the underpayment or overpayment did not result from a failure of the Party which is obliged to pay interest under clause 21.6(a) to perform its obligation under this Contract, the Prescribed Interest Rate for the purposes of clause 21.6(a) is the Bank Bill Rate plus an annual interest rate of 1 percent.

## ***Default and Termination (clause 22)***

### 22. Default and Termination

#### 22.1 Default by Shipper

The Shipper is in default under this Contract only if:

- (a) the Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract. For the avoidance of doubt, withholding of a disputed amount in accordance with clause 21.5 is not considered a default;
- (b) the Shipper defaults in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in this Contract and such default is material in the context of the Contract as a whole;
- (c) without the Operator's prior consent, the Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking, so far as that undertaking relates to the use of Gas Delivered under this Contract;
- (d) the Shipper suffers an Insolvency Event;
- (e) there is any adverse change in the business or financial condition of the Shipper or any event occurs which could, in the reasonable opinion of the Operator, in any way jeopardise the ability of the Shipper to meet its obligations to the Operator under this Contract; or
- (f) the Shipper is found to be materially in breach of any warranty given to the Operator in this Contract, or if any statement or representation made by any means or in any document by the Shipper to the Operator, is found to be false or misleading in any material particular, and the Shipper fails to remedy that event within the relevant period determined in accordance with clause 22.3(b) following the giving of a Shipper Default Notice by the Operator.

#### 22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing to the Shipper specifying the nature of the default and requiring the Shipper to rectify the default (***Shipper Default Notice***).

### 22.3 When Operator may exercise remedy

- (a) Subject to clause 22.3(b), the Operator may exercise a remedy under clause 22.4 at any time during which the Shipper remains in default under this Contract.
- (b) The Shipper is not in default under this Contract and the Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):
  - (i) in respect of an event described in clauses 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days have elapsed after the Shipper receives that Shipper Default Notice; and
  - (ii) in respect of an event described in clauses 22.1(b), 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after the Shipper receives that Shipper Default Notice, and the event has not been remedied within the relevant period specified in (i) or (ii) above.
- (c) A default of the kind referred to in clause 22.1(d) is deemed to be remedied when the relevant Insolvency Event is no longer continuing.

### 22.4 Remedies for Shipper's default

Subject to clause 22.3, if the Shipper is in default under this Contract, then the Operator may in its sole discretion:

- (a) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point until such time as:
  - (i) all amounts the failure to pay which constitutes the event described in clause 22.1(a), plus interest on those amounts at the Prescribed Interest Rate, have been paid in full; and
  - (ii) all other events described in clause 22.1 have been remedied, ceased or removed; or
- (b) by notice in writing to the Shipper terminate this Contract which termination takes effect immediately upon receipt of such notice.

### 22.5 Default by Operator

The Operator is in default under this Contract only if:

- (a) the Operator repudiates, disclaims or defaults in the performance of, any obligation under this Contract and such repudiation, disclaimer or default is material in the context of the Contract as a whole; or
- (b) an Insolvency Event occurs in respect of the Operator, and the Operator fails to remedy that event within the relevant period determined in accordance with clause 22.7 following the giving of an Operator Default Notice by the Shipper.

### 22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing to the Operator specifying the nature of the default and requiring the Operator to rectify the default (Operator Default Notice).

## 22.7 When Shipper may exercise remedy

- (a) Subject to clause 22.7(b), the Shipper may exercise a remedy under clause 22.8 at any time during which the Operator remains in default under this Contract.
- (b) The Operator is not in default under this Contract and the Shipper may not terminate this Contract under clause 22.8 for a default under this Contract:
  - (i) in respect of an event described in clause 22.5(a), unless it has given an Operator Default Notice, and until 20 Working Days have elapsed after the Operator receives that Operator Default Notice; and
  - (ii) in respect of an event described in clause 22.5(b), unless it has given an Operator Default Notice, and until 5 Working Days have elapsed after the Operator receives that Operator Default Notice, and the event has not been remedied within the relevant period specified in clause 22.7(b)(i) or 22.7(b)(ii).
- (c) A default of the kind referred to in clause 22.5(b) is deemed to be remedied when the relevant Insolvency Event is no longer continuing. A default of the kind referred to in clause 22.5(a) that relates to the repudiation or disclaimer of a contract, agreement or deed is deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.

## 22.8 Remedies for Operator's default

Subject in all cases to clauses 22.7 and 22.9, if the Operator is in default under this Contract and:

- (a) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(b), then the Shipper may in its sole discretion by notice in writing to the Operator terminate this Contract, which termination takes effect at the start of the Gas Day immediately following the Operator's receipt of the notice of termination; or
- (b) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(a), then the Shipper may, in its sole discretion, terminate this Contract by notice in writing to the Operator, which termination takes effect on the date the Shipper specifies in the notice of termination but the date must not be a date exceeding 3 years after the Operator receives the notice of termination.

## 22.9 [Deleted]

## 22.10 Saving of other remedies

Except where expressly excluded or limited by this Contract, the right to terminate this Contract under this clause 22 is in addition to and is not in substitution for any other rights and remedies available to a Party, whether under this Contract or under any Law.

## 22.11 Effect of termination

- (a) Termination of this Contract by the Operator under clause 22.4(b) or the Shipper under clauses 22.8:

- (i) does not prejudice the rights or remedies accrued to either Party at the date of termination or any of the provisions of clauses 17.2 or 17.3, clauses 23.1 to 23.7 (inclusive), and clause 29; and
  - (ii) subject to clause 22.11(b), relieves each Party of all further obligations under this Contract to the other Party.
- (b) Termination of this Contract by the Operator under clause 22.4(b) does not relieve the Shipper of its obligations under this Contract to (subject to clause 22.11(c)) pay the Capacity Reservation Charges for the balance of the Period of Supply (but for the termination of this Contract) and to pay all amounts outstanding (and then due and payable) at the time of termination, and termination of this Contract by the Shipper under clause 22.8 does not relieve the Operator of its obligations to pay all amounts outstanding (and then due and payable) at the time of termination.
- (c) The Shipper is relieved of its obligation under clause 22.11(b) to continue to pay an amount if and to the extent that the Operator subsequently enters into a contract for Capacity Services, and receives payment from the Shipper or any other shipper for, some or all of the Contracted Capacity (Terminated Capacity) made spare by the termination of this Contract.
- (d) For the purposes of clause 22.11(c), Terminated Capacity in any Capacity Service must be assumed to be the last Capacity available to be committed under a contract for Gas Transmission Capacity, and any amounts received by the Operator under such contract must be assumed to be applied last to any Terminated Capacity committed under that contract.

## ***Liability (clause 23)***

### 23. Liability

#### 23.1 Liability limited to Direct Damage

Subject to the terms and conditions of this Contract, a Party who:

- (a) is negligent; or
- (b) defaults in respect of its obligations to the other Party under this Contract, is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and must indemnify the other Party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage caused by or arising out of the negligence or default.

#### 23.2 Liability for fraud

A Party who is fraudulent in respect of its obligations to the other Party under this Contract is liable to the other Party for, and must indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of the fraud, and the exclusion of Indirect Damage in clause 23.3 does not apply.

#### 23.3 No liability for Indirect Damage

- (a) Subject to clause 23.3(c), neither Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.

- (b) Subject to clause 23.3(c), the Operator hereby releases the Shipper from, and agrees to indemnify the Shipper against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Operator and the Shipper hereby releases the Operator from, and agrees to indemnify the Operator against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Shipper.
- (c) Where this Contract states that "the exclusion of Indirect Damage in clause 23.3(a) does not apply", or words to the same effect, in relation to a matter, then:
  - (i) the exclusion of Indirect Damage in clause 23.3(a) and the release and indemnity in clause 23.3(b) do not apply in relation to that matter; and
  - (ii) the Parties' respective liability in relation to the matter must be determined by Law and, to avoid doubt, the definition of "Indirect Damage" in this Contract must be disregarded for the purposes of that determination.

#### 23.4 No liability arising out of any approval by Operator

Without limiting the generality of clause 23.3, the Operator is not, except as provided in clauses 23.1 and 23.2, in any circumstances to be liable to the Shipper for any Direct Damage or Indirect Damage arising out of any approval by the Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the DBNGP.

#### 23.5 Saving of contractual payments

Nothing in this clause 23 limits the liability of either Party to make all payments due under this Contract.

#### 23.6 Shipper responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Shipper alone is liable for any:
  - (i) injury to or death of any person employed by the Shipper or by any person (except the Operator) contracting with the Shipper; and
  - (ii) loss of or damage to any property of the Shipper or of any person (except the Operator) contracting with or employed by the Shipper,

however caused, except to the extent this liability was contributed to by an act or omission of the Operator or any person (except the Shipper) contracting with the Operator, or the Operator's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP, or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Shipper must indemnify the Operator and any person (except the Shipper) contracting with the Operator, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand,

action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.6(a).

23.7 Operator responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Operator alone is liable for any:
  - (i) injury to or death of any person employed by the Operator or by any person (except the Shipper) contracting with the Operator; and
  - (ii) loss of or damage to any property of the Operator or of any person (except the Shipper) contracting with or employed by the Operator,

however caused, except to the extent this liability was contributed to by an act or omission of the Shipper or any person (except the Operator) contracting with the Shipper, or the Shipper's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNPG or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Operator must indemnify the Shipper and any person (except the Operator) contracting with the Shipper, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.7(a).

23.8 Each limitation separate

Each limitation or exclusion created by this clause 23 and each protection given to the Operator or the Shipper or to their respective directors, servants, consultants, independent contractors and agents by this clause 23 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 23 is held inapplicable in any circumstances.

## ***Dispute Resolution and Independent Experts (clause 24)***

24. Dispute Resolution and Independent Experts

24.1 Method of Resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause.

24.2 Acknowledgment

The Parties acknowledge that while Disputes may arise from time to time, their common intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

24.3 Service of Notice

If a Dispute arises at any time which is between the Parties, then either Party may give the other Party a notice in writing which is dated, signed, and must specify the precise nature of the Dispute (**Dispute Notice**).

#### 24.4 Meeting

Within 5 Working Days of service of a Dispute Notice, the Parties must meet and use all their reasonable efforts to resolve the Dispute (by negotiation or otherwise).

#### 24.5 Senior Officers

If the Dispute is not resolved within 10 Working Days after the meeting between the Parties under clause 24.4, the Parties must immediately refer the Dispute to their respective senior executive officers who must meet within 5 Working Days and use all reasonable efforts to resolve the Dispute.

#### 24.6 Failure to Resolve Dispute

If the Parties are unable to resolve the Dispute in accordance with clause 24.5, and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 24.7), then either Party may require that the Dispute be determined by an independent expert (***Independent Expert***) under clauses 24.8, 24.9 and 24.10 and if the Dispute is not a Technical Matter or a Financial Matter then either Party may commence proceedings in a court of competent jurisdiction in Western Australia.

#### 24.7 Technical and Financial Matters

In this clause 24:

- (a) a ***Technical Matter*** means a matter involving issues relating to the receipt, transportation and delivery of Gas under this Contract which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which the Operator has issued an Unavailability Notice); and
- (b) a ***Financial Matter*** means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

#### 24.8 Appointment of Independent Expert

- (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
- (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then, in relation to a Technical or Financial Matter, either Party may refer the matter to the Australian Commercial Disputes Centre and request that a suitably qualified person be nominated by the Australian Commercial Disputes Centre, in accordance with the Rules of Expert Determination of the Australian Commercial Disputes Centre as amended from time to time, to act as Independent Expert to determine the Dispute.
- (c) If the Australian Commercial Disputes Centre ceases to exist or otherwise ceases to provide the relevant expert nomination service, then the Institute of Arbitration and Mediation Australia is to substitute for the Australian Commercial Disputes Centre as the nominating body and nomination is to occur in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators Australia as amended from time to time.

#### 24.9 Expert not an Arbitrator

The Independent Expert appointed under clause 24.8:

- (a) will act as an expert and not as an arbitrator;
- (b) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) will not be a current or former employee or representative of, or a person who provides consultancy services on a regular basis to, a Party or to a Related Body Corporate of a Party; and
- (d) must disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which may conflict with his or her position.

#### 24.10 Representation, Evidence, Confidentiality, Powers and Costs

- (a) Each Party may be legally represented at any hearing before the Independent Expert.
- (b) Each Party will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute.
- (c) Each Party will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (d) The Independent Expert will not be bound by the rules of evidence and, subject to abiding by the rules of natural justice, the Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent Expert must determine the procedures to be followed in resolving the Dispute (including whether or not any hearing will take place) and the Parties must co-operate promptly with those procedures, but the Independent Expert must in any event:
  - (i) provide the Parties with a fair opportunity to make written submissions;
  - (ii) provide written reasons for the Independent Expert's determination; and
  - (iii) prior to handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity to lodge written submissions concerning the proposed determination which the Independent Expert must consider before settling and handing down the Independent Expert's determination.
- (f)
  - (i) Subject to clause 24.10(f)(ii), all information, material and evidence obtained or made available in the course of or for the purpose of the determination will be kept confidential by the Independent Expert and all the Parties.
  - (ii) Clause 24.10(f)(i) does not apply if:
    - (A) all the Parties otherwise agree; or
    - (B) the disclosure is authorised by Law or the disclosure is required by or under a written Law of the State or the Commonwealth.

- (iii) If either Party becomes legally compelled to disclose information, material or evidence obtained in the course of or for the purpose of the determination, that person must immediately provide the other Party with written notice so that the other Party may seek appropriate relief and may only disclose information, material or evidence which is legally required to be disclosed.
- (iv) This clause does not make confidential, information, material or evidence which is in the public domain at the time it is obtained in the course of or for the purpose of the determination.
- (v) The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.
- (g) Subject to any time prescribed anywhere else in this Contract, the Independent Expert will make a determination on the Dispute within a reasonable period of his or her appointment.
- (h) The determination of the Independent Expert:
  - (i) will be final and binding upon the Parties so far as the Law allows, except where a Party has been denied natural justice; and
  - (ii) will determine what, if any, adjustments may be necessary between the Parties.
- (i) The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:
  - (i) unless the Parties otherwise agree before the reference of the Dispute, the remuneration of the Independent Expert will be finally determined by the President for the time being of the appropriate body referred to in clause 24.8(b) who will have the power to fix the remuneration of the Independent Expert at the conclusion of the determination or, if requested by the Independent Expert, to determine a fair rate at which the Independent Expert will be remunerated at any time during the conduct of the determination process; and
  - (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of:
    - (A) the determination; and
    - (B) each Party's own costs (including out of pocket costs) incurred in the preparation and presentation of any submissions or evidence to the Independent Expert,

and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.

#### 24.11 Urgent Relief Condition Precedent to litigation

- (a) A Party must not commence any proceedings before any court in respect of a Dispute which a Party requires to be determined by an Independent Expert under clause 24.6 unless the Dispute has first been referred to an

Independent Expert and the Independent Expert does not determine the Dispute within 6 months of the date of the dispute being referred to the Independent Expert.

- (b) Nothing in this clause 24.11 will preclude either Party from seeking any urgent interlocutory, injunctive or declaratory relief, or from commencing proceedings before any court to prevent its claim from being statute barred under the *Limitation Act 1935 (WA)* or any other relevant statute of limitation.

## **Assignment (clause 25)**

### 25. Assignment

#### 25.1 No assignment except under this clause

Subject to this clause 25 and to clause 27, neither Party may assign any right, interest or obligation under this Contract.

#### 25.2 Charges

- (a) A Party may, without the consent of the other Party (but subject to all other necessary consents and approvals), charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the charge enters into a tripartite deed with the other Party substantially in the form of Schedule 7. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.
- (b) The granting of a charge under this clause 25.2 does not constitute the assignment of a right, interest or obligation referred to in this clause 25.

#### 25.3 Assignment

- (a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:
  - (i) such assignment does not release the assignor from liability;
  - and
  - (ii) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.
- (b) Subject to clauses 25.3(c), 25.3(d) and 25.4, either Party may, with the prior written consent of the other Party, which must not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.
- (c) Without limitation, the Operator may withhold its consent to an assignment by the Shipper if the Operator reasonably considers that the proposed assignee is not in a position to meet the Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to the Operator, acting reasonably.

- (d) Without limitation, the Shipper may withhold its consent to an assignment of the Operator's obligations under this Contract if the proposed assignee does not have:
  - (i) the contractual, statutory or ownership rights to access the DBNGP for the purposes of performing all of the Operator's obligations under this Contract; or
  - (ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNGP and to perform all of Operator's obligations under this Contract.

#### 25.4 Assignment: deed of assumption

- (a) A Party (in this clause 25.4 the **Assignor**) must not assign all or part of its rights and interests under this Contract (other than by way of a Bare Transfer under clause 27.1) without requiring the assignee to enter into a deed of assumption to the reasonable satisfaction of the other Party under which the assignee assumes all, or the relevant portion, of the Assignor's obligations under this Contract.
- (b) Upon the fulfilment of the relevant conditions specified in clause 25.3 and the entry into of a deed of assumption contemplated by this clause 25.4, the Assignor is released from all future liability and obligations under this Contract to the extent that the assignee agrees to perform them under the deed of assumption, but this release does not apply to an assignment to a Related Body Corporate under clause 25.3(a) effected without the written consent of the other Party.

#### 25.5 Pipeline Trustee's Acknowledgments and Undertakings

- (a) In this clause 25.5, **dispose** means, in relation to the DBNGP, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the DBNGP (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee:
  - (i) acquiring any equitable interest in the DBNGP, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the DBNGP; or
  - (ii) otherwise acquiring legal or equitable rights against the DBNGP which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the DBNGP itself.
- (b) The Pipeline Trustee, in its capacity as trustee of the DBNGP Pipeline Trust (**Pipeline Trust**), undertakes to the Shipper that the Pipeline Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Operator under:
  - (i) this Contract; and
  - (ii) any other contract with the Shipper entered into by, or undertaking given in favour of the Shipper by, the Operator which requires the use or application of any asset owned by the Pipeline Trust, including the DBNGP, in order to be able to perform the contract or comply with the undertaking, except to the extent that such obligations are observed, performed or discharged by the Operator.

- (c) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to the Shipper that if for any reason the DBNPG Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNPG (whether imposed on the Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by the Operator had the DBNPG Operating Agreement not been terminated.
- (d) The Shipper acknowledges and agrees that:
  - (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.5(b) and 25.5(c) (**Relevant Agreements**) to the same extent that the Operator would have had to comply with those obligations under the Relevant Agreements;
  - (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement and expressed to be for the benefit of the Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25.5(b) and 25.5(c); and
  - (iii) nothing in clauses 25.5(b) and 25.5(c) gives the Shipper any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that the Shipper would have been entitled to against the Operator for that failure.
- (e) The Pipeline Trustee represents and warrants that it is the legal owner of the DBNPG and owns the DBNPG in its capacity as trustee of the DBNPG Pipeline Trust.
- (f) Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, the Pipeline Trustee shall not dispose of the whole or any part of its right, title or interest in the DBNPG without requiring the donee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:
  - (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be released to the extent that the Pipeline Trustee's obligations are assumed); and
  - (ii) acknowledges that its obligations under such assumption of obligations extend to Operator's obligations under the Relevant Agreements,

consistent with this clause 25.5.
- (g) Subject to clause 25.5(h), if the donee is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the donee, execute the deed of assumption in terms of clause 25.5(f).
- (h) If the donee is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.5(g) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the donee. Nothing in clause 25.5(g) or this clause 25.5(h)

requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

#### 25.6 Utilising other shippers' Daily Nominations

Neither clause 25.1 nor clause 27.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

### **General Right of Relinquishment (clause 26)**

#### 26. General Right of Relinquishment

##### 26.1 Shipper may make Relinquishment Offer

- (a) In addition to its rights under this Contract to relinquish Contracted Capacity in certain circumstances, Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to Operator (**Relinquishment Offer**).
- (b) The Relinquishment Offer must specify the amount of Contracted Capacity under this Contract to be relinquished (**Relinquishable Capacity**) at an Inlet Point, and at an Outlet Point.
- (c) The Relinquishment Offer may specify how a Relinquishment Acceptance is to apportion any Relinquished Capacity between Shipper's Contracted Capacities for each Period.
- (d) A Relinquishment Offer, unless accepted under clause 26.3(a), has no effect on this Contract.

##### 26.2 Withdrawal of Relinquishment Offer

Shipper may at any time before Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to Operator that it wishes:

- (a) to withdraw that Relinquishment Offer; or
- (b) to amend that Relinquishment Offer,

and that Relinquishment Offer is by force of this clause 26.2 withdrawn or amended, as the case requires, from the time when that notice is received by Operator.

##### 26.3 Operator may accept Relinquishment Offer

- (a)
  - (i) Operator may at any time give notice in writing to Shipper accepting a Relinquishment Offer (**Relinquishment Acceptance**).
  - (ii) A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.
  - (iii) A Relinquishment Acceptance must not apportion Relinquished Capacity between Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(d).
- (b) A Relinquishment Acceptance must specify:
  - (i) the amount of Relinquishable Capacity that Operator has agreed to relinquish (**Relinquished Capacity**);

- (ii) the changes to the Access Request Form which are required to give effect to the relinquishment of the Relinquished Capacity; and
  - (iii) the date the relinquishment is to take effect.
- (c) Subject to clause 26.3(b), Operator's discretion in determining:
- (i) whether or not to give a Relinquishment Acceptance;
  - (ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and
  - (iii) the order in which it accepts offers of relinquishment from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,
- is to be absolute and unfettered.
- (d) Operator's discretion is not to be limited by:
- (i) any circumstances of Shipper;
  - (ii) the current or projected level of utilization of capacity of the DBNRP;
  - (iii) the number or magnitude of current or anticipated offers of relinquishment from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or
  - (iv) the order in which offers of relinquishment are received by Operator from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

#### 26.4 Effect of Relinquishment Acceptance

- (a) Upon receipt by Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:
  - (i) Shipper's Contracted Capacity is amended in accordance with the Relinquishment Acceptance;

- (ii) if, as a result of a reduction under clause 26.4(a)(i), Shipper's Contracted Capacity is reduced to zero, then this Contract is terminated; and
  - (iii) if the Relinquishment Acceptance is given in respect of:
    - (A) part only of the Relinquishable Capacity, the Relinquishment Offer remains in effect, subject to clause 26.2, in respect of the Relinquishable Capacity which has not become Relinquished Capacity; or
    - (B) all of the Relinquishable Capacity, the Relinquishment Offer ceases to have effect.
- (b) Subject to clause 26.4(a)(ii), this Contract, as amended under clause 26.4(a)(i), remains in effect after receipt by Shipper of the Relinquishment Acceptance, and Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by Shipper.

#### 26.5 Notification of relinquishment of capacity by other shippers

If another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, Operator must, whenever requested by Shipper to do so, provide Shipper, at Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26.

#### 26.6 Administrative expenses

Shipper must, when requested by Operator to do so, reimburse Operator for all reasonable expenses incurred by Operator by reason of any:

- (a) Relinquishment Offer;
- (b) notice given under clause 26.2(a); or
- (c) Relinquishment Acceptance.

### ***Trading or Transferring Contracted Capacity (clause 27)***

#### 27. Trading or Transferring Contracted Capacity

##### 27.1 No transfer of Contracted Capacity other than by this clause

- (a) The Shipper must not Transfer any of its Contracted Capacity other than in accordance with this clause 27 or clause 25, as the case may be.
- (b) Subject to clause 25.6, neither clause 27.1(a) nor clause 25.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

##### 27.2 Transfer by way of sub-contract

Shipper may, without Operator's consent, transfer all or any of Shipper's contracted capacity to a third party by way of sub-contract in accordance with rule 105(2) of the Rules, subject to Shipper immediately giving notice to Operator of:

- (a) the subcontract and its likely duration;

- (b) the identity of the other shipper; and
  - (c) the amount of contracted capacity which is being transferred.
- 27.3 Replacement Shipper must be another shipper or an Approved Prospective Shipper

Other than a transfer in accordance with clause 27.2, the Shipper may Transfer Contracted Capacity only to a person who is, prior to the Transfer, another shipper or an Approved Prospective Shipper (**Replacement Shipper**).

- 27.4 Transfer of Capacity by Shipper - Approval of transfer terms
- (a) If the Shipper desires to transfer all or part of its Contracted Capacity to a Replacement Shipper, the Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (**Tradeable Capacity**), make a written request to the Operator for the approval of the Transfer of that Tradeable Capacity (**Request for Approval**).
  - (b) A Request for Approval must set out in detail the terms and conditions on which the Shipper is prepared to Transfer the Tradeable Capacity to a Replacement Shipper, including:
    - (i) the duration of the Transfer;
    - (ii) the Inlet Point or Inlet Points and the Outlet Point or Outlet Points at which the Tradeable Capacity is to be Transferred;
    - (iii) the circumstances in which, and the terms on which, the Shipper may interrupt a Replacement Shipper;
    - (iv) the quantity of Tradeable Capacity; and
    - (v) whether there are any rights reserved in respect of the Tradeable Capacity by the Shipper.
  - (c) The Shipper may retain a right in specified circumstances to Resume the Traded Capacity, either permanently or temporarily.
  - (d) The Operator must, within 5 Working Days of receipt of the Request for Approval, notify the Shipper that it either approves, or rejects, the Transfer Terms. The Operator may reject the Transfer Terms if the Operator as a Reasonable and Prudent Person considers for any reason that its operation of the DBNGP cannot accommodate:
    - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; or
    - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
  - (e) The Operator must not unreasonably withhold its approval of Transfer Terms if the Transfer is to an existing shipper who is not in default of any of its contracts for Capacity Services and Spot Transactions and, the Operator (acting as a Reasonable and Prudent Person) believes the DBNGP can accommodate:
    - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; and
    - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.

- (f) If the Operator does not notify the Shipper that it rejects the Transfer Terms in the terms and within the time stipulated in clause 27.4(d), then the Transfer of the Tradeable Capacity on the Transfer Terms is deemed to have been approved by the Operator.
- (g) If:
  - (i) the Operator notifies the Shipper that it approves the Transfer of the Tradeable Capacity; or
  - (ii) the Operator is taken to have approved the Transfer of the Tradeable Capacity, (in either case **Approved Tradeable Capacity**) on the Transfer Terms, then (subject to clause 27.6) the Shipper may Transfer the Tradeable Capacity to a Replacement Shipper on those terms.

## 27.5 Posting of Tradeable Capacity

- (a) The Operator may, if requested by the Shipper, notify all other shippers of which the Operator is aware who are or may be interested in taking a Transfer of Tradeable Capacity are notified of details of Approved Tradeable Capacity in such a way that they all receive notice (by the CRS or otherwise) at approximately the same time as the Operator makes available to the shippers any bulletin dealing with the amount of Capacity available for Nomination or Renomination on a Gas Day.
- (b) The Operator may provide a statement of the current details of all other shippers' Approved Tradeable Capacity at the Shipper's request.

## 27.6 Notification of traded capacity

The Shipper must notify the Operator of a Transfer of Approved Tradeable Capacity to a Replacement Shipper at least 2 Working Days before the Transfer of Approved Tradeable Capacity takes effect.

## 27.7 Replacement Contract

- (a) A Transfer of Approved Tradeable Capacity to a Replacement Shipper is deemed to be a contract between the Operator and the Replacement Shipper in respect of the Approved Tradeable Capacity.
- (b) A Replacement Contract is governed by the terms and conditions of this Contract.
- (c) A Replacement Contract is deemed to include a provision that the Traded Capacity is subject to all the Operator's rights over that Traded Capacity under this Contract.
- (d) Prior to the Operator exercising any rights to terminate the Replacement Contract as a result of the Replacement Shipper's default, the Operator must give at least 20 Working Days notice to the Shipper specifying the nature of the default, and the Operator must not terminate the Replacement Contract if within that period the Shipper:
  - (i) cures the default; or
  - (ii) resumes the Tradeable Capacity (having cured the default).

## 27.8 Shipper's Contract

- (a) Subject to this clause 27, this Contract remains in full force and effect following any Transfer of Traded Capacity and the Operator is not obliged to release any deposit, bond, security or other form of assurance provided by the Shipper.
- (b) For the duration of the Replacement Contract, this Contract is deemed to be amended so that the Shipper's Contracted Capacity in respect of the relevant Inlet Point or Inlet Points or Outlet Point or Outlet Points is reduced by the amount of the Traded Capacity.

#### 27.9 Resumption of Traded Capacity by Shipper

- (a) If the Shipper wishes to exercise a right under the Transfer Terms to resume the Traded Capacity, the Shipper must give a Resumption Notice to the Operator and the Replacement Shipper, specifying the amount of Capacity Resumed and the duration of the Resumption.
- (b) The Operator, on receipt of a Resumption Notice, must as soon as practicable confirm to the Shipper and the Replacement Shipper that the Capacity has been Resumed.
- (c) In any proceedings brought against the Operator in relation to a Resumption, a Resumption Notice is conclusive proof of the validity of its issue and of its contents.
- (d) To the extent that a Resumption Notice is invalidly issued or a purported Resumption is not authorised by the Transfer Terms, a Replacement Shipper's remedy lies against the Shipper.
- (e) For the duration of a Resumption, this Contract and the Replacement Contract is deemed to be amended to the extent necessary to reflect the Resumption of Traded Capacity and the duration and terms of that Resumption.
- (f) Traded Capacity which is resumed by the Shipper, or Capacity which is otherwise transferred or reverts to the Shipper, is subject to the terms of this Contract and treated as the same Capacity Service that applied prior to its Transfer, regardless of the terms applying to it prior to the resumption.

#### 27.10 Administrative expenses

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator by reason of the Request for Approval and any Resumption.

### ***Confidential Information (clause 28)***

#### 28. Confidentiality

##### 28.1 Confidential Information

- (a) Subject to clauses 28.2 and 28.3, each Party must keep the terms and conditions of this Contract, and all information specifically relating to or provided pursuant to or in accordance with this Contract or in the negotiations leading to the execution of this Contract (***Confidential Information***), confidential.
- (b) To avoid doubt Confidential Information includes all information received by the Operator in the Operation and Expansion of the DBNGP which relates to

the Shipper, the disclosure or misuse of which might reasonably be expected to materially affect the Shipper's commercial interests, including information relating to the Shipper's gas flows and flow rates, billing, and the Shipper's maintenance schedules and plant availability.

- (c) A reference in this clause 28 to information being disclosed to or received by a Party, includes information being communicated to or created, ascertained, discovered or derived by it or on its behalf.

## 28.2 Exceptions to Confidentiality

Either Party may disclose Confidential Information which:

- (a) at the time when it is disclosed to the Party, is publicly known;
- (b) subject to clauses 28.4 and 28.5, at the time when it is disclosed to the Party, is already known to the Party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 28.1, and which the Party can prove by prior or contemporaneous written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) after the time when it is disclosed to the Party, comes into the public domain otherwise than as a result of any breach of the confidentiality undertaking owed pursuant to clause 28.1;
- (d) subject to clauses 28.4 and 28.5, the other Party acquires from a source other than that Party or any Related Body Corporate or representative of that Party where such source is entitled to disclose it and such disclosure is not subject to confidentiality restrictions under this Contract;
- (e) that Party is required by the ASX, court order, Law, the Regulator, or requested by the ACCC to disclose, and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be);
- (f) is necessary in relation to any discovery of documents, or any proceedings before a court, tribunal, ACCC, other governmental agency or stock exchange, and in such cases, the disclosing Party must promptly notify the other Party of that requirement;
- (g) with the consent of the other Party and subject to any conditions of that consent;
- (h) it is necessary or convenient in relation to any notification by the Shipper to ACCC or ERA under clause 28.7;
- (i) is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a Party, a Related Body Corporate of a Party, the Diversified Utility and Energy Trust No 1 and No 2 or the POWERS Trust, or any funding vehicle of any of those parties;
- (j) is requested by an operator of a pipeline which is inter-connected with the DBNRP, subject to the Confidential Information being relevant to and necessary for the operation of the inter-connected pipeline;
- (k) is required by Law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the

DBNGP and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be); or

- (I) comprises the terms of the Operator's Standard Shipper Contract.

### 28.3 Permitted Disclosure

- (a) Either Party may disclose Confidential Information to:
  - (i) subject to clauses 28.4 and 28.5, its, and its Related Bodies Corporate, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers (and for the purpose of this clause 28.3(a) Alcoa, WestNet and the System Operator must be considered Related Bodies Corporate of the Operator); and
  - (ii) subject to clauses 28.4 and 28.5, a bona fide proposed or prospective transferee (and their employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial advisers, Related Entities, co-bidders or bid consortium members and actual or proposed joint venturers) of:
    - (A) a 20% or more legal or equitable interest in a relevant part or the whole of a Party's business;
    - (B) a 20% or more legal or equitable interest in any property to which the information relates;
    - (C) 20% or more of the shares in a Party; or
    - (D) 20% or more (by value) of the shares or units (or both) in a company or trust (or both) which, directly or indirectly, controls (as that term is defined in the Corporations Act) a Party, to the extent those persons have a need to know the Confidential Information.
- (b) Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:
  - (i) any person who is directly involved in:
    - (A) the distribution of Gas to customers through the Western Australia – Natural Gas Distribution System as that term is used in the National Third Party Access Rules for Natural Gas Pipeline Systems (as amended from time to time);
    - (B) the retailing of Gas within Western Australia;
    - (C) the generation or sale of electricity in Western Australia;
    - (D) contracting for Capacity on the DBNGP; or
    - (E) the management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or
  - (ii) such person's employees, officers, agents, contractors consultants and technical advisers who are themselves directly involved in any of the

activities described in clause 28.3(b)(i), except to the extent that such person is:

- (iii) the System Operator and requires the disclosure of information to it by the Operator or by it to enable it to perform its obligations to the Operator under the relevant operating and maintenance services contract (provided that at no time may the System Operator or its employees, officers, agents, contractors, consultants and technical advisers (which, without limiting clauses 28.4 and 28.5, does not include WestNet to the extent it provides corporate and other head office services to the System Operator) be directly or indirectly involved in anything listed in clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D) or clause 28.3(b)(i)(E) to the extent it relates to clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D));
  - (iv) a director or senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate through which they have a direct or indirect equity interest in the DBNGP, and requires the disclosure of information in connection with the management of their respective equity interests in the DBNGP; or
  - (v) a senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate, who:
    - (A) is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or
    - (B) by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv), which disclosure under clauses 28.3(b)(iii), 28.3(b)(iv) and 28.3(b)(v) is, subject to clauses 28.4 and 28.5, permitted in accordance with the provisions of this clause 28.3.
- (c) Any Party seeking to disclose information under clause 28.3(a)(ii) must:
- (i) seek the consent of the other Party as to the protocols, arrangements and agreements which will govern the disclosure of the information and the prevention of further disclosure of the information, which consent is not to be unreasonably withheld or unreasonably delayed; and
  - (ii) consult with the other Party to ascertain whether there is any commercially sensitive information which may not be disclosed at all or may only be disclosed on terms and conditions agreed between the Parties, and must give effect to the reasonable requirements of the other Party in these respects.
- (d) The Operator will comply with the ring fencing obligations in Chapter 4, Part 2 of the National Gas Law.

#### 28.4 Disclosure by recipient of Confidential Information

- (a) Any Party disclosing information under clauses 28.2 or 28.3 must ensure that persons receiving Confidential Information from it, or from any person or persons to whom the Confidential Information has been disclosed, do not:
- (i) disclose the information except in circumstances permitted in clauses 28.2 or 28.3 (as the case may be); and

- (ii) use the information except in the circumstances permitted by clause 28.5.
- (b) If the Operator and the System Operator disclose information to a person under clauses 28.3(b)(iii), 28.3(b)(iv) or 28.3(b)(v), then the Operator must ensure that (unless in the circumstances of a particular case it is not possible to do so) the information is disclosed in a manner which minimises the disclosure of the Confidential Information referred to in clause 28.1(b), including by one or more of aggregating the information with like information from other shippers, presenting it in summary form, or presenting it (so far as is practicable) in a form which does not identify it as relating to the Shipper.

#### 28.5 Use of Confidential Information

A Party who has received Confidential Information from another under this Contract must not use it, and a Party who has disclosed Confidential Information to a person under clause 28.3 must procure that that person, and any person or persons to whom the Confidential Information is subsequently disclosed, does not use it, except for the purpose of exercising the Party's rights or performing the Party's obligations under this Contract or as otherwise contemplated under this Contract, with the exception of those persons set out in clause 28.3(a)(ii), who must not use the Confidential Information received from another under this Contract except for and in relation to assessing the value of, and preparing a bid for, the relevant interest under clause 28.3(a)(ii) that is proposed to be acquired and who must comply with the protocols, arrangements and agreements agreed under clause 28.3(c)(i).

#### 28.6 Information received by Operator

- (a) The Operator must develop, implement and enforce, policies and procedures to:
  - (i) give effect to its obligations under:
    - (A) clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c); and
    - (B) clauses 28.4 and 28.5 to the extent related to disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b);
  - and
  - (ii) ensure that all shippers are treated equally and fairly, and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.
- (b) The Operator recognises that some information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that where the information is commercially sensitive (as determined by the Operator acting reasonably), in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP. The

Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.

- (c) The Operator must make available to the Shipper upon request a copy of the policies and procedures developed and implemented under clause 28.6(a). Despite this clause 28, the Shipper may in any submissions to the ERA or the ACCC disclose this clause 28 and the policies and procedures developed and implemented under clause 28.6(a).
- (d) Nothing in clause 28.6(c) requires the Operator to consult with the Shipper regarding, or to seek the Shipper's agreement with, any policies and procedures developed and implemented under clause 28.6(a).

#### 28.7 Breach by Operator

- (a) The Shipper must notify the Operator immediately if it has evidence able to be substantiated of a breach by the Operator, or any party for whom the Operator is responsible under this clause 28, of any of:
  - (i) clauses 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c);
  - (ii) clauses 28.4 or 28.5 to the extent related to disclosure under clause 28.3(a)(i), 28.3(b) or 28.6(b); or
  - (iii) the policies or procedures referred to in clause 28.6(a),  
(each a **Relevant Breach**).
- (b) Within 30 days after receipt of a notice under clause 28.7(a), the Operator must:
  - (i) notify the Shipper as to whether or not it agrees that a Relevant Breach has occurred; and
  - (ii) if it agrees that a Relevant Breach has occurred, specify the manner in which the Operator proposes to address the breach and ensure that it is not repeated and if applicable make a proposal of compensation for the Shipper's loss (which proposal must take into account the fact that the exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under clauses 28.7(c) and 28.7(e)).
- (c) If the Operator does not agree that a Relevant Breach has occurred, or if the Operator's response under clause 28.7(b) does not resolve the matter to the Shipper's reasonable satisfaction or include a proposal of compensation acceptable to the Shipper acting reasonably, or if the Operator does not respond within the time required by clause 28.7(b), the Shipper may notify the ACCC. If the ACCC confirms that there was a Relevant Breach of this clause 28, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(c).
- (d) If, following notification from the Shipper to ACCC under clause 28.7(c), the ACCC does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ACCC, the Shipper may notify the ERA.
- (e) If, following notification from the Shipper to ERA under clause 28.7(d), the ERA confirms that there was a Relevant Breach of this clause 28 or does not

resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ERA, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(e).

- (f) If the Shipper considers that a breach of this clause 28 has occurred by the Operator or any party for whom the Operator is responsible under this clause 28 but the Shipper does not have evidence of such breach, then the Shipper may notify the Operator.
- (g) Within 30 days after receipt of a notice under clause 28.7(f), the Operator must:
  - (i) notify the Shipper as to whether or not it agrees that a breach has occurred; and
  - (ii) if it agrees that a breach has occurred, confirm the manner in which the Operator proposes to address the breach and ensure that it is not repeated.
- (h) If the Operator's response under clause 28.7(g) does not address the Shipper's concern to the Shipper's reasonable satisfaction, the Shipper may notify the ERA.
- (i) Following notification under clause 28.7(h), if the ERA determines that there was a breach of this clause 28 it may suggest an appropriate remedy, however the Parties agree that the Operator is not liable to the Shipper for any damages in these circumstances.
- (j) The procedures outlined in clauses 28.7(a) to 28.7(i) represent the sole and exclusive means by which the Shipper may obtain damages in relation to such breaches or alleged breaches by the Operator. No right of termination arises for a Relevant Breach. This clause 28.7(j) does not limit clause 28.10.
- (k) If, and for so long as, either or both of the ERA and the ACCC are unable to accept the role intended for them under this clause 28.7, the Parties agree that the references to the ERA or ACCC, as applicable, is deemed to be to an Independent Expert under clause 24 and the provisions of clause 24 will apply subject only to the following modifications:
  - (i) the matter will be considered a Technical Matter;
  - (ii) the appointing authority in clause 24.8(b) will in the first instance be the Chairman for the time being of the ERA or, if he or she fails or declines to make the appointment within 10 days of being asked to do so, then it will revert to the appointing body as set out in 24.8(b); and
  - (iii) the following will be added to clause 24.10(g): "and the Independent Expert must, and the Parties must assist as applicable to, make a determination within 30 days of his appointment".
- (l) The Parties agree to cooperate to make submissions to the applicable person or body to seek the conferral of the relevant power on the ERA or ACCC, as applicable, in order that they may accept the role intended for them under this clause 28.7.

## 28.8 Publicity

A Party must not make press or other announcements or releases relating to this Contract and the transactions the subject of this Contract without the approval of the other Party as to the form and manner of the announcement or release (which approval must not be unreasonably withheld or delayed) unless and to the extent that the announcement or release is required to be made by the Party by Law or by a stock exchange. This clause 28.8 does not apply:

- (a) if the second Party unreasonably delays or withholds approval; or
- (b) to the extent that the proposed announcement or release relates to a matter regarding which the Parties are in a bona fide dispute or disagreement.

Nothing in this clause 28.8 authorises the disclosure of Confidential Information.

## 28.9 No disclosure of terms of this Contract

Except as otherwise agreed or duly required by Law or any regulatory authority, no Party may disclose the terms of this Contract to any person other than pursuant to clauses 28.2(d) to 28.2(f) and 28.3.

## 28.10 Remedies

The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause 28 and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

## 28.11 Survival

This clause 28 survives termination (for whatever reason) of this Contract.

## **Notices (clause 29)**

### 29. Notices

#### 29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading

- (a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5, 9.9(c), and 17.6(a) must be communicated by facsimile to the facsimile number set out in the Access Request Form, until further notice is given under clause 29.3(c).
- (b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.
- (c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each install and maintain a dedicated facsimile machine on a separate facsimile number for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new facsimile number which takes effect in substitution for the number set out in the Access Request Form.

#### 29.2 The CRS

- (a) Subject to clauses 29.2(b) and 29.2(c), Accumulated Imbalance Notices, Resumption Notices, and all notices under clause 8 (Nominations) may be provided through the CRS.
- (b) If at any time and for any reason the CRS fails to function properly, then each of the notices specified in clause 29.2(a) that are required to be given during the period of failure, must be communicated by the method set out in clause 29.1.
- (c) The terms and conditions of access to the CRS will be as published by the Operator from time to time, provided that the CRS must not be used for giving notices which have contractual effect unless the Shipper has agreed to the terms and conditions (such agreement not to be unreasonably withheld).

#### 29.3 Notices generally

- (a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- (b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses and facsimile numbers of the Parties are as set out in the Access Request Form.
- (c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- (d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

#### 29.4 Receipt of notices

- (a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or facsimile machine, or posted to the CRS, by no later than that time.
- (b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.
- (c) When the time printed on the transmission report referred to in clause 29.4(b) is between:
  - (i) 00:00 hours and 09:00 hours; or
  - (ii) 17:00 hours and 24:00 hours,

on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.

- (d) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in the Access Request Form (**Dedicated Email Address**). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4, taken to be given and received at the time the sender receives an automatic response message to the email.
- (e) For the purposes of this Contract, a notice sent by certified mail is taken to be received on the earlier of the date of receipt or on the second Working Day after the notice was committed to post.
- (f) For the purposes of this Contract:
  - (i) a notice sent by the CRS between 00:00 hours and 17:00 hours on a Working Day will be taken to have been received on that Working Day; and
  - (ii) the other notices sent by the CRS will be taken to have been received at the commencement of the next Working Day.

## ***Representations and Warranties (clause 30)***

### 30. Representations and Warranties

#### 30.1 Operator's Representations and Warranties

- (a) The Operator represents and warrants to the Shipper that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental and Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental and Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract and to allow those obligations to be enforced;
  - (iii) it has in full force and effect all materially necessary leases, licences or easements to construct, Operate and Maintain the Outlet Point Station at each Outlet Point specified in the Access Request Form and all metering and other facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) the Operator does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

- (vi) this Contract and any transaction under it does not contravene the Operator's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
  - (vii) it is the operator of the DBNGP;
  - (viii) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the person except debts mandatorily preferred by Law;
  - (ix) the Operator is not in default under a Law affecting it or its assets, or any obligation or undertaking by which it or any of its assets are bound which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (x) the Nominations Plan will be applied to the allocation of Gas Transmission Capacity to all shippers on the DBNGP and the Curtailment Plan will be applied to the Curtailment of the Delivery of Gas to all shippers on the DBNGP; and
  - (xi) it will not enter into a contract arrangement or understanding for a Capacity Service that has a priority of allocations of Nominations for the purposes of clause 8.8, and for the purposes of Curtailments under clause 17.7(a), that is inconsistent with clause 8.8 and in particular, but without limitation, it will not allow a Capacity Service to have a priority of allocation of Nominations which sits between Alcoa's Exempt Delivery Entitlement and the T1 Service, or between any of the Types of Capacity Services listed in the Curtailment Plan.
- (b) The representations and warranties in clause 30.1(a) are made on and from the Capacity Start Date, and must be taken to be made anew on each day thereafter for the duration of this Contract.

### 30.2 Shipper's Representations and Warranties

- (a) Subject to clause 30.2(b), the Shipper represents and warrants to the Operator that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental And Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract, and to allow those obligations to be enforced;
  - (iii) it has, or its Producers have, in full force and effect all necessary leases, licences or easements to construct, Operate and Maintain all facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) this Contract and any transaction under it does not contravene the Shipper's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;

- (vi) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the Shipper except debts mandatorily preferred by Law;
  - (vii) neither the Shipper nor any of its Related Bodies Corporate is in default under a Law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
  - (viii) there is no pending or threatened action or proceeding affecting the Shipper or any of its Related Bodies Corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (ix) neither the Shipper nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
  - (x) the Shipper is not an agent or trustee in relation to this Contract or in relation to the Gas to be Received or Delivered under this Contract.
- (b) The representations and warranties in clause 30.2(a) are made on and from the Capacity Start Date, and are taken to be made anew on each day thereafter for the duration of this Contract.

### 30.3 Pipeline Trustee's Representations and Warranties

- (a) The Pipeline Trustee represents and warrants to the Shipper that:
  - (i) it is empowered by the constitution of its Trust to enter into and perform this Contract, to carry on its business as now conducted or contemplated and to own its assets in its capacity as trustee of the Pipeline Trust, and there is no restriction on or condition of its doing so;
  - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the constitution of its Trust for it to enter into and perform this Contract;
  - (iii) it is the sole trustee and responsible entity of the Pipeline Trust;
  - (iv) no property of the Pipeline Trust has been re-settled or set aside or transferred to any other trust;
  - (v) the Pipeline Trust has not been terminated, nor has any event for the vesting of the assets of the Pipeline Trust occurred;
  - (vi) its right of indemnity out of, and lien over, the assets of the Pipeline Trust has not been limited in any way (other than as required by section 601GA(2) of the Corporations Act) including, without limitation, it has no liability which may be set off against that right of indemnity;
  - (vii) the constitution of its Trust complies with all applicable Laws; and (viii) it has complied in all material respects with its obligations and duties under the constitution of its Trust and the Corporations Act.

- (b) The representations and warranties in clause 30.3(a) are made on and from the Capacity Start Date and must be taken to be made anew on each day thereafter for the duration of this Contract.

#### 30.4 Creditworthiness of Shipper

The Operator may from time to time seek confirmation from the Shipper (including provision of the most recent audited financial accounts of the Shipper) that the Shipper is in a position to meet its obligations under this Contract.

#### 30.5 Failure to Satisfy Operator of Creditworthiness

If the Operator is (acting reasonably) not sufficiently certain that the Shipper is in a position to meet or continue to meet its obligations under this Contract, the Operator may require, and the Shipper must provide, security for those obligations to the Operator's reasonable satisfaction.

### **Records and Information (clause 31)**

#### 31. Records and Information

- (a) Except where otherwise provided in this Contract, both the Operator and the Shipper must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to this Contract, and must retain those books, accounts, records and inventories for at least seven years.
- (b) If the Shipper requests (which it may not do more frequently than every 12 months) and without limiting any other obligation on the Operator to provide information under this Contract, another contract or at Law, the Operator shall provide the Shipper with a non-binding indicative summary of its material planned expansions (if any) of the Gas Transmission Capacity for the following 5 years. The Shipper agrees that these plans will be prepared and provided to the Shipper without any warranty or undertaking that such planned expansions will be undertaken, or if undertaken will be effective and available to the Shipper.

### **Insurances (clause 32)**

#### 32. Insurances

- (a) Subject to clause 32(d), the Shipper must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
- (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment (if any) at the Inlet Point Station or Outlet Point Station; and
  - (iii) liability insurance for such amount as the Operator may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.

- (b) Subject to clause 32(d), the Shipper must:
  - (i) arrange for the Operator's interest to be noted on the policies referred to in clauses 32(a)(ii) and 32(a)(iii) to the reasonable satisfaction of the Operator so that the Operator is covered under those policies; and
  - (ii) use all reasonable endeavours to arrange for the insurers to waive rights of subrogation against the Operator.
- (c) Subject to clause 32(d), the Shipper must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Operator with certificates of currency of the insurances and endorsements required by this clause 32.
- (d) The Operator may waive compliance by the Shipper with any or all of the requirements of clauses 32(a), 32(b) and 32(c), if the Operator:
  - (i) is satisfied that the Shipper has adequate alternative arrangements; or
  - (ii) accepts the Shipper as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.
- (e) Subject to clause 32(h), the Operator must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
  - (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Operator's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the DBNGP and all associated equipment; and
  - (iii) liability insurance for such amount as the Shipper may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.
- (f) Subject to clause 32(h), the Operator must use all reasonable endeavours to arrange for:
  - (i) (A) endorsement on the policies referred to in clauses 32(e)(ii) and 32(e)(iii) of the Shipper as an insured or co-insured; or
  - (B) the Shipper's interest to be noted on those policies to the satisfaction of the Shipper so that the Shipper is covered under those policies; and
  - (ii) the insurers to waive rights of subrogation against the Shipper.
- (g) Subject to clause 32(h), the Operator must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Shipper with certificates of currency of the insurances and endorsements required by this clause.

- (h) The Shipper may waive compliance by the Operator with any or all of the requirements of clauses 32(e), 32(f) and 32(g), if the Shipper:
  - (i) is satisfied that the Operator has adequate alternative arrangements;
  - (ii) accepts the Operator as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.

## No Waiver (clause 33)

### 33. No Waiver

No failure or delay by a Party in exercising any of its rights under this Contract operates as a waiver of the Party's rights or prevents the Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of this Contract.

## Entire Agreement (clause 34)

### 34. Entire Agreement

This Contract constitutes the entire agreement between the Parties on the subject matter of this Contract and supersedes all prior negotiations, representations and agreements between the Parties.

## Severability (clause 35)

### 35. Severability

If any clause or provision of this Contract is held to be illegal or unenforceable by any judgment of a court, arbitrator, tribunal or authority having competent jurisdiction, the judgment does not affect the remaining provisions of this Contract which remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included in this Contract.

## Entry and Inspection (clause 36)

### 36. Entry and Inspection

- (a) Each Party must grant to, or use its reasonable endeavours to procure for, the other Party all reasonable rights of entry:
  - (i) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP);
  - (ii) to inspect for safety or other reasons the construction, installation, Operation, Maintenance and repair of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP); and
  - (iii) for any other purpose connected with or arising out of this Contract.
- (b) Any entry under clause 36(a) is made in all respects at the expense and risk of the entering Party, who must, subject to clause 23 make good any damage occasioned by or resulting from the entry.

- (c) Except in the case of emergency, a Party must:
  - (i) when it seeks to exercise a right of entry under this clause 36, give reasonable notice to the other Party specifying the proposed time and duration of entry; and
  - (ii) take all reasonable steps to ensure that during the entry its employees, servants, consultants, independent contractors and agents cause as little inconvenience to the other Party as possible and at all times comply with all reasonable safety standards and other requirements of that Party.
- (d) To the extent that any equipment or thing is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a right of entry to that third person's premises.

## ***Ownership, Control, Maintenance and Risk (clause 37)***

### 37. Ownership, Control, Maintenance and Risk

- (a) In the absence of any agreement between the Parties to the contrary, the Inlet Point and the Outlet Point on the DBNGP mark the boundaries of ownership of all plant, equipment, pipelines and facilities and, as between the Parties and in the absence of evidence to the contrary:
  - (i) the Shipper is presumed to own any relevant thing upstream of the Inlet Point and downstream of an Outlet Point; and
  - (ii) the Operator is presumed to own any relevant thing between the Inlet Point and the Outlet Point.
- (b) In the absence of any agreement between the Parties to the contrary, the responsibility to install, commission, Operate and Maintain, and the risk in relation to, all plant, equipment, pipelines and facilities follows ownership.

## ***Revocation, Substitution and Amendment (clause 38)***

### 38. Revocation, Substitution and Amendment

- (a) The Operator and the Shipper may at any time agree in writing to revoke, substitute or amend any provision of this Contract (including the Access Request Form).
- (b) Clause 38(b) does not prevent the Shipper from:
  - (i) relocating Contracted Capacity under this Contract;
  - (ii) making a Nomination or Renomination for and being scheduled Capacity under this Contract which exceeds the Shipper's Contracted Capacity;
  - (iii) contracting for and having Capacity transferred to it by another shipper; or
  - (iv) varying this Contract in accordance with clauses 14.9 or 17.7(f).
- (c) If the Parties agree to an increase in Contracted Capacity, this Contract (including the Access Request Form) is to be amended to reflect this.

## **No Common Carriage (clause 39)**

39. No Common Carriage

Neither the Operator nor the Shipper is a common carrier of Gas transported through the DBNGP.

## **Operator not a Supplier of Gas (clause 40)**

40. Operator Not a Supplier of Gas

Nothing in this Contract requires the Operator to supply Gas to the Shipper but the Operator is required to Deliver Gas from time to time in accordance with this Contract.

## **Stamp Duty (clause 41)**

41. Stamp duty

The Shipper must pay all stamp duty payable in respect of this Contract.

## **No Third Party Benefit (clause 42)**

42. No Third Party Benefit

Subject to clauses 24.4(c) and 23, no person other than the Operator or the Shipper obtains any right, benefit or entitlement under this Contract, despite that person being referred to in this Contract or belonging to a class of persons which is referred to in this Contract.

## **Governing Law (clause 43)**

43. Governing Law

This Contract must be construed and interpreted in accordance with the Law of Western Australia and the Parties entering into this Contract submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **General (clause 44)**

44. General

44.1 Operator's discretion

In circumstances in which the Operator has a discretion to take action under this Contract, including any of clauses 9.7, or 10.3(a)(iii) that may limit the amount of Capacity available to the Shipper, or that may affect the way in which the Shipper may use Capacity, during a certain period, which action is not governed by the provisions of clauses 8.8, or 8.9, relating to Nominations or clauses 17.9 or 17.10 relating to Curtailment, the Operator must treat the Shipper fairly and reasonably in the circumstances with all other shippers who should or may be subject to similar action.

44.2 Refusal to Receive or Deliver Gas

Where the Operator is entitled under this Contract to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, then the Operator may take whatever action it believes, acting as a Reasonable and Prudent Person, is necessary to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, including by physically reducing, interrupting or stopping completely or in part the flow of Gas at the Inlet Point or Outlet Point.

## ***Non-discrimination clause (clause 45)***

### 45. Non-Discrimination Clause

#### 45.1 Access to DBNGP information

If the Operator, the System Operator or any of their contractors or agents, or any person or persons to whom information from the Operator or the System Operator has been disclosed, provides any information to any shipper or a Related Body Corporate or officer of a shipper (acting in their respective capacity as shippers) about availability of Capacity, including:

- (a) information relating to planned and unplanned maintenance;
- (b) policies and procedures under which the market for Spot Capacity and Curtailment is administered; or
- (c) DBNGP flow data between each compressor station and each other significant point,

then, other than to the extent that such information relates to an inlet point, outlet point or gate station which is specific to an individual shipper, the Operator must ensure that the Shipper receives that information at substantially the same time and in the same format.

Nothing in this clause 45.1 limits the Operator's obligations under clause 28.

#### 45.2 Arms' length dealings

The Operator must, and must procure that the System Operator does, in Operating and Expanding the DBNGP and exercising the discretions afforded to the Operator under this and other contracts:

- (a) treat all shippers (including shippers which are Associates of a Relevant Company) on an arms' length basis; and
- (b) ensure that no shipper which is an Associate of a Relevant Company receives a benefit, compared with another shipper which is not, unless the benefit is attributable to an arms' length application of the two shippers' respective contractual entitlements entered into on terms and conditions that are comparable with the Standard Shipper Contract.

## ***Pipeline Trustee's Limitation of Liability (clause 46)***

### 46. Pipeline Trustee's Limitation of Liability

- (a) The Pipeline Trustee enters into this Contract only in its capacity as trustee of the Pipeline Trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Pipeline Trustee only to the extent to which it can be satisfied out of property of the Pipeline Trust out of which the Pipeline Trustee is actually indemnified for the liability. Except as provided in clause 46(b), this limitation of the Pipeline Trustee's

liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Pipeline Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.

- (b) Clause 46(a) does not act to limit:
  - (i) the Shipper's entitlements to seek orders against the Pipeline Trustee (in its capacity as trustee of the Pipeline Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Shipper under any Law; or
  - (ii) Pipeline Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

### ***Unused Clause (clause 47)***

47. Not Used

***Schedule 1 – Access Request Form***

Schedule 1 - Access Request Form

**TAX INVOICE**  
**ABN: 69 081 609 190**

**DAMPIER TO BUNBURY NATURAL GAS PIPELINE  
REFERENCE SERVICE ACCESS REQUEST FORM**

This is an Access Request Form for a Reference Service. In accordance with the Access Arrangement, the terms and conditions for the Reference Service are subject to negotiation between Operator and Prospective Shipper.

**1. PROSPECTIVE SHIPPER DETAILS**

Name	
ABN	
Address	
Telephone Number	
Facsimile Number	
Email	
Nominated Representative	

**2. OPERATOR DETAILS**

Name	DBNGP (WA) TRANSMISSION PTY LIMITED
ABN	69 081 609 190
Address	Level 6, 12-14 The Esplanade
Telephone Number	Perth WA 6000
Facsimile Number	(08) 9223 4300
Email	(08) 9223 4301
Nominated Representative	<a href="mailto:dbpnotices@dbp.net.au">dbpnotices@dbp.net.au</a>

**3. SERVICE DETAILS**

Requested Reference Service	
Requested Reference Service Start Date	
Requested Reference Service End Date	

**4. INLET AND OUTLET POINTS**

**The following are to be the Inlet Points, Outlet Points and Contracted Capacity for Service as at the Capacity Start Date.**

**ITEM 1: INLET POINTS: DESCRIPTION AND CONTRACTED CAPACITIES**

Location	Designation	Contracted Capacity (TJ/d)
1.		
2.		
3.		
<b>TOTAL:</b>		

**ITEM 2: OUTLET POINTS: DESCRIPTION AND CONTRACTED CAPACITIES**

	Location	Designation	Contracted Capacity (TJ/d)
1.			
2.			
3.			
<b>TOTAL:</b>			

**5. CREDITWORTHINESS**

**Prospective Shipper represents and warrants that copies of its latest set of audited accounts and (if applicable) its Constitution are attached.**

**6. TERMS AND CONDITIONS**

**The Terms and Conditions of the R1 Shipper Contract apply.**

**7. ACKNOWLEDGMENT**

**By executing and submitting this Access Request Form, Prospective Shipper acknowledges having read and understood the latest version of the Access Arrangement, including the Queuing Policy under the Access Arrangement, and the proposed terms and conditions for the Reference Service.**

**8. AGREEMENT**

**In accordance with the Access Arrangement, this Access Request when executed by the Operator and the Pipeline Trustee and attached to the R1 Shipper Contract forms the Agreement between the parties.**

**9. DUPLICATE**

**This Request for a Reference Service must be submitted to Operator in duplicate.**

**10. PRESCRIBED FEE**

This Access Request Form is accompanied by the Prescribed Fee (as specified in the Access Guide) (plus the amount of GST payable in respect of the Prescribed Fee). This Access Request Form is to be treated by Prospective Shipper as a tax invoice in connection with the Prescribed Fee.

**Executed by Prospective Shipper:**

**Executed by**

[insert Prospective Shippers Details and ABN]  
in accordance with section 127 of the  
Corporations Act 2001:

**Signature – Director**

**Signed – Director/Secretary**

**Title**

**Title**

**Name (block letters)**

**Name (block letters)**

**Date of Execution:**

**Executed by Operator:**

**Executed by**

DBNGP (WA) Transmission Pty Limited (ABN  
69 081 609 190) in accordance with section  
127 of the Corporations Act 2001:

**Signature – Director**

**Signed – Director/Secretary**

**Title**

**Title**

**Name (block letters)**

**Name (block letters)**

**Date of Execution:**



**Dampier To Bunbury Natural Gas Pipeline  
Full Haul R1 Contract Terms & Conditions  
Schedule 1 - Access Request Form**

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**Executed by Pipeline Trustee:**

**Executed by**

**DBNPG (WA) Nominees Pty Limited (ABN  
78 081 609 289) in accordance with  
section 127 of the Corporations Act 2001:**

**Signature – Director**

**Signed – Director/Secretary**

**Title**

**Title**

**Name (block letters)**

**Name (block letters)**

**Date of Execution:**

## Schedule 2 – Charges

### Schedule 2 - Charges

All amounts in this Schedule 2 are exclusive of GST.

#### T1 Reference Tariff

<b>Tariff</b>	<b>Amount</b>
T1 Capacity Reservation Tariff	\$1.087228/GJ MDQ
T1 Commodity Tariff	\$0.092402/GJ

#### Other Charges (clause 20.4)

<b>Row</b>	<b>Description of Charge</b>	<b>Rate at which Charge is determined</b>
1	Excess Imbalance Charge (clause 9.5(c))	200% of the T1 Reference Tariff from time to time
2	Hourly Peaking Charge (clause 10.3(f))	200% of the T1 Reference Tariff from time to time
3	Overrun Charge (clause 11.1(a))	At the rate specified in clause 11.1(b)
4	Unavailable Overrun Charge (clause 11.6 and clause 17.8(e))	The greater of: (a) 250% of the T1 Reference Tariff from time to time; and (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

## Schedule 3 – Operating Specifications

### Schedule 3 - Operating Specifications

#### Item 1 Gas Specifications

(a) Inlet Point Specification

The Inlet Point specification is the Reference Specification for the DBNGP as set out in Item 1 of Schedule 2 of the *Gas Supply (Gas Quality Specifications) Regulations 2010*.

(b) Outlet Point Specification

The Outlet Point specification is the specification for outlet points on the DBNGP which is set out in the *Gas Supply (Gas Quality Specifications) Regulations 2010*.

#### Item 2 Gas Temperature and Pressure

Inlet Points: Minimum and Maximum Temperature and Pressure

		Pressure		Temperature	
	Location	Min (kPag)	Max (kPag)	Min (°C)	Max (°C)
1.	[Location]	[Line Pressure]	[MAOP]	[0]	[45] – all Inlet Points except I1-01 [60] – I1-01

Outlet Points: Minimum and Maximum Temperature and Pressure

		Pressure		Temperature	
	Location	Min (kPag)	Max (kPag)	Min (°C)	Max (°C)
1.	[Location]	[Line Pressure]	[MAOP]	[0]	[45]

**Schedule 4 – Not Used**

**Schedule 4 – Not Used**

## Schedule 5 – Existing Stations

**Schedule 5 – Existing Stations**

Existing Station	Designation
Nangetty Road	O81-01
Eneabba	O83-01
Pinjar Power Station	OP2-01
Ellenbrook	OP3-01
North Metro	OP4-01 OP5-01 OP9-01
South Metro	OP4-01 OP6-01 OP7-01
WLPG	OPLPG-01
AGR	OPLPGOSO-01
Kwinana Power Station	OKW-02
Barter Road	OKW-03
BP Cogen	ORK-01
Mason Road	ORK-02
Rockingham	ORK-03
TiWest Cogen	ORK-05
WMC	ORK-04
Pinjarra Town	OS1-01
Alcoa Pinjarra Cogen	OS2-01
Harvey	OS4-01
Worsley	OS4-02
Rhone Poulenc (Oakley Road)	OS2-02
Kemerton	OS5-01
Clifton Road	OS6-01

## Schedule 6 – Curtailment Plan

### Schedule 6 - Curtailment Plan

#### Part A

Order of priority	System Curtailment	Order of Priority	Point Specific Curtailment
1	Any Capacity Service insofar as it is for the Shipper's relevant share of the Distribution Networks' IPQ	1	Any Capacity Service insofar as it is for the shipper's relevant share of the Distribution Networks' IPQ
2	Alcoa's Priority Quantity	2	Alcoa's Priority Quantity
3	Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), apportioned in accordance with the provisions of Part B of this Schedule 6	3	Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), at the relevant point apportioned in accordance with the provisions of Part B of this Schedule 6
4	The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1, P1 Service and B1 Service), which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 6	4	The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1, P1 Service and B1 Service), at the relevant point which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 6
5	Firm Service	5	Firm Service that is Contracted Capacity at the relevant point
6	Other Reserved Service	6	Other Reserved Service that is Contracted Capacity at the relevant point
7	Spot Capacity, in the manner described in clause 17.9(c)(iii)	7	Aggregated T1 Service at the relevant point
		8	Other Reserved Service (if any) nominated by and scheduled to the shipper at the relevant point at which the shipper does not have Contracted Capacity in that Other Reserved Service in accordance with the provision of the shipper's contract for the Other Reserved Service
		9	Spot Capacity, in the manner described in clause 17.9(c)(iii)

## Part B

- (a) The amount of Capacity available after allowing for items 1 and 2 in Part A of this Schedule 6, up to the next 253.5 TJ/d of Capacity, must be apportioned as follows:
  - (i)  $\frac{1}{2}$  of the available Capacity must be apportioned to Alcoa; and
  - (ii)  $\frac{1}{2}$  of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i).
- (b) The amount of Capacity available after allowing for items 1, 2 and 3 in Part A of this Schedule 6 must be apportioned as follows:
  - (i) the Alcoa Proportion of the available Capacity must be apportioned to Alcoa; and
  - (ii) the balance of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i), or if there is available Capacity after all T1 Service, P1 Service and B1 Service has been provided for then to items below T1 Service, P1 Service and B1 Service in the applicable column of the table in Part A of this Schedule 6, which among shippers with the relevant Type of Capacity Service must be apportioned in accordance with clause 17.9(c)(i).
- (c) The Alcoa Proportion must be determined in accordance with the following:

$$AP = AE/PE$$

where:

**AP** = the Alcoa Proportion;

**AE** = the aggregate of all Alcoa's additional entitlements to Capacity under the Alcoa Exempt Contract which have arisen as a result of Alcoa giving notices requiring additional Capacity under the provisions of the Alcoa Exempt Contract since the date of the Alcoa Exempt Contract which entitlements have not been discontinued or relinquished by Alcoa; and

**PE** = the aggregate of all increases in Full Haul Capacity on the DBNPG which have resulted from Capacity expansion programmes as contemplated in the Alcoa Exempt Contract since the date of the Alcoa Exempt Contract, less the lesser of 1/3 of the capacity of the last such Capacity expansion programme or 30 TJ/d.

***Schedule 7 – Form of Tripartite Deed***

**Schedule 7 - Form of Tripartite**



**Tripartite Deed**

DBNGP (WA) Transmission Pty Limited  
and

[***Shipper***]

and

[***Security Holder***]

## TABLE OF CONTENTS

<b>1.</b>	<b>Interpretation .....</b>	<b>215</b>
1.1	Definitions .....	215
1.2	Terms defined in the Transmission Contract.....	218
1.3	References to certain general terms .....	218
1.4	Obligations as to time .....	219
1.5	Headings .....	219
1.6	Duration.....	219
1.7	Consideration .....	219
1.8	Security Holder .....	219
1.9	Precedence of obligations .....	220
<b>2.</b>	<b>Acknowledgments and Consents .....</b>	<b>220</b>
2.1	Shipper.....	220
2.2	No interference.....	221
2.3	Releases in favour of Security Holder .....	221
2.4	Shipper and Operator continue to deal.....	222
2.5	Acknowledgment by Operator .....	222
2.6	Payment of Money .....	222
2.7	Acknowledgment by Operator .....	222
<b>3.</b>	<b>Regulating the Transmission Contract.....</b>	<b>222</b>
3.1	Notification by Shipper .....	222
3.2	Copies of key notices .....	222
3.3	Operator information .....	223
3.4	Notification by Security Holder .....	223
3.5	Cure rights.....	223
3.6	Remedy of Default Event .....	224
3.7	Remedy of an Insolvency Event.....	225
3.8	Change of Cure Period.....	225
3.9	Right to remedy.....	225
3.10	Information, access and discussions .....	225
3.11	Undertakings by Security Holder .....	226
3.12	Appointment and rights of Enforcing Operator Party.....	226
3.13	Notification .....	226
3.14	Consequences of enforcement .....	227
3.15	Rights to enforce .....	227
3.16	Removal of Cure Period .....	227
<b>4.</b>	<b>Representations and Warranties.....</b>	<b>227</b>
4.1	Representations and warranties.....	227
4.2	Notification if incorrect .....	228
<b>5.</b>	<b>Taxes and GST .....</b>	<b>229</b>
5.1	Taxes .....	229
5.2	GST gross up .....	229
<b>6.</b>	<b>Notices .....</b>	<b>229</b>
6.1	Form.....	229
6.2	Delivery .....	229
6.3	Parties details.....	229
6.4	When effective .....	230
6.5	Receipt - post .....	230
6.6	Receipt - fax .....	230
6.7	Receipt - general.....	230

<b>7.</b>	<b>Assignment.....</b>	<b>230</b>
<b>7.1</b>	Assignment of the Transmission Contract.....	230
<b>7.2</b>	New tripartite .....	231
<b>7.3</b>	Assignment by Security Holder .....	231
<b>7.4</b>	Assignment by Shipper .....	231
<b>8.</b>	<b>General.....</b>	<b>231</b>
<b>8.1</b>	Counterparts .....	231
<b>8.2</b>	Governing law .....	231
<b>8.3</b>	Discretion in exercising rights.....	232
<b>8.4</b>	Partial exercising of rights .....	232
<b>8.5</b>	No liability for loss .....	232
<b>8.6</b>	Remedies cumulative .....	232
<b>8.7</b>	Variation and waiver.....	232
<b>8.8</b>	No merger .....	232
<b>8.9</b>	Inconsistent law.....	232
<b>8.10</b>	Further security .....	232
<b>8.11</b>	Supervening legislation .....	232
<b>8.12</b>	Further steps .....	233
<b>8.13</b>	Rights and obligations are unaffected .....	233

Date	
Parties	<p>DBNGP (WA) Transmission Pty Limited (<b>ABN 69 081 609 190</b>) of Level 6, 12-14 <b>The Esplanade, Perth, Western Australia, 6000</b> (<i>Operator</i>)</p> <p>[#] (<i>Shipper</i>)</p> <p>[#] (<i>Security Holder</i>)</p>
	<p><i>[Note: Without limiting clause 25.2 of the R1 Terms and Conditions, this document may be amended where necessary:</i></p> <p class="list-item-l1">(a) <i>to reflect bona fide differences between the Shipper's requirements and the requirements of shippers generally (for example, amendments necessary to reflect the Shipper's ownership structure); or</i></p> <p class="list-item-l1">(b) <i>to reflect bona fide requirements of particular securities (for example, where there is only one chargee).]</i></p>
Recitals	<p>The Operator has entered into a contract with the Shipper for the transportation of gas on the DBNGP (the <i>Transmission Contract</i>).</p> <p>The Operator and the Shipper have agreed to enter into this deed with the Security Holder.</p>

## Operative Provisions

### 1. Interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**Authorised Officer** means:

- (a) in the case of the Security Holder, a director or company secretary, or an officer whose title contains the word "director", "chief", "head", "president" or "manager" or a person performing the functions of any of them or any other person nominated by the Security Holder as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Shipper, a director or company secretary of the Shipper or any other person nominated by the Shipper as an Authorised Officer for the purposes of this deed; and

- 
- (c) in the case of the Operator, a director or company secretary of the Operator or any other person appointed by the Operator to act as an Authorised Officer under this deed.

**Beneficiary** includes the Security Holder and any person on whose behalf the Security Holder holds the Security, whether as trustee, agent, nominee, custodian or otherwise.

**Cure Notice** means a notice given by Shipper to the Security Holder in respect of a Default Event and includes the following:

- (a) details of the Default Event and refers to the relevant provisions (if any) of the Transmission Contract relating to the Default Event;
- (b) a statement that Shipper will rely upon that Default Event to Terminate the Transmission Contract unless it is remedied;
- (c) the Cure Period applicable to the Default Event; and
- (d) details of steps or actions which Shipper considers may remedy the Default Event or are otherwise appropriate.

**Cure Period** means the period commencing on the date set out in the Cure Notice (not being a date earlier than the date on which the Security Holder receives the Cure Notice for a Default Event) and ending:

- (a) if the Default Event is a repudiation, disclaimer or default by the Operator in the performance of the obligations of the Operator under clause 16 of the Transmission Contract to provide contracted capacity, not less than 40 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of the Shipper under clause 22.9(b) of the Transmission Contract;
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of an ascertainable sum of money, not less than 15 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of the Shipper;
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) and is an Insolvency Event or is capable of being remedied, not less than 60 Working Days (or any further period from time to time agreed by the Shipper and an Enforcing Operator Party) after a Termination Right in respect of the Transmission Contract arises on the part of the Shipper; and
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, not less than 15 Working Days after an amount is agreed by the Shipper and the Operator or an Enforcing Operator Party (as the case may be) or awarded by a court of competent jurisdiction,

unless the period is ended earlier by the Security Holder or an Enforcing Operator Party by giving notice in writing (which will take effect immediately on receipt by the Shipper) to the Shipper and as extended from time to time under clause 3.8.

**Default Event** means any event or circumstance which would:

- (a) entitle the Shipper to give a notice under the Transmission Contract requesting that default be remedied; or

- 
- (b) either immediately or upon the expiry of any time period, giving of notice or satisfaction of some other condition provided for under the Transmission Contract, give rise to a Termination Right; or
  - (c) constitute a repudiation or disclaimer of the Transmission Contract by the Operator.

**Default Notice** means any notice given by the Shipper to the Operator in respect of a Default Event, including any notice required under the terms of the Transmission Contract to be given by the Shipper if it is to rely upon, or exercise any Power in respect of, that Default Event.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement, or any agreement to create any of them or allow them to exist.

**Enforcing Operator Party** means the Security Holder or any Receiver, agent, controller, administrator or attorney or nominee appointed pursuant to the Security, or any person claiming through or under the Security Holder (including any person acquiring any rights on realisation of the Security). It also includes the Security Holder as mortgagee in possession.

**Event of Default** has the meaning it has in the Security.

**Force Majeure** has the meaning it has in the Transmission Contract.

**Force Majeure Notice** means any notice given under clause 19 of the Transmission Contract in respect of an event of Force Majeure, and all attachments and other particulars given or required to be given under the Transmission Contract in connection with the occurrence of the event of Force Majeure.

**GST** means Australian Goods and Services Tax payable in accordance with *A New Tax System (Goods and Services Tax) 1999* (Cth) or any goods and services tax, value added tax or similar tax imposed in any applicable jurisdiction.

**Independent Expert** has the meaning it has in the Transmission Contract.

**Insolvency Event** has the meaning it has in the Transmission Contract and a person is Insolvent if an Insolvency Event occurs in respect of that person.

**Permitted Assignee** has the meaning provided in clause 7.1.

**Power** means any right, power, authority, discretion, remedy or privilege, whether express or implied (including to exercise a Termination Right or grant releases or waivers) conferred on any person.

**Receiver** includes a receiver or receiver and manager.

**Relevant Account** means a bank account nominated by the Security Holder.

**Related Entity** has the meaning it has in the *Corporations Act 2001* (Cth).

**Security** means any Encumbrance in favour of or with any Beneficiary granted by or entered into by a Security Provider relating to or which may affect the Transmission Contract.

**Security Holder** means the Security Holder, and includes its successors, substitutes and assigns.

**Security Provider** means the party granting or entering into the Security to or with the Security Holder.

**Security Trust** means the trust created by the Security Trust Deed.

**Security Trust Deed** means the deed dated on or about the date of this deed entitled "Security Trust Deed" between, among others, the Operator and the Security Holder.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

**Terminate** means, in relation to a document, to terminate, determine, rescind, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance), or accept the termination, rescission or repudiation of that document and **Termination** has a corresponding meaning.

**Termination Right** means, at any time, any right of the Shipper to, but for this deed, Terminate the Transmission Contract.

**Transmission Contract** has the meaning given in Recital A.

**Working Day** means any Monday, Tuesday, Wednesday, Thursday or Friday which is not gazetted as a public holiday in the Perth metropolitan area.

## **1.2 Terms defined in the Transmission Contract**

A term which has a defined meaning in the Transmission Contract has the same meaning when used in this deed unless it is expressly defined in this deed in which case the meaning in this deed prevails.

## **1.3 References to certain general terms**

Unless the contrary intention appears, a reference in this deed to:

- (a) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (b) the singular includes the plural and vice versa;
- (c) a particular person includes a reference to the person's substitutes (including persons taking by novation), successors and assigns;
- (d) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (e) a reference to assign (and other cognate expressions) includes selling, assigning, transferring, novating or creating or permitting to exist any Encumbrance over or an interest in or otherwise disposing of or dealing with, any of that party's rights or obligations or both under or in connection with a document (including the Transmission Contract);
- (f) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- 
- (h) a reference to amend (and cognate expressions) includes any amendment, variation, supplement, replacement or novation;
  - (i) a document (including this deed) includes any variation or replacement of it, provided it is not prohibited by this deed; and
  - (j) the word **person** includes a firm, body corporate, an unincorporated association or an authority.

#### **1.4 Obligations as to time**

For the avoidance of doubt, if an obligation under the Transmission Contract requires a thing to be done or occur by a certain time or date, a breach of that obligation will be remedied when that thing is done or occurs notwithstanding that the relevant time or date has passed and no obligation under the Transmission Contract is incapable of remedy merely because the time or date for it to be done or to occur has passed, unless the Transmission Contract has been validly terminated prior to the breach of obligation being remedied.

#### **1.5 Headings**

Headings are inserted for convenience and do not affect the interpretation of this deed.

#### **1.6 Duration**

This deed terminates (without limiting any rights accrued prior to termination) when the Security Holder gives notice to Shipper that it has fully and finally discharged and released the Security.

#### **1.7 Consideration**

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and for other valuable consideration.

#### **1.8 Security Holder**

- (a) The Security Holder enters into this deed only in its capacity as trustee of the Security Trust and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against the Security Holder only to the extent to which it can be satisfied out of the trust fund of the Security Trust out of which the Security Holder is actually indemnified for the liability, except in the case of fraud, wilful misconduct, gross negligence or breach of trust. This limitation of the Security Holder's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Security Holder in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed, except in the case of fraud, wilful misconduct, gross negligence or breach of trust.
- (b) The parties other than the Security Holder may not sue the Security Holder in connection with this deed in any capacity other than as trustee of the Security Trust, nor may they seek the appointment of a receiver (except in relation to the trust fund of the Security Trust), a liquidator, an administrator or any similar person to the Security Holder or prove in any liquidation, administration or arrangement of or affecting the Security Holder (except in relation to the trust fund of the Security Trust).
- (c) The provisions of this clause 1.8 shall not apply to any obligation or liability of the Security Holder to the extent that it is not satisfied because under the trust deed establishing the Security Trust or by operation of law there is a reduction in the extent of the Security Holder's indemnification out of the assets of the Security Trust, or as a

result of the Security Holder's fraud, wilful misconduct, gross negligence or breach of trust.

- (d) In relation to the administration of rights and obligations of the Shipper and the Security Holder under this deed the Shipper is entitled to deal only with the Security Holder and is under no obligation or duty to enquire as to the authority of the Security Holder or to confer with, contact or seek approvals, consents or waivers of any of the Beneficiaries for the time being (past or present) and the Beneficiaries are only entitled to deal with the Shipper through the Security Holder.

### **1.9 Precedence of obligations**

If any ambiguity, inconsistency or conflict of obligations exists or arises between this deed and the Transmission Contract, the provisions of this deed take precedence over and apply to resolve that ambiguity, inconsistency or conflict.

## **2. Acknowledgments and Consents**

### **2.1 Shipper**

The Shipper:

- (a) acknowledges that it has received notice of the Security, including the charging and assigning by the Security Provider to the Security Holder of its right, title and interest in, to, under and derived from the Transmission Contract and agrees that there are no restrictions under the Transmission Contract on granting such Security;
- (b) irrevocably consents to the Security and this deed;
- (c) acknowledges that:
  - (i) neither the existence of the Security nor the exercise of any Power under any Security will of itself contravene or constitute a default under the Transmission Contract or entitle it to exercise any right or power under the Transmission Contract (including the right to terminate);
  - (ii) any Enforcing Operator Party may directly exercise and enforce, in accordance with the Security Documents, any powers conferred on Operator under the Transmission Contract in accordance with the Transmission Contract; and
  - (iii) at any time after the commencement or enforcement of any Security, any Enforcing Party may, but is not obliged to, exercise all or any of the powers of the Operator, and perform all or any of the obligations of the Operator under or in relation to the Transmission Contract;
- (d) agrees that the Security Holder, an Enforcing Operator Party and each Beneficiary (if any) may provide a copy of the Transmission Contract and this deed (and correspondence and notices in relation to the Transmission Contract and this deed) to any person permitted by the terms of the Security and any proposed purchaser or assignee of any or all of the Operator's assets (including any contracts or choses in action) or any equity interest in the Operator (and to their consultants and advisors) and to any consultants or advisors engaged by the Security Holder, an Enforcing Operator Party or a Beneficiary, subject to compliance with the requirements as to confidentiality in the Transmission Contract; and

- (e) acknowledges that if the Shipper elects or is granted additional equity in the Consortium Holding Trust, pursuant to clause 16.10 of the Transmission Contract, then such additional equity must be subject to a share mortgage in favour of the Security Holder (if the additional equity is in the form of shares), or, fully subordinated to debt secured by the Security (if the additional equity is in the form of a loan), in both cases on terms satisfactory to the Security Holder.

Nothing in clause 2.1 relieves the Operator or any Permitted Assignee (to the extent a Permitted Assignee has become a party to the Transmission Contract) from its obligations under the Transmission Contract.

## **2.2 No interference**

Each of the Shipper and the Operator undertake that it will not hinder or prevent the Security Holder, the Beneficiaries (if any) or the Enforcing Operator Parties exercising or enforcing their rights under the Security or this deed, provided that, in relation to exercising any rights under this deed, the Security Holder or any Enforcing Operator Parties exercise or enforce their rights under this deed in accordance with this deed.

## **2.3 Releases in favour of Security Holder**

Each of Shipper and Operator agree that despite any provision of the Transmission Contract:

- (a) the parties to the Security may at any time amend the Security and persons may become Beneficiaries without the consent of Shipper;
- (b) neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary has any obligation or commitment whatsoever to arrange, provide or reschedule any financial accommodation in connection with the Operator or its assets or the Transmission Contract;
- (c) at any time while an Event of Default subsists, the Security Holder and any Enforcing Operator Party may exercise all or any of the Operator's Powers and perform all or any of the Operator's obligations under or in connection with the Transmission Contract as if it were, and to the exclusion of, the Operator; and
- (d) except in respect of any obligation expressly assumed by the Security Holder in accordance with this deed, neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary is at any time obliged to:
  - (i) remedy or prevent any Default Event or Termination;
  - (ii) observe or perform any of the Operator's obligations under the Transmission Contract; or
  - (iii) exercise any of its Powers under or in connection with this deed, the Transmission Contract or the Security or continue to exercise them or exercise them in any particular manner,

and, is not liable, will not be taken to have assumed liability, and will not become (including as a result of taking any of these actions) liable for any liability or responsibility including for any Direct Damage or any Indirect Damage or to perform any obligation under or in connection with the Transmission Contract, this deed or the Security.

## **2.4 Shipper and Operator continue to deal**

The parties agree that, despite the creation of the Security and this deed, the Shipper will continue to deal with the Operator and the Operator is entitled to exercise Powers under the Transmission Contract until the Shipper has received written notice to the contrary from the Security Holder or as this deed otherwise requires. The Operator will remain liable to perform its obligations under the Transmission Contract and subject to clause 3.12, 3.14 and 3.15 neither the Security Holder, nor any Beneficiary nor any Enforcing Operator Party is under any obligation of any kind under the Transmission Contract nor under any liability whatsoever in the event of any failure or default by the Operator.

## **2.5 Acknowledgment by Operator**

The Operator consents to the terms of this deed, agrees that it is bound by and will co-operate in the implementation of this deed and the Operator agrees that nothing in this deed affects, limits or derogates from its obligations to the Beneficiaries, the Security Holder and the Enforcing Operator Parties.

## **2.6 Payment of Money**

If the Security Holder so directs at any time when the Security Holder, Beneficiaries or the Enforcing Operator Parties are exercising or enforcing their rights under the Security, the Shipper must pay all money due to the Operator under the Transmission Contract to the Relevant Account. This clause 2.6 is not intended to create any Encumbrance.

## **2.7 Acknowledgment by Operator**

The Operator acknowledges and consents to the obligation of the Shipper as set out in clause 2.6 and agrees that any such payment by the Shipper will discharge the Shipper from its obligation to make that payment to the Operator.

# **3. Regulating the Transmission Contract**

## **3.1 Notification by Shipper**

The Shipper must notify the Security Holder, in writing, as soon as is reasonably practicable after it:

- (a) becomes aware of any Default Event; or
- (b) determines that it has, but for this deed, the Power to Terminate the Transmission Contract; or
- (c) becomes aware of, or commences, any dispute resolution or arbitration proceeding under the terms of, or in connection with, the Transmission Contract.

## **3.2 Copies of key notices**

The Shipper must give the Security Holder a copy of:

- (a) any Default Notice (including details of the Default Event and copies of all documents issued by the Shipper to the Operator under the Transmission Contract in any way relating to, or arising out of, the Default Event);
- (b) any Force Majeure Notice;

- (c) any T1 Capacity Notice given by the Shipper under clause 16 of the Transmission Contract;
- (d) any notice of exercise of the Option by the Shipper given by the Shipper under clause 4.5 of the Transmission Contract;
- (e) any notice of the proposed creation of a charge over the Transmission Contract given to or received by the Shipper under clause 25.2 of the Transmission Contract; and
- (f) any notice of proposed assignment of rights under the Transmission Contract given to or received by the Shipper under clause 25.3 of the Transmission Contract,

at the same time it gives the applicable notice to the Operator or the Operator's representative (or as soon as is reasonably practicable thereafter), or as soon as possible following receipt of the applicable notice from the Operator.

### **3.3 Operator information**

Where the Shipper has given the Operator a Default Notice, the Operator must promptly inform the Security Holder of all measures taken or intended to be taken by the Operator to remedy the Default Event which is the subject of the Default Notice and the Shipper and the Operator each irrevocably consent to the giving of such information to the Security Holder.

### **3.4 Notification by Security Holder**

- (a) The Security Holder must give notice to the Shipper of any action taken by the Security Holder to exercise its rights, powers or remedies under a Security or otherwise to enforce a Security promptly after the relevant action is taken.
- (b) If and when the Security Holder or any Enforcing Operator Party ceases the enforcement of a Security, the Security Holder must give the Shipper notice thereof.

### **3.5 Cure rights**

- (a) The Shipper agrees that, despite anything to the contrary in the Transmission Contract:
    - (i) the Shipper cannot, and will not, Terminate the Transmission Contract in respect of the Operator; and
    - (ii) the Transmission Contract cannot, and will not automatically Terminate in respect of the Operator,
- unless:
- (iii) the Security Holder has been notified in accordance with clause 3.2(a) of this deed; and
  - (iv) in respect of the Default Event which, but for this deed, would give rise to the applicable Termination Right:
    - A. a Cure Notice has been received by the Security Holder;
    - B. that Default Event has not been remedied in accordance with clause 3.6 of this deed, or other arrangements made to the reasonable satisfaction of the Shipper within the Cure Period

and upon expiry of that Cure Period, a Termination Right subsists; and

- C. at that time, no Independent Expert has been appointed in accordance with the Transmission Contract or no dispute resolution or arbitration is being conducted in accordance with the Transmission Contract in connection with the Default Event or any Termination Right arising from or in connection with that Default Event.
- (b) This clause does not affect or prejudice the Shipper's rights to Liquidated Damages against the Operator under clause 22.9 of the Transmission Contract following the giving of a notice to the Operator if the default described in clause 22.5(a) of the Transmission Contract has not been remedied within 40 Working Days after the giving of an Operator Default Notice in respect of that default.
- (c) If, during any Cure Period, a further Default Event occurs, then the Shipper may issue a further Default Notice in respect of that additional Default Event and if that further Default Event has not been remedied in accordance with clause 3.6 within the applicable Cure Period for that additional Default Event, then the Shipper may Terminate the Transmission Contract in accordance with the terms of the Transmission Contract.

### **3.6 Remedy of Default Event**

Each of the parties agrees with the others that a Default Event (other than the occurrence of an Insolvency Event) will be remedied:

- (a) if the Default Event is a repudiation, disclaimer or default by the Operator in the performance of the obligations of the Operator under clause 16 of the Transmission Contract, if the Requested T1 Capacity is provided within the relevant Cure Period (identified in paragraph (a) of the definition of "Cure Period");
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of a readily ascertainable sum of money, if that sum of money and any consequential default interest is paid to the Shipper within the relevant Cure Period (identified in paragraph (b) of the definition of "Cure Period");
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) that default, if reasonably capable of remedy within the Cure Period, is remedied within the relevant Cure Period (identified in paragraph (c) of the definition of "Cure Period") or in relation to a default that is not reasonably capable of remedy within the Cure Period, a process to remedy such default has been commenced and is being diligently pursued within the Cure Period (provided that such default must be remedied within 6 months of the start of the Cure Period);
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, if the Shipper's reasonable estimation of that amount and any consequential interest is paid within the relevant Cure Period (identified in paragraph (d) of the definition of "Cure Period") (provided that such default must be remedied within 6 months of the start of the Cure Period).

### **3.7 Remedy of an Insolvency Event**

Without limiting any other rights of the Security Holder, any Enforcing Operator Party or any Beneficiary, if the Default Event is an Insolvency Event in respect of the Operator, the Security Holder will be taken to have remedied the Default Event:

- (a) if and for so long as it procures the appointment of an Enforcing Operator Party over or to the Operator's right, title or interest in or to the Transmission Contract and the Enforcing Operator Party complies or procures compliance with, and continues to comply with and procure compliance with, all of the Operator's obligations under the Transmission Contract both before and after the Cure Period; or
- (b) if the Operator's right, title and interest in or to or obligations under the Transmission Contract are assigned, transferred or novated to a person who is not Insolvent in accordance with clause 7.1; or
- (c) by any combination of the above,

provided it does so within the relevant Cure Period (as specified in paragraph (c) of the definition of "Cure Period").

### **3.8 Change of Cure Period**

A Cure Period will be extended only if the Shipper consents (such consent to be granted at the Shipper's discretion) in writing to a longer period after the Security Holder, an Enforcing Operator Party or a Beneficiary has demonstrated to the reasonable satisfaction of the Shipper that a course of action is being diligently pursued to remedy or otherwise overcome the effect of the Default Event. More than one extension may be sought and obtained to a Cure Period.

### **3.9 Right to remedy**

Each of the Shipper and the Operator agree that:

- (a) the Security Holder, another Enforcing Operator Party or a Beneficiary may (but are not obliged to), in addition to the Operator's rights to remedy any Default Event or prevent the occurrence of a Default Event, do all things necessary and take any steps to remedy, or procure the remedy of, any Default Event or to prevent the occurrence of a Default Event and in doing so acts as the agent of the Operator; and
- (b) any remedy that remedies the Default Event by the Security Holder, an Enforcing Operator Party or a Beneficiary remedies the Default Event for the purposes of the Transmission Contract.

### **3.10 Information, access and discussions**

Upon written request from the Security Holder, an Enforcing Operator Party or a Beneficiary, the Shipper must:

- (a) promptly provide the Security Holder, the Enforcing Operator Party or Beneficiary, as applicable, with all information reasonably requested by that person for the purpose of taking any steps under clause 3.9(a) (Right to remedy) or exercising any Power under the Security or this deed, including details of:
  - (i) any steps the Shipper considers appropriate to be taken in the circumstances; or
  - (ii) any progress made in remedying any Default Event;

- (b) promptly after a request from the Security Holder or an Enforcing Operator Party, hold discussions in good faith with that person in connection with the remedying of any Default Event; and
- (c) provide the Security Holder and its representatives and consultants a reasonable opportunity, after the occurrence of a Default Event and while it is subsisting, to attend and participate in all negotiations, consultations and meetings undertaken or convened:
  - (i) pursuant to an obligation imposed on any party to the Transmission Contract to negotiate, consult or agree; and
  - (ii) in an endeavour to resolve any material dispute with the Operator under the Transmission Contract.

### **3.11 Undertakings by Security Holder**

- (a) The Security Holder undertakes that, during any Cure Period, if a decision has been reached whereby the Security Holder or an Enforcing Operator Party does not intend to procure a remedy of a Default Event in accordance with clause 3.6, then the Security Holder will notify the Shipper, as soon as reasonably practicable after such decision has been reached. If the Security Holder notifies the Shipper that it does not intend to procure a remedy of a Default Event within the applicable Cure Period in accordance with clause 3.6, then clause 3.5(a) shall cease to apply from the date of receipt of such notice.
- (b) The Security Holder undertakes that during any Cure Period it will not, and any Enforcing Party will not, materially interfere with, prevent or restrict the Operator's continued provision of the "P1 Service" (as defined in the Transmission Contract) in accordance with the terms of the Transmission Contract, provided that and for so long as:
  - (i) the Shipper has not committed a default which is subsisting under the Transmission Contract which would allow the Operator a right to terminate the Transmission Contract; and
  - (ii) the Receiver, the Security Holder or any Enforcing Party is exercising any Power over the Operator's right, title and interest in the Transmission Contract.

### **3.12 Appointment and rights of Enforcing Operator Party**

Without limiting the rights of the Security Holder under any Security following an event that renders a Security enforceable, but subject to this deed:

- (a) the Security Holder may appoint an Enforcing Operator Party to exercise any or all of the Operator's rights or perform some or all of the Operator's obligations under the Transmission Contract; and
- (b) and subject to clause 7.1, the Security Holder or any Enforcing Operator Party may transfer or dispose of the Operator's rights and obligations under the Transmission Contract to another party.

### **3.13 Notification**

If the Security Holder has enforced or exercised any of its rights, powers or remedies under any Security, including by appointing an Enforcing Operator Party or commencing proceedings to

foreclose, the Security Holder must notify the Shipper promptly after it has enforced or exercised its rights, powers or remedies (which notice must set out the identity and capacity of any such Enforcing Operator Party).

### **3.14 Consequences of enforcement**

If the Security Holder appoints an Enforcing Operator Party under clause 13.12(a) then:

- (a) the Shipper must continue to duly and punctually perform and observe its duties and obligations under the Transmission Contract (in accordance with its terms);
- (b) the Transmission Contract shall remain in full force and effect; and
- (c) the Enforcing Operator Party is not liable to the Shipper in respect of any events, acts or omissions which have occurred or should have occurred before the date of the appointment, or for any liability of the Operator to the Shipper in relation to the Transmission Contract in respect of any event, act or omission before the date of the appointment.

### **3.15 Rights to enforce**

Nothing in this deed prevents the Security Holder from:

- (a) giving any notices under the Security;
- (b) demanding the payment of any money under the Security;
- (c) exercising or enforcing any power, right or remedy afforded generally to unsecured creditors or under any agreement other than the Security; or
- (d) enforcing the Security.

### **3.16 Removal of Cure Period**

If, during a Cure Period, the Security Trustee or any Enforcing Party causes or allows the Operator to commit a separate Default Event to the one in respect of which the Cure Period is running (**Cure Period Default**) then the Shipper may immediately serve a Default Notice on the Operator and the Security Trustee, and the Shipper may subsequently terminate the Transmission Contract in accordance with its terms and shall not be required to comply with clause 3.5 of this deed in relation to such Cure Period Default.

## **4. Representations and Warranties**

### **4.1 Representations and warranties**

Each of the Shipper and the Operator represents and warrants to the Security Holder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this deed and the Transmission Contract, to carry out the transactions contemplated by them and to carry on its business as now conducted or contemplated;
- (c) this deed and the Transmission Contract constitute its legal, valid and binding obligations enforceable against it in accordance with their terms subject only to laws generally affecting creditors' rights and principles of equity;

- (d) the Transmission Contract is in full force and effect, the obligations of the Operator under it are not subject to any conditions precedent (which have not been satisfied) and, if required under the Transmission Contract, any notice to proceed and notice of satisfaction of conditions precedent has been received by the Shipper as applicable prior to the date of this deed;
- (e) it has in full force and effect, and is complying with, the consents, licences, approvals and authorisations necessary for it to enter into this deed and the Transmission Contract, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- (f) the execution, delivery and performance by it of this deed and the Transmission Contract and each transaction contemplated under them does not cause a limitation on its powers or exceed the powers of its directors, or contravene in any respect:
  - (i) any law, regulation, treaty, judgment, ruling, order or decree binding on it or to which any of its assets are subject;
  - (ii) its constituent documents (if any); or
  - (iii) any other document, the Transmission Contract, arrangement or obligation which is binding on it or its assets;
- (g) each representation and warranty made by it under the Transmission Contract is true and correct and not misleading when made and when repeated;
- (h) it has not entered into this deed or the Transmission Contract in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of any of the other parties to this deed nor any of their respective Related Entities;
- (i) it is not in default under the Transmission Contract and except as disclosed to the other parties to this deed prior to any repetition of this representation and warranty after the date of this deed:
  - (i) no Default Event is subsisting and it is not able to Terminate the Transmission Contract; and
  - (ii) no condition exists (or would exist with the giving of notice, lapse of time or fulfilment of any condition or any of them) which would interfere with its ability to perform its obligations under the Transmission Contract or entitle it to Terminate the Transmission Contract; and
- (j) it has not received actual notice of any notice of any assignment, transfer, novation, Encumbrance, or other dealing in relation to the Transmission Contract.

#### **4.2 Notification if incorrect**

Each of the parties undertakes to notify the other parties promptly of any representation or warranty made by it in this deed or the Transmission Contract which is found to be incorrect or misleading when made.

## **5. Taxes and GST**

### **5.1 Taxes**

The Operator agrees to pay all fees, Taxes and charges, including fines and penalties, payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment receipt or other transaction contemplated by them.

### **5.2 GST gross up**

If any party:

- (a) is liable to pay GST on a supply made in connection with this deed; and
- (b) certifies to the recipient of the supply that it has not priced the supply to include GST,

then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

## **6. Notices**

### **6.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications (a **Notice**) in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in clause 6.3 of this deed or, if the recipient has notified otherwise for the purpose of this clause, then marked for attention in the way last notified.

### **6.2 Delivery**

A Notice must be:

- (a) left at the address set out or referred to in clause 6.3 of this deed;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in clause 6.3 of this deed;
- (c) sent by fax to the fax number of the party set out or referred to in clause 6.3 of this deed; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the Notice must be to that address or number.

### **6.3 Parties details**

#### **Operator**

DBNGP (WA) Transmission Pty Limited, Level 6, 12-14 The Esplanade, Perth 6000, Western Australia  
Fax: (08) 9223 4301  
Attention: General Manager Commercial

**Shipper**

[To be completed]

**Security Holder**

[To be completed]

**6.4 When effective**

A Notice takes effect from the time it is received unless a later time is specified.

**6.5 Receipt - post**

If sent by post, a Notice is taken to be received three Working Days after posting (or seven days after posting if sent to or from a place outside Australia).

**6.6 Receipt - fax**

If sent by fax, a Notice is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

**6.7 Receipt - general**

Despite clauses 6.5 and 6.6, if a Notice is received after 5.00pm in the place of receipt or on a non-Working Day, it is to be taken to be received at 9.00am on the next Working Day.

**7. Assignment**

**7.1 Assignment of the Transmission Contract**

The Shipper and the Operator agree with the Security Holder that the Security Holder and the Enforcing Operator Parties may, in the exercise or enforcement of their Powers under the Security and this deed, without the consent of the Shipper or the Operator (and without the need for them or anyone else to comply with any provision of the Transmission Contract):

- (a) assign (or seek to assign) all or any of the Operator's rights, title or interest in or to the Transmission Contract; or
- (b) transfer or novate the Operator's obligations under or in connection with the Transmission Contract,  
to any person (including any person who takes an assignment of any or all of the Operator's right, title or interest in and to, and/or a transfer or novation of any or all of the Operator's obligations under, the Transmission Contract) (**Permitted Assignee**) provided that:
  - (c) the Permitted Assignee is a person to whom an assignment would be permitted by clause 25.3 of the Transmission Contract or a person to whom the Shipper has given its consent (such consent not to be unreasonably withheld or delayed);
  - (d) the Permitted Assignee enters into a deed of assumption with the Shipper on terms reasonably satisfactory to the Shipper so as to ensure the assignment, transfer or novation of the applicable rights, title, interest and obligations; and
  - (e) the Shipper agrees, acting reasonably, that the Permitted Assignee has the:
    - (i) contractual and ownership rights necessary to access the DBNGP for the purpose of performing all of the Operator's obligations under the Transmission Contract; and

- (ii) financial capability and technical expertise to enable the Permitted Assignee to effectively operate the DBNGP and to perform all of the Operator's obligations under the Transmission Contract.

Each of the Shipper and the Operator agree to do anything reasonably requested by the Security Holder or an Enforcing Operator Party (including signing and producing documents and effecting the transaction by way of a novation) to enable or facilitate that assignment, transfer or novation.

## **7.2 New tripartite**

Each of the Shipper and the Operator agrees, promptly on the written request of the Security Holder, to execute a deed substantially in the form of this deed with:

- (a) the person to whom the Security Holder assigns, transfers or novates rights or obligations or both under this deed; and
- (b) if the rights or obligations or both of the Operator under the Transmission Contract are assigned, transferred or novated, the financier (or an agent or trustee on its behalf) of the assignee, transferee or novatee.

## **7.3 Assignment by Security Holder**

The Shipper acknowledges that:

- (a) the Security Holder may assign its rights and novate or otherwise transfer its obligations under this deed to any replacement security trustee appointed in relation to the Security; and
- (b) any other Beneficiary may assign or novate the whole or any part of its interest in the Security and the documents relating to the Security or the money secured by the Security.

## **7.4 Assignment by Shipper**

The Shipper must not assign or otherwise dispose of, novate or deal with its rights or obligations under the Transmission Contract without the prior written consent of the Security Holder, provided that such consent is not required where the transfer is permitted under the terms of the Transmission Contract and such transfer is to a new counterparty who is in a position to meet the Shipper's obligations under the Transmission Contract and who will provide security, in favour of the Operator, for those obligations on terms and conditions acceptable to the Security Holder, acting reasonably.

# **8. General**

## **8.1 Counterparts**

This deed may consist of a number of copies of this deed each signed by one or more parties to the deed. When taken together, the signed copies are treated as making up the one document.

## **8.2 Governing law**

- (a) This deed is governed by the law in force in the State of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of that State.

- 
- (b) Each party waives any rights it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

#### **8.3 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

#### **8.4 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

#### **8.5 No liability for loss**

- (a) A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.
- (b) In relation to any breach of this deed, the party in breach will only be liable to any other party for damages for direct losses attributed to any such breach and the rights of any other party to damages for indirect or consequential loss in respect of such breach are hereby expressly excluded.

#### **8.6 Remedies cumulative**

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

#### **8.7 Variation and waiver**

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound, and in all cases, the Security Holder.

#### **8.8 No merger**

The warranties, undertakings and indemnities in this deed do not merge upon the occurrence of any event or activity.

#### **8.9 Inconsistent law**

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

#### **8.10 Further security**

If the Security Holder is granted any additional Encumbrance over or in respect of the Transmission Contract, each party agrees that the additional Encumbrance is to be treated in all respects as part of the Security and subject to the provisions of this deed.

#### **8.11 Supervening legislation**

Any present or future legislation which operates to vary the obligations of a party in connection with this deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **8.12 Further steps**

Each party agrees to do anything the Security Holder reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind it and any other person intended to be bound by this deed; and
- (b) to show whether it is complying with the Transmission Contract or this deed.

#### **8.13 Rights and obligations are unaffected**

Rights given to the Security Holder under this deed and the other parties' liabilities under it are not affected by anything which might otherwise affect them at law.



Dampier To Bunbury Natural Gas Pipeline  
Full Haul R1 Contract Terms & Conditions  
Schedule 7 - Form of Tripartite

**EXECUTED** as a deed.

**EXECUTED by DBNGP (WA)  
TRANSMISSION PTY LIMITED  
ABN 69 081 609 190** in accordance with  
section 127 of the Corporations Act:

---

Signature of director

---

Signature of director/secretary

---

Name

---

Name

**EXECUTED by [SHIPPER] ABN [#] in  
accordance with section 127 of the  
Corporations Act:**

---

Signature of director

---

Signature of director/secretary

---

Name

---

Name

**EXECUTED by [SECURITY HOLDER]  
ABN [#] in accordance with section 127 of  
the Corporations Act:**

---

Signature of director

---

Signature of director/secretary

---

Name

---

Name

# Terms and Conditions for the P1 Service

## Interpretation (clause 1)

### 1. Interpretation

In this Contract:

**ACCC** means the Australian Competition and Consumer Commission.

**Access Arrangement** means the access arrangement from time to time for the DBNGP under the Access Regime, as changed, varied or replaced from time to time (including by the change made by the Corrigenda of 12 January 2004).

**Access Arrangement Information** means the access arrangement information forming part of an access arrangement proposal from time to time in accordance with the provisions of the National Gas Access (Western Australia) Law.

**Access Regime** means any legislative, legislative and administrative or administrative regime from time to time governing the terms and conditions of third party access to Capacity Services or Spot Capacity on the DBNGP, and at the time of this Contract includes the *National Gas Access (WA) Act 2009 (WA)*, the National Gas Access (Western Australia) Law and the Rules, and any access arrangement approved under the National Gas Access (Western Australia) Law and in force for the DBNGP.

**Access Request Form** means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.

**Accumulated Imbalance** means the accumulated imbalance calculated under clause 9.3 and, if applicable, adjusted under clause 9.8.

**Accumulated Imbalance Limit** has the meaning given in clause 9.5(a).

**Accumulated Imbalance Notice** has the meaning given in clause 9.4.

**Accurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be.

**Actual Mass Flow Rate** means either:

- (a) a directly measured variable; or
- (b) a Derived Variable computed by multiplying the instantaneous actual volume flow of Gas, as measured by the Primary Metering Equipment, by the density of the Gas, the density being either:
  - (i) measured as the instantaneous measured density of the Gas; or
  - (ii) calculated in accordance with the full detail method defined in AGA Report No. 8 Compressibility Factor of Natural Gas and Related Hydrocarbon Gasses (1994) standards, as the Operator determines, or in accordance with such other Gas industry standards as the Parties may agree.

**Advance Nomination** means a Nomination by the Shipper under clause 8.18.

**Affected Party** has the meaning given in clause 19(a).

**Alcoa** means Alcoa of Australia Limited ABN 93 004 879 298.

**Alcoa's Exempt Capacity** means the Gas Transmission Capacity necessary to transport the quantity of Gas which the Operator is required to Deliver from time to time to Alcoa under the Alcoa Exempt Contract (including Alcoa's Exempt Delivery Entitlement).

**Alcoa Exempt Contract** means the contract originally between the State Energy Commission of Western Australia and Alcoa and now between the Operator and Alcoa dated 7 February 1983 as amended from time to time, and including any changes to the quantities of Alcoa's entitlements under that contract taking effect after the date of execution of the Deed of Amendment No 5 of that contract which result from an exercise of rights by Alcoa under that contract which existed upon the execution of Deed of Amendment No 5 of that contract, but excluding any amendments having effect after the date of execution of Deed of Amendment No 5 of that contract which in any way relate to the Capacity the Operator must provide to Alcoa under that contract including for the purposes for which that Capacity may be used and the prices Alcoa pays for that Capacity if it uses that Capacity for other than a purpose specified in that contract.

**Alcoa's Exempt Delivery Entitlement** means the quantity of Gas (including Alcoa's Priority Quantity) of which Alcoa is entitled to take Delivery under the Alcoa Exempt Contract during a Curtailment, which may exceed Alcoa's Priority Quantity.

**Alcoa's Priority Quantity** means 40 TJ/d of Alcoa's Exempt Delivery Entitlement.

**Appointed Agent** means a person appointed by the Shipper by way of a written agreement to act as agent of the Shipper in respect of some or all of those matters this Contract contemplates may be performed by a Producer or an Appointed Agent on behalf of the Shipper.

**Approved Prospective Shipper** means a person who is not a shipper but who has satisfied the Operator of its creditworthiness such that, in the Operator's reasonable opinion, that person would be capable of meeting the obligations imposed under any relevant contract for Gas Transmission Capacity on the DBNGP.

**Approved Tradeable Capacity** has the meaning given in clause 27.4(g).

**AS** followed by a designation, refers to the text from time to time amended and for the time being in force of the document so designated issued by Standards Australia.

**ASX** means ASX Limited ABN 98 008 624 691.

**Associate** has the meaning given in section 11 of the Corporations Act as at the Execution Date.

**Associated**, when used to describe the relationship between:

- (a) an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and
- (b) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point.

**Authorisation** means:

- (a) any authorisation, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption of any Governmental Authority; and
- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Authority intervenes or acts in any manner within a specified period after notification to it, the expiry of that period without intervention or action of the relevant Governmental Authority.

**Authorised Relocation** means a Requested Relocation that has been authorised by the Operator under clause 14.2.

**B1 Service** means a Back Haul transportation Reference Service provided under the terms and conditions set out in the Access Arrangement for the B1 Service which gives the shipper a right, subject to the terms and conditions of the Access Arrangement, to access capacity of the DBNGP and which:

- (a) can only be Curtailed in the circumstances specified in clause 17.2;
- (b) is treated the same in the Curtailment Plan as all other shippers with a T1, P1 or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (c) is treated the same in the Nominations Plan as all other shippers with a T1, P1 or B1 Service, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.9.

**Back Haul** means a Gas transportation service on the DBNGP where the Inlet Point is downstream of the Outlet Point.

**Bank Bill Rate** means, for the day of calculation, the average mid rate for bills having a tenor closest to 90 days, as displayed on the "BBSY" page of the Reuters Monitor System on that day. However, if the average mid rate is not displayed by 10:30am (Sydney time) on that Day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate (expressed as a yield to maturity) set by the Operator in good faith and acting reasonably at approximately 10:30am on that day, having regard, to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the "BBSW" page of the Reuters Monitor System). The rate set by the Operator must be expressed as a percentage rate per annum and be rounded up to the nearest sixth decimal place.

**Blended Gas** means all Gas Delivered at a Multi-shipper Inlet Point in a commingled inlet stream.

**Blended Specifications** has the meaning given in clause 7.13.

**Capacity** means:

- (a) at an Inlet Point or a proposed Inlet Point - the capacity of the DBNGP to take delivery at and to transport Gas from that Inlet Point; and
- (b) at an Outlet Point or a proposed Outlet Point - the capacity of the DBNGP to transport and deliver Gas to that Outlet Point,

and must be expressed in TJ/d. For the avoidance of doubt, unless otherwise expressly stated, a reference in this Contract to Capacity is a reference to Capacity averaged across a Gas Day.

**Capacity End Date** means 08:00 hours on the date determined in accordance with clause 4 and is 08:00 hours on the date on which the Shipper's access to the particular Contracted Capacity is to end.

**Capacity Reservation Charge** means a component of the price for Gas Transmission Capacity to which the Shipper has access under this Contract, calculated in accordance with clause 20.2.

**Capacity Service** means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided.

**Capacity Start Date** means 08:00 hours on the date specified in clause 4.1 of this Contract as the date at which the Shipper's access to the particular Contracted Capacity is to start or has started.

**Carbon Cost** means any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

**Charges** means the Capacity Reservation Charge, Commodity Charge and Other Charges.

**Check Metering Equipment** means any Metering Equipment or other equipment installed, maintained or operated by a Party under clause 15.8(a) for checking measurements of Gas quality and quantity.

**Commodity Charge** means the charge set out in clause 20.3.

**Confidential Information** has the meaning given in clause 28.1.

**Contract** means this contract as revoked, substituted or amended from time to time under clause 38, including the queuing policy of the Access Arrangement, Access Request Form and these terms and conditions and the Schedules attached hereto.

**Contracted Capacity** has the meaning given in clause 3.3 and, in the context of any other contract in respect of a particular Capacity Service, has the meaning given in that contract.

**Contracted Firm Capacity** means Alcoa's Exempt Capacity and Capacity under a T1 Service, B1 Service or P1 Service or a Firm Service.

**Contract Year** means the period from the Capacity Start Date until 31 December in the same calendar year and thereafter the period commencing 1 January in a calendar year and ending on 31 December in the same calendar year, with the last Contract Year ending on the earlier of the Capacity End Date and the sooner termination of this Contract.

**Contribution Agreement** has the meaning given to it in clause 6.13(b).

**Control** has the meaning given in the Corporations Act as at the Execution Date.

**Controller** has the meaning given in the Corporations Act as at the Execution Date.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** means the Consumer Price Index, all groups; weighted average of eight capital cities as published for each quarter by the Australian Bureau of Statistics or, if the Consumer Price Index, all groups; weighted average of eight capital cities ceases to be

published, such alternative index as the Operator as a Reasonable and Prudent Person may determine.

**CRS** means the Operator's electronic customer reporting system.

**CS7** means compressor station no.7 on the DBNGP.

**Cubic Metre** or m<sup>3</sup> means a cubic metre at MSC.

**Current Verification** means the Verification at which the Primary Metering Equipment is found to be Inaccurate.

**Curtail** means reduce, interrupt or stop, or any combination of them, completely or in part.

**Curtailment Area** means, in relation to a particular Curtailment, the area affected by the relevant Curtailment and unless the Curtailment is a Point Specific Curtailment, includes all areas of the DBNGP downstream of that area.

**Curtailment Notice** has the meaning given in clause 17.6(a).

**Curtailment Plan** means the regime governing Curtailments of Capacity set out in Schedule 6 and clause 17.9.

**Daily Imbalance** means, for a particular Gas Day, the Shipper's Total Inlet Quantity minus the Shipper's Total Outlet Quantity for that Gas Day across all of its Capacity Services.

**Daily Nomination** means:

- (a) in respect of a Type of Capacity Service at an Inlet Point on a Gas Day – the Capacity for the quantity of Gas that the Shipper is to Deliver to the Operator at the Inlet Point on a Gas Day under that Type of Capacity Service; and
- (b) in respect of a Type of Capacity Service at an Outlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is to Receive from the Operator at the Outlet Point on a Gas Day under that Type of Capacity Service,

in each case as set out in the Initial Nomination for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled under a Renomination process.

**DBNGP** means the Gas transmission pipeline system that runs between Dampier and Bunbury in Western Australia, described in Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015) as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists at the Execution Date.

**DBNGP Corridor** has the meaning given in the DBP Act.

**DBNGP Operating Agreement** means the document so titled dated 25 March 1998 between the Operator and the Pipeline Trustee as amended and extended from time to time, under which the Pipeline Trustee grants to the Operator a sublicense of the pipeline licence for the DBNGP and the right and obligation to operate the DBNGP.

**DBNGP Trustee** means DBNGP Holdings Pty Ltd ABN 16 110 721 081.

**DBP Act** means the *Dampier to Bunbury Pipeline Act 1997 (WA)*.

**Deliver** means to deliver or supply Gas and includes Gas deemed by this Contract to be delivered or supplied at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Derived Variable** means a value computed by electronic, analogue or digital means from primary measurements or other derived variables or a combination of both.

**Direct Damage** means loss or damage which is not Indirect Damage.

**Dispute** means any dispute or difference concerning:

- (a) the construction of;
- (b) anything contained in or arising out of; or
- (c) the rights, obligations, duties or liabilities of a Party under,

this Contract and includes any issue which a provision of this Contract contemplates may be referred to dispute resolution under clause 24.

**Distribution Network** means any Gas distribution system which receives Gas from the DBNGP and includes any Gas distribution system owned or operated by Networks which receives Gas from the DBNGP.

**Distribution Networks' IPQ** means 40 TJ/d or such greater or lesser amount as may be agreed between the Parties.

**Distribution Networks Shipper** means any shipper delivering Gas into a Distribution Network (subject to any Law which excludes that shipper from participating in a share of the Distribution Networks' IPQ), from time to time, and may include the Shipper.

**Duty Equipment** means the Metering Equipment in service at a particular time.

**Electronic Data Collection System** means the system and equipment for collecting, receiving and transferring electronic signals and data from Metering Equipment, used for the measurement of Gas delivered to shippers and for billing.

**Environmental and Safety Law** means a Law relating to environmental, building, construction, engineering, planning, health, safety or occupational health and safety matters.

**Equity** means the body of law referred to as equity in section 24 of the *Supreme Court Act 1935 (WA)*.

**ERA** means the Economic Regulatory Authority established by the *Economic Regulation Authority Act 2003 (WA)*.

**Excess Imbalance Charge** means the charge payable by the Shipper identified in clause 9.5(c).

**Excess Imbalance Rate** means the rate set out in row 1 of Schedule 2.

**Execution Date** means the date on which this Contract is signed by the last of the Parties to sign it.

**Existing Gas Supply Contract** means a contract between a shipper and a customer for the sale and or transport of Gas to a customer of a shipper under which the Gas is or will be supplied to the customer at or immediately downstream of an Outlet Point, which was in existence as at the date of the relevant change in Law as contemplated in

clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Inlet Point** means an Inlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Inlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Outlet Point** means an Outlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Outlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Producer Contract** means a contract between a shipper and a Producer for the sale of Gas to the shipper under which the Gas is or will be supplied to the shipper at or immediately upstream of an Inlet Point, which was in existence as at the date of the relevant change in Law as contemplated in clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Station** means:

- (a) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that was installed and commissioned on or before 1 January 1995; or
- (b) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that is the subject of a Facility Agreement (which has the meaning given in clause 6.14) or similar agreement, as at the Capacity Start Date,

all of which are listed in Schedule 5.

**Expansion** means all work required to be undertaken to or in connection with the DBNGP in order to expand the Gas Transmission Capacity of the DBNGP, including to provide additional Capacity for Alcoa pursuant to the Alcoa Exempt Contract, but excluding (subject to the following sentence) any expansion which causes the DBNGP to exceed the geographical confines of the DBNGP Pipeline Corridor created under Part 4 of the DBP Act as at the date of this Contract. The preceding exclusion does not apply to expansion within the extended corridor as contemplated by the expansion project of the easement for the corridor under the DBP Act which was occurring at or about 27 October 2004.

**Facility** has the meaning given in clause 6.14.

**Facility Agreement** has the meaning given in clause 6.14.

**Financial Matter** has the meaning given in clause 24.7.

**Firm Service** has the meaning given in the Access Arrangement in the form the Access Arrangement was in on 13 January 2004.

**Force Majeure** means any event or circumstance not within a Party's control and which the Party, by the exercise of the standards of a Reasonable and Prudent Person, is not able to prevent or overcome, including (provided the foregoing tests are satisfied):

- (a) acts of God, including epidemics, land slides, lightning, earthquakes, fires, storms, floods, wash outs and cyclones;
- (b) strikes, lock outs, stoppages, restraints of labour and other industrial disturbances;

- (c) acts of the enemy including wars, blockades and insurrection;
- (d) acts of terror, terrorism or terrorists;
- (e) riots and civil disturbances;
- (f) valid Laws of the Commonwealth or any Commonwealth statutory authority;
- (g) valid Laws of the State or a local government or any State statutory authority;
- (h) shortage of necessary equipment, materials or labour;
- (i) [deleted]
- (j) refusal or delay in obtaining any necessary consent or approval from any Commonwealth, State or local government or a Commonwealth or State statutory authority;
- (k) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the Party's operations;
- (l) any DBNGP shutdown or interruption which is validly required or directed by any Commonwealth, State or local government agency or any Commonwealth or State statutory authority having authority to so require or direct;
- (m) any DBNGP shutdown or interruption required to conform with design or regulatory limits on DBNGP facilities, whether arising due to environmental conditions or circumstances or otherwise;
- (n) DBNGP ruptures; and
- (o) collisions or accidents.

**Forward Haul** means a gas transportation service on the DBNGP where the Inlet Point is upstream of the Outlet Point.

**Full Haul** means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.

**Gas** means any naturally occurring gas or mixture of gases, intended for use:

- (a) as a fuel; or
- (b) in any chemical process.

**Gas Day** means the period starting at 08:00 hours on a day and ending at 08:00 hours on the following day and the date of a Gas Day is the date on which it commences.

**Gas Hour** means a period of 60 minutes, commencing and ending on the hour.

**Gas Month** means the period starting at 08:00 hours on the first day of a calendar month and ending at 08:00 hours on the first day of the following calendar month.

**Gas Transmission Capacity** means the capacity of the DBNGP to transport Gas.

**Gas Year** means the period starting at 08:00 hours on 1 January and ending at 08:00 hours on the following 1 January.

**Good Gas Industry Practice** means the practices, methods and acts engaged in or approved by a firm or body corporate which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons engaged in providing services to the Australian gas industry under the same or similar circumstances and conditions, and includes complying with the terms of this Contract and taking reasonable steps to ensure that:

- (a) manufacturers' instructions and operating manuals are complied with;
- (b) adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;
- (c) sufficient experienced and trained operating personnel are available to undertake its responsibilities under this Contract;
- (d) appropriate monitoring and testing is carried out to ensure that the equipment will function properly under normal and emergency conditions;
- (e) equipment is operated and maintained in accordance with any Laws applicable to that equipment;
- (f) in accordance with all applicable Laws:
  - (i) it acts in a sound and workmanlike manner;
  - (ii) it acts with due skill, care and applying standards required or accepted by a company experienced in the delivery of similar works and the provision of similar services;
  - (iii) it acts with due expedition and without unnecessary or unreasonable delays; and
  - (iv) it acts in a manner which allows for the work to be efficiently and cost-effectively performed with due regard to safety.

**Governmental Authority** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, responsible minister, department, office, commission, delegate, authority, instrumentality, tribunal, board, agency, entity or organ of government, whether federal, state, territorial or local, statutory or otherwise.

**GST** means GST as that term is defined in the GST Law and as imposed by the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

**Higher Heating Value** means the gross amount of heat energy (measured in megajoules) produced by the complete combustion of one Cubic Metre of dry Gas with air of the same temperature and pressure, when the products of combustion are cooled to the initial temperature of the Gas and air and when all water formed by combustion is condensed to the liquid state, corrected to a water - vapour free basis and expressed at MSC, and determined using ISO 6974 for the analysis of natural Gas and using ISO 6976 for the calculations from that analysis.

**Hourly Peaking Charge** means the charge payable under clause 10.3(d).

**Hourly Peaking Limit** has the meaning given in clause 10.1.

**Hourly Peaking Rate** means the rate specified in row 2 of Schedule 2.

**Hourly Quantity** means, in respect of a particular shipper for a Gas Hour, the total quantity (across all Outlet Points in the relevant Pipeline Zone or Zones (as the case may be)) of Gas Received by the shipper from the Operator during that Gas Hour, expressed in terajoules.

**Inaccurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a greater extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii) (as the case may be).

**Independent Expert** means an expert chosen under clause 24.8.

**Indirect Damage** means, in respect of a person:

- (a) any indirect loss or damage suffered by that person, however caused, including any:
  - (i) consequential loss or damage;
  - (ii) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
  - (iii) business interruption,
 whether or not the indirect loss or damage was foreseeable; and
- (b) any liability of that person to any other person, or any claim, demand, action or proceeding brought against that person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding.

**Inert Gases** means any one or any mixture of helium, neon, argon, krypton, xenon, radon, nitrogen and carbon dioxide.

**Initial Nomination** means a Nomination by the Shipper under clause 8.6, unless no such Nomination has been made, in which case it means an Advance Nomination (if the Shipper has made an Advance Nomination).

**Initial Notice** has the meaning given to it in clause 17.6(b)(i)(A).

**Inlet Metering Equipment** means the Metering Equipment referred to in clause 15.1(a).

**Inlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator and, where the context requires, means a flange, joint or other point specified in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

**Inlet Point Connection Facilities** means that part of the DBNGP that comprises facilities and equipment between an Inlet Point and the main trunkline structure of the pipeline, and includes:

- (a) any facilities to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
  - (b) all standby, emergency and safety facilities; and
  - (c) all ancillary equipment and services,
- constituting that part of the DBNGP.

**Inlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Inlet Sales Agreement** means the form of inlet sales agreement which is published on the Operator's website from time to time.

**Inlet Station** means the Metering Equipment site Associated with an Inlet Point, and includes:

- (a) any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
- (b) all standby, emergency and safety facilities; and
- (c) all ancillary equipment and services.

**Insolvency Event** means, in respect of a Party (the *first person*) any one or more of:

- (a) any execution or other process of any court or authority being issued against or levied upon any material part of the first person's property or assets being returned wholly or partly unsatisfied;
- (b) an order being made or a resolution being passed for the winding up or dissolution without winding up of the first person otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other Party has given consent;
- (c) a Controller being appointed in respect of the whole or a material part of the first person's property, undertaking or assets;
- (d) the first person entering into any arrangement, reconstruction or composition with or for the benefit of its creditors;
- (e) an administrator of the first person being appointed or the board of directors of the first person passing a resolution to the effect of that specified in section 436A(1) of the Corporations Act;
- (f) the first person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand for an amount in excess of \$1 million; or
- (g) an event having a substantially similar effect to an event described in any of paragraphs (a) to (f) (inclusive) which happens in connection with the first person under the law of any jurisdiction.

**ISO** means an International Standards Organisation standard.

**Kwinana Junction** has the meaning given in the pipeline description document that forms Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015).

**Law:**

- (a) means any statute, subsidiary legislation, ordinance, code, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order; and
- (b) includes:

- (i) the terms and conditions of any licence, permit, consent, certificate, authority, approval or assurance or bond or similar requirements issued under any of the things referred to in paragraph (a); and
  - (ii) all applicable standards and obligations under the common law and Equity; but
- (c) excludes:
- (i) any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this Contract); and
  - (ii) any requirements of the Regulator (except for requirements which apply by force of law to prevail over any inconsistent clause of this Contract).

**Load Characteristics** means the relationships between Gas flow and time.

**LPG** means the sum of propane and butane components of Gas.

**Maintain** includes, where necessary, renew or replace.

**Maintenance Charge** has the meaning given in clause 6.11.

**Major Works** means any enhancement, expansion, connection, pigging or substantial work that the Operator needs to undertake on the DBNGP and that:

- (a) cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and
- (b) by its nature or magnitude would require a Reasonable and Prudent Person to wholly or partially reduce Gas Transmission Capacity.

**Metering Equipment** means all equipment used to measure either or both the physical quantity or quality of Gas entering the DBNGP at an Inlet Point or exiting the DBNGP at an Outlet Point and all ancillary equipment required to compute Derived Variables and to produce printed reports at the Inlet Station or Outlet Station and to test and Maintain the reliability and calibration accuracy of that equipment (including any metering facilities or equipment that are or could be used for proving, testing and calibration of the equipment).

**Metering Information** has the meaning given in clause 15.5(d).

**MHQ** for an Outlet Point on a particular Gas Day in respect of a shipper, means (subject to clause 17.7(c)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Outlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper.

**MSC** means metric standard conditions, being a pressure of 101.325 kPa and a temperature of 15°C.

**Multi-shipper Agreement** means an agreement under clause 6.3(d).

**Multi-shipper Inlet Point** means an Inlet Point at which more than one shipper Delivers Gas to the Operator.

**Multi-shipper Outlet Point** means an Outlet Point at which more than one shipper Receives Gas from the Operator.

**National Gas Access (Western Australia) Law** means the provisions applying because of section 7 of the *National Gas Access (WA) Act 2009* (WA).

**Networks** means ATCO Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd and before that AlintaGas Networks Pty Ltd).

**New Inlet Point** means an Inlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**New Outlet Point** means an Outlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**Nominated Day** means a Gas Day in respect of which an Advance Nomination or Initial Nomination is made.

**Nominated Inlet Point** means an Inlet Point specified in an Initial Nomination as one at which the Shipper proposes to Deliver Gas to the Operator during the Nominated Day.

**Nominated Outlet Point** means an Outlet Point specified in an Initial Nomination as one at which the Shipper proposes to Receive Gas from the Operator during the Nominated Day.

**Nominations** means Initial Nominations or Advance Nominations, and where other contracts for Capacity are being referred to, includes the material equivalent of Initial Nominations or Advance Nominations (as the case may be) under those other contracts.

**Nominations Plan** means the process for allocating Nominations set out in clause 8.8 which is based upon the priorities set out in the Curtailment Plan.

**Notice** includes a Tax Invoice, statement, demand, consent, request, application, notification and any other written communication, and includes such a notice communicated by means of facsimile or (if the Parties so agree) by the CRS.

**Notional Gate Point** has the meaning given in clause 6.10.

**Operate** includes to Maintain, test, or repair.

**Operating Specification** means the Gas quality specification specified in Item 1 of Schedule 3, and includes each component of the specification.

**Operationally Feasible** means operationally feasible in the Operator's opinion (acting as a Reasonable and Prudent Person) in the circumstances prevailing at the relevant time including:

- (a) the configuration and status of the DBNGP at the relevant time;
- (b) the individual and collective Reserved Capacities and Load Characteristics of all shippers;
- (c) Gas Transmission Capacity generally; and
- (d) the Operator's relevant entitlements and obligations under any contract or written Law.

**Operator** means DBNGP (WA) Transmission Pty Ltd ABN 69 081 609 190 and includes its successors and permitted assigns.

**Operator Default Notice** has the meaning given in clause 22.6.

**Operator Entity** means the Operator, all of the Operator's Related Bodies Corporate and all entities Controlled by any of the foregoing.

**Operator Owned Point** means an Outlet Point described in clauses 6.13(a)(ii)(A) or 6.13(a)(ii)(B).

**Option** has the meaning given in clause 4.3.

**Original Capacity has** the meaning given in clause 4.3.

**Other Charges** has the meaning given in clause 20.4.

**Other Reserved Service** means a Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, P1 Service, B1 Service, a Firm Service and Capacity under a Spot Transaction).

**other shipper** means any shipper other than:

- (a) Alcoa as a shipper under the Alcoa Exempt Contract (but not otherwise); and
- (b) the Shipper.

**Outlet Metering Equipment** means Metering Equipment which the Operator is required by clause 15.2(a) to supply, install, Operate and Maintain at an Outlet Station at the Shipper's expense.

**Outlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Receipt by it of Gas from the Operator and, where the context requires, means a flange, joint or other point referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

**Outlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Outlet Station** means either the Metering Equipment site associated with an Outlet Point, and includes any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services.

**Out-of-Specification Gas** means Gas which does not comply with one or more of the temperature or pressure specifications in this Contract or with one or more components of the Operating Specification, or where relevant with clause 7.2 or 7.3 (as the case may be).

**Overrun Charge** has the meaning given in clause 11.1(a).

**Overrun Gas** means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including P1 Services and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

**Overrun Rate** has the meaning given in clause 11.1(b).

**P1 Capacity Reservation Tariff** has the meaning given in clause 3.4(b) of the Access Arrangement.

**P1 Commodity Tariff** has the meaning given in clause 3.4(b) of the Access Arrangement.

**P1 Contract** means any contract between the Operator and a shipper for a P1 Service, and to avoid doubt includes this Contract.

**P1 Permissible Curtailment Limit** has the meaning given in clause 17.3(c).

**P1 Service** has the meaning given in clause 3.2(a) and clause 3.4(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**P1 Tariff** means the reference tariff for T1 Service set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time

**Part Haul** means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

**Party** means the Operator or the Shipper or, where the context requires, the Pipeline Trustee or the DBNGP Trustee (as the case may be) and, if the Shipper comprises more than one person, includes each such person.

**Period** means in respect of the Shipper's Capacity, a Season or a Gas Month as the case may be for which the Shipper's Capacity is quantified.

**Period of Supply** means in respect of particular Contracted Capacity the time period between:

- (a) the relevant Capacity Start Date; and
- (b) the relevant Capacity End Date.

**Physical Gate Point** means a flange, joint or other point marked in the description of the DBNGP system in the Access Arrangement Information as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point.

**Pipeline Trust** has the meaning given in clause 25.5(b).

**Pipeline Trustee** means DBNGP (WA) Nominees Pty Ltd ABN 78 081 609 289.

**Pipeline Zone 1** means the area of the DBNGP immediately downstream of the Dampier Inlet Point and upstream of 1 kilometre downstream of the CS2 Station Downstream Isolating Valve (MLV30).

**Pipeline Zone 2** means the area of the DBNGP immediately downstream of 1 kilometre downstream of CS2 Station Downstream Isolating Valve and immediately upstream of 1 kilometre downstream of the CS3 Station Downstream Isolating Valve (MLV42).

**Pipeline Zone 10** means the area of the DBNGP which is downstream of:

- (a) the upstream flange of Kwinana Junction valve V4; and
- (b) the upstream flange of Kwinana Junction valve HV401A.

**Pipeline Zone 10B** means the area of the DBNGP on mainline South, being downstream of the outlet flange of compressor station 10.

**Planned Maintenance** means maintenance of the DBNGP which is scheduled in advance and of which the Shipper is given reasonable, and in any event not less than 3 Gas Days, written notice.

**Point Specific Curtailment** means a Curtailment as it affects or applies to a particular Inlet Point or Outlet Point.

**Possession** includes custody, control, and an immediate right to possession, custody, or control.

**Prescribed Interest Rate** means the Bank Bill Rate plus an annual interest rate of 3 percent per annum.

**Prescribed Limits of Uncertainty** means the limits of metering uncertainty prescribed by clause 15.3.

**Previous Verification** means the Verification at which the Primary Metering Equipment was last found to be Accurate.

**Primary Metering Equipment** means the Inlet Metering Equipment or the Outlet Metering Equipment, as the case may be.

**Producer** means a producer or supplier of Gas with whom the Shipper has entered into a Gas supply contract or contracts under which Gas is or will be Delivered at an Inlet Point.

**Reasonable and Prudent Person** means a person acting in good faith with the intention of performing his or her contractual obligations and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable Laws engaged in the same type of undertaking under the same or similar circumstances and conditions.

**Receive** means to accept or receive Gas into or from the DBNGP (as the case requires) and includes Gas deemed by this Contract to be received at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Reference Tariff Variation Mechanism** means the mechanism for varying the P1 Tariff as set out in section 11 of the Access Arrangement.

**Regulator** means **local Regulator** as this term is defined in section 11 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA), being the ERA.

**Related Body Corporate** has the meaning given in the Corporations Act as at the Execution Date.

**Related Entity** has the meaning given to that expression in the Corporations Act as at the Execution Date.

**Relative Density** is expressed at MSC and means the molar mass of a Gas in g/mol divided by 28.9641 g/mol (being the molar mass of dry air as defined in ISO 6976)

and corrected for the effect of deviation from ideal Gas behaviour upon both air and Gas.

**Relevant Company** means the direct and indirect shareholders of the Operator, service providers to the Operator (including the System Operator) and all Related Bodies Corporate of those entities.

**Relevant Construction Costs** means the Relevant Outlet Station Construction Costs (as the case may require).

**Relevant Contracts** has the meaning given in clause 7.13.

**REMCo** means the company established to administer and operate the approved retail market scheme for the retail gas market in Western Australia and includes any company, person or authority from time to time undertaking that role, being Retail Energy Market Company Limited ACN 103 318 556 of Level 40, 140 William Street, Melbourne, Victoria 3000.

**Remote Data** is defined in clause 15.4(d).

**Renomination** has the meaning given in clause 8.11.

**Replacement Contract** means the contract which is deemed to arise between the Operator and a Replacement Shipper by clause 27.7 following the Transfer of Tradeable Capacity to the Replacement Shipper.

**Replacement Shipper** has the meaning given in clause 27.3.

**Request for Approval** has the meaning given in clause 27.4(a).

**Requested Relocation** has the meaning given in clause 14.1.

**Reserved Capacity** means, subject to any changes from time to time made pursuant to the Curtailment Plan:

- (a) the Distribution Networks IPQ, Alcoa's Priority Quantity, Alcoa's Exempt Delivery Entitlement;
- (b) Capacity referred to in any contract for a Type of Capacity Service as "Contracted Capacity" where such "Contracted Capacity" may, at the relevant time, be nominated for delivery to the relevant Inlet Point or Outlet Point (if any) pursuant to that Capacity Service (regardless of the level of interruptibility of the service at an Inlet Point or an Outlet Point (as the case may be)).

**Resumption** means a resumption by the Shipper of all or part of Traded Capacity in accordance with the Transfer Terms.

**Resumption Notice** means a notice issued by the Shipper that the Shipper intends to Resume all or part of Traded Capacity.

**Retail Market Rules** means the retail market rules that govern the retail gas market in Western Australia.

**Rules** means the National Gas Rules referred to in section 294 of the National Gas Access (Western Australia) Law.

**Season** means either Summer or Winter.

**Share of the Distribution Networks' IPQ** means a shipper's pro-rata share of the Distribution Networks' IPQ, based on its Nominations into the Distribution Networks, unless the Distribution Networks Shippers all agree to a different allocation policy and advise the Operator thereof.

**Shipper** means any person who, from time to time, has a contract with the Operator for access to Gas Transmission Capacity, and includes the Shipper.

**Shipper** means the party so described where the parties to this Contract are named on its first page.

**Shipper Default Notice** has the meaning given in clause 22.2.

**SI Units** means units of *Le Système International d'Unités* established by the *Conférence Générale des Poids et Mesures* set out in AS1000-1979.

**Spot Capacity** means any Gas Transmission Capacity on a Gas Day (being the Gas Transmission Capacity available after all Nominations for Reserved Capacity for that Gas Day has been scheduled by the Operator for that Gas Day), which Gas Transmission Capacity, is, according to the Operator (acting in good faith) available for purchase.

**Spot Transaction** means a transaction for the sale and purchase of Spot Capacity between the Operator and a shipper.

**Standard Shipper Contract** means the contract of that nature required to be made available on the Operator's website.

**State** means the State of Western Australia.

**Storage Service** means a service to store Gas on the DBNGP which is provided on terms and conditions as published on the Operator's website from time to time.

**Sub-network** means that part of a Distribution Network which operates at a nominal pressure in excess of 300 kPa, which for the purposes of gas flow is not directly connected with any other part of the Distribution Network which operates at a nominal pressure in excess of 300 kPa.

**Summer** means the period from 08:00 hours on 1 November of a year to 08:00 hours on 1 May of the following year.

**Surcharges** means the charges referred to in clauses 20.4(a)(i) to 20.4(a)(iv) inclusive.

**System Curtailment** means a Curtailment which affects more than one Inlet Point or Outlet Point.

**System Operator** has the meaning given in clause 2.5(a).

**System Use Gas** means Gas used by the Operator for the following purposes:

- (a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:
  - (i) compressor fuel;
  - (ii) gas engine alternator fuel;
  - (iii) heater fuel; and
  - (iv) increases to linepack, other than:

- A. when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
  - B. repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
- (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.

**T1 Capacity** has the meaning given in clause 3.2(b).

**T1 Service** has the meaning given in clause 3.3(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**T1 Tariff** means the reference tariff for T1 Service set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax, capital gains tax, fines or penalties).

**Tax Change** means:

- (a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
- (b) any Carbon Cost is incurred in relation to the DBNGP by the Operator or any of its Related Bodies Corporate;
- (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or
- (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date.

**Tax Change Notice** has the meaning given to it in clause 20.7(c).

**Tax Invoice** has the meaning given to it in the GST Law.

**Technical Matter** has the meaning given to it in clause 24.7.

**Technically Practicable** means technically feasible and practicable consistent with the safe and reliable operation of the DBNGP, in the view of a Reasonable and Prudent Person.

**Terminated Capacity** has the meaning given in clause 22.11(c).

**TJ/d** means terajoules per Gas Day.

**Total Contracted Capacity** means in respect of a particular shipper in respect of one or more particular Capacity Services (as the case may be) at a particular time:

- (a) in relation to Inlet Points, the sum of the shipper's Contracted Capacity for all Inlet Points; and
- (b) in relation to Outlet Points, the sum of the shipper's Contracted Capacity for all Outlet Points.

**Total Current Physical Capacity** means the total physical Gas throughput Capacity at the relevant time (having regard to all associated facilities) of an Inlet Point or an Outlet Point and operating within its technical design parameters, as the case may be, in the Operator's opinion as a Reasonable and Prudent Person.

**Total Inlet Quantity** means the total quantity (across all Inlet Points) of Gas Delivered to the Operator by the Shipper on a Gas Day across all contracts (including Spot Transactions).

**Total Outlet Quantity** means the total quantity (across all Outlet Points) of Gas Received by the Shipper from the Operator on a Gas Day across all contracts (including Spot Transactions).

**Total Physical Capacity** means the Total Current Physical Capacity as at the Execution Date.

**Tp Service** is an Other Reserved Service.

**Tradeable Capacity** has the meaning given in clause 27.4(a).

**Traded Capacity** is any Tradeable Capacity which has been Transferred to a Replacement Shipper following the approval or deemed approval of the Transfer Terms of that Tradeable Capacity.

**Transfer** includes transfer, assign to or otherwise grant an interest in or entitlement to Tradeable Capacity.

**Transfer Terms** means the terms and conditions, set out in a Request for Approval, on which a shipper is prepared to Transfer Tradeable Capacity to a Replacement Shipper.

**Transmission Outlet Point** means an Outlet Point which is not a Notional Gate Point.

**Type of Capacity Service** has the meaning given in clause 8.8(b).

**Unavailable Overrun Charge** means the charge payable under clause 11.6 and clause 17.8(e).

**Unavailable Overrun Rate** means the rate specified in row 4 of Schedule 2.

**Unavailability Notice** has the meaning given in clause 11.2(a).

**Verification** means the process of testing all Metering Equipment and all components of Metering Equipment to establish its calibration accuracy.

**WestNet** means WestNet Infrastructure Group Ltd (ABN 40 087 857 001) (formerly Alinta 2000 Limited).

**Winter** means the period from 08:00 hours on 1 May in a year to 08:00 hours on 1 November of the same year.

**WLPG Plant** means the LPG extraction plant fronting Leath and Mason Roads, Kwinana, which is operated by Wesfarmers LPG Pty Ltd.

**Wobbe Index** means the number obtained by the formula:

$$\text{Wobbe Index} = \frac{\text{Higher Heating Value}}{\text{Relative Density}}$$

**Working Day** means any Monday, Tuesday, Wednesday, Thursday or Friday which is not gazetted as a public holiday in the Perth metropolitan area.

## General provisions (clause 2)

### 2. General

#### 2.1 Construction generally

In the construction of this Contract, unless the context requires otherwise:

- (a) a reference to a clause or Schedule is a reference to a clause or Schedule of this Contract;
- (b) words indicating the singular number include the plural number and vice versa;
- (c) words of one gender include the corresponding words of all other genders;
- (d) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (e) a reference to any statutory Law extends to and includes any regulations under that Law and any amendment of, modification of, or substitution for, that Law;
- (f) a reference to any contract or agreement is a reference to that contract or agreement as amended, varied, novated or substituted from time to time;
- (g) references to dollars or \$ are references to Australian dollars;
- (h) a reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in Perth, Western Australia, even if the obligation must be performed elsewhere;
- (i) all time is expressed in a 24-hour format, with each day (but not a Gas Day) commencing at 00:00 hours and ending at 24:00 hours;
- (j) unless specified otherwise, reference to a quantity of Gas is a reference to that quantity of Gas measured in GJ;
- (k) all units of measurement used in this Contract are SI Units as they are applied as Australian legal units of measurement under the *National Measurement Act 1960* (Cth);
- (l) unless the contrary intention appears, the interpretation provisions of the *Interpretation Act 1984* (WA) apply to this Contract;
- (m) any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (n) any specific reference to or listing of items following the words **including, for example or such as** is without limitation and does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (o) **under** includes **by, by virtue of, pursuant to and in accordance with;**

- (p) a reference to rights, entitlements, obligations or terms "materially equivalent" or the "same" (in comparison to rights, entitlements, obligations or terms in this Contract or in comparison to other rights, entitlements, obligations or terms (as the case may be)) or any similar expressions is deemed to mean rights, entitlements, obligations or terms that are, in the opinion of a Reasonable and Prudent Person, materially equivalent to the relevant rights, entitlements, obligations or terms in this Contract or those other rights, entitlements, obligations or terms (as the case may be).

## 2.2 Headings

Headings are inserted for convenience and do not affect the interpretation of this Contract.

## 2.3 Rounding to a certain number

Any number calculated under this Contract which exceeds six decimal places must be rounded to six decimal places. For the purposes of such rounding, if the digit at the seventh decimal place is:

- (a) between zero and four (inclusive), the number must be rounded down to the nearest sixth decimal place; and
- (b) between five and nine (inclusive), the number must be rounded up to the nearest sixth decimal place.

## 2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including [P1](#) Service, Other Reserved Service, Contracted Capacity, and Total Contracted Capacity) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

## 2.5 System Operator

- (a) The Operator's rights and powers under this Contract may be delegated to a contractor (**System Operator**) who is entitled to exercise, on behalf of the Operator, all such rights and powers conferred on the Operator.
- (b) The Operator may from time to time give notice in writing to the Shipper as to the details of the System Operator.
- (c) Any act, matter or thing done by the System Operator in respect of this Contract or in the performance of obligations related to this Contract in either its own name or in the name of the Operator is deemed to have been done by the Operator and the Operator agrees to ratify and confirm whatsoever the System Operator does or causes to be done by virtue of, or purportedly by virtue of, the powers contained in this Contract.
- (d) Without limiting clause 2.5(c), any communication or notice given, or document signed, by the System Operator in respect of this Contract is deemed to have been given or signed by the Operator and will bind the Operator. Similarly, any communication, notice or document given to the System Operator in respect of this Contract is deemed to have been given to the Operator and will bind the Operator.
- (e) The Operator must procure that the System Operator complies with the requirements of the Ring Fencing Arrangements of Part 2 of Chapter 4 of the *National Gas Access (Western Australia) Law* as if it were a 'Service Provider' for the purposes of that section.

## 2.6 Access Regime and Regulator's requirements as Laws

To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract.

## **Capacity service (clause 3)**

### 3. Capacity Service

#### 3.1 Operator to provide P1 Service to Shipper

During the Period of Supply, the Operator will provide the P1 Service to the Shipper and the Shipper agrees to accept the P1 Service from the Operator on the terms and conditions of this Contract.

#### 3.2 Capacity Service

(a) The P1 Service is the Full Haul Gas transportation service provided under this contract which gives the Shipper a right, subject to the terms and conditions of this Contract, to access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9):

- (i) can only be Curtailed in the circumstances specified in clause 17.2;
- (ii) is treated the same in the Curtailment Plan as all other shippers with a P1 Service, a P1 Service or a B1 Service, or a P1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (iii) is treated the same in the Nominations Plan as all other shipper with a P1 Service, a P1 Service or a B1 Service, or a P1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.

(b) The Operator acknowledges and agrees:

- (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
- (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP is 98% for each Period of a Gas Year;
- (iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator, acting as a Reasonable and Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and
- (iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:
  - (A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and
  - (B) Alcoa's Exempt Capacity,

does not materially exceed the amount of T1 Capacity in the DBNGP.

- (c) Shipper acknowledges and agrees that, subject to clause 14, the T1 Service is a Full Haul Service and cannot be:
  - (i) Back Haul; or
  - (ii) Part Haul.
- (d) In this clause 3.2 probability of supply means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.
- (e) For the avoidance of doubt, Alcoa's Exempt Capacity is provided by Operator out of Tranche 1 Capacity in the DBNGP.

### 3.3 Contracted Capacity

The Shipper's **Contracted Capacity** for each Gas Day within a Period under this Contract:

- (a) at an Inlet Point specified in the Access Request Form - is the amount for P1 Service set out in the Access Request Form for that Period; and
- (b) at an Outlet Point specified in the Access Request Form - is the amount for P1 Service set out in the Access Request Form for that Period.

### 3.4 Operator must deliver Gas up to Contracted Capacity

During the Period of Supply, subject to this Contract (including clauses 5 and 17), the Operator must deliver on each Gas Day (aggregated across all Outlet Points) the quantity of Gas required by the Shipper up to the Shipper's Total Contracted Capacity.

## ***Duration of the contract (clause 4)***

### 4. Duration of the Contract

#### 4.1 Capacity Start Date

- (a) The Capacity Start Date is 08:00 hours on the date specified in the Access Request Form as the Requested Reference Service Start Date.
- (b) Requests from the Shipper for any amendment to the Capacity Start Date will be considered by the Operator with terms and conditions for any such amendment to be agreed between the parties giving regard to the Operator's circumstances at the time of the request.

#### 4.2 Term

- (a) Subject to the terms and conditions of this Contract the Capacity End Date is 08:00 hours on the date specified in the Access Request Form. (b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates as the Requested Reference Service End Date.

#### 4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6 and 4.7, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (*Original Capacity*) each for a period of 1 year (*Option*).

#### 4.4 Conditions to be satisfied before exercising an Option

Shipper may only validly give notice exercising an Option if Shipper:

- (a) is not in default (within the meaning of clause 22.1) under this Contract in a way which is material in the context of this Contract as a whole at the time Shipper gives notice; and
- (b) complies with the requirements of clause 4.5 of this Contract.

#### 4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

#### 4.6 First Option Period

If Shipper gives a notice in accordance with clause 4.5 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year and:

- (a) the Capacity End Date for the Original Capacity (as defined in clause 4.1) is amended to 08:00 hours on that date; and
- (b) this clause 4.6 (relating to the exercise of the Option) will have no effect after 08:00 hours on the date originally specified in the Access Request Form as the Capacity End Date.

#### 4.7 Second Option Period

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clause 4.5 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year and:

- (a) the Capacity End Date for the Original Capacity (as amended by the previous operation of clause 4.6(a)) is amended to 08:00 hours on that date; and
- (b) clauses 4.3, 4.4, 4.5 and this clause 4.7 (all relating to the exercise of the Option) will have no effect after 8:00 hours on the date that is one year after the date that was originally specified in the Access Request Form as the Capacity End Date.

### **Receiving and Delivering Gas (clause 5)**

#### 5. Receiving and Delivering Gas

##### 5.1 Shipper may Deliver and Receive Gas

Subject to any other provision of this Contract, the Shipper, on each Gas Day during the Period of Supply:

- (a) may Deliver to the Operator at the Inlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Inlet Points on the DBNGP, and
- (b) may Receive from the Operator at the Outlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Outlet Points on the DBNGP.

## 5.2 Operator must Receive and Deliver Gas

Subject to any other provision of this Contract, the Operator, on each Gas Day during the Period of Supply:

- (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
- (b) must Deliver to the Shipper at Nominated Outlet Points the quantities of Gas required by the Shipper up to the Shipper's Contracted Capacity aggregated across all Outlet Points.

## 5.3 Operator may refuse to Receive Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Receive Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limits); and
  - (iv) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Receive that Gas;
- (d) to the extent that Receipt by the Operator of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure;
- (e) subject to determination by the Operator as a Reasonable and Prudent Person, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;
- (f) to the extent that the Shipper has not entered into any agreement in relation to that Inlet Point required by clause 6.13; and
- (g) to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

#### 5.4 Notification of refusal to Receive Gas

Without affecting the Operator's rights under clause 5.3, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Receive Gas;
- (b) if it does not give the Shipper advance notice under clause 5.4(a) of a refusal to Receive Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) as soon as practicable, notify the Shipper (in reasonable detail) of the reasons for a refusal to Receive Gas.

#### 5.5 Refusal to Receive Gas is a Curtailment in limited circumstances

To the extent that a refusal to Receive such Gas under clauses 5.3(c) and 5.3(d) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Receive Gas, a refusal to Receive Gas under clauses 5.3(c) and 5.3(d):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

#### 5.6 No liability for refusal to Receive Gas

Subject to clause 23.2 and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Receive Gas under clause 5.3.

#### 5.7 Operator may refuse to Deliver Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may refuse to Deliver Gas to the Shipper at an Outlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Deliver Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limit);
  - (iv) clause 10.3(a)(iii) (Consequences of exceeding Hourly Peaking Limit);
  - (v) clause 10.5(c) (Remedies for breach of Peaking Limits);
  - (vi) clause 11.5 (Operator may refuse to Deliver Overrun Gas); and
  - (vii) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides

to refuse to Receive Gas, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;

- (c) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (d) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point; and
- (e) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13.

#### 5.8 Notification of refusal to Deliver Gas

When the Operator refuses to Deliver Gas to the Shipper under clause 5.76, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Deliver Gas;
- (b) if it does not give the Shipper advance notice under clause 5.87(a) of a refusal to Deliver Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) notify the Shipper of the reasons for a refusal to Deliver Gas in sufficient detail to explain the refusal.

#### 5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances

To the extent that a refusal to Deliver such Gas under clause 5.7(c) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Deliver Gas, a refusal to Deliver Gas under clause 5.7(c):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

#### 5.10 No liability for refusal to Deliver Gas

Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7.

#### 5.11 No change to Contracted Capacity

- (a) Unless deemed a Curtailment under clause 5.9 and subject to the requirement to refund the Capacity Reservation Charge under clause 17.4, a refusal to Deliver Gas under clause 5.7 does not affect the calculation of the Charges payable by the Shipper under clause 20, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form.
- (b) Unless deemed a Curtailment under clause 5.9, when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) for a particular shipper, no

reduction is to be made for any capacity not made available as a result of any refusal to Deliver Gas, either generally or in respect of any specific Capacity Service, Inlet Point or Outlet Point, under any of the shippers' contracts for Capacity Service pursuant to that clause which is the material equivalent of clause 5.7.

#### 5.12 System Use Gas

The Operator must supply all system use gas which is reasonably necessary to supply services to the Shipper under this Contract.

#### 5.13 Additional Rights to Refuse to Receive or Deliver Gas

- (a) In addition to any other rights and remedies that may be available to it under this Contract or under any Law, if:
  - (i) the Governor or any other person, regulatory authority or body declares a state of emergency under the *Fuel, Energy and Power Resources Act 1972* (WA) or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
  - (ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the *Energy Coordination Act 1994* (WA) or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
  - (iii) the Minister or any other person, regulatory authority or body declares a state of emergency under the *Emergency Management Act 2005* (WA) or any successor, supplementary or similar Law and the Minister or any other person, regulatory authority or body makes regulations or exercises any power under that act which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP, (any and all of these being a **Declaration**), then the Operator may, with prior notice to the Shipper wherever practicable, refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point (or both) to the extent that the Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.
- (b) To the extent that the exercise of rights and remedies under clause 5.13(a) would not have occurred had the Operator taken the steps expected of a Reasonable and Prudent Person to prevent the relevant event occurring, or failing such prevention, to minimise the magnitude and duration of the need to refuse to Receive or Deliver Gas, the exercise of rights and remedies under clause 5.13(a):
  - (i) is a Curtailment for the purposes of this Contract; and

- (ii) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.
- (c) If the Operator exercises any rights under clause 5.13 (a), it must:
  - (i) promptly give notice to the Shipper of the occurrence giving rise to the right of the Operator to exercise such rights, and the steps that the Operator intends to take under clause 5.13 (a); and
  - (ii) resume full performance of its obligations under this Contract as soon as reasonably practicable.

#### 5.14 Shipper's gas installations

- (a) The terms "inspector", "gas installation" and "Type B gas appliance" used in this clause 5.14 have the meanings given in the *Gas Standards Act 1972* (WA) or other relevant Law.
- (b) The Shipper must, at its cost:
  - (i) in accordance with the *Gas Standards Act 1972* (WA) appoint an inspector to inspect:
    - (A) any gas installation installed by the Shipper after the Execution Date, prior to the commencement of any Delivery of Gas by the Operator; or
    - (B) any gas installation that has been altered by the Shipper after the Execution Date by the installation of a Type B gas appliance, prior to any Delivery of Gas by the Operator;
  - (ii) provide evidence of the completion of an inspection under clause 5.14 (b)(i) to the Operator, including confirmation that the gas installation is compliant with the *Gas Standards Act 1972* (WA); and
  - (iii) ensure that once installed its gas installations comply at all times with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972* (WA) and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA).
- (c) If, on an inspection under clause 5.14(b)(i) , the inspector makes an order under section 18(2)(a) of the *Energy Coordination Act 1994* (WA) or issues a notice under the *Gas Standards Act 1972* (WA), the Shipper must provide a copy of such order or notice to the Operator within 10 days of the completion of the inspection.
- (d) If any gas installation is installed by the Shipper after the Execution Date, the Operator is not obliged to commence Delivery of Gas until the gas installation is inspected in accordance with clause 5.14(b)(i) and evidence confirming compliance with the *Gas Standards Act 1972* (WA) is provided to the Operator in accordance with clause 5.14(b)(ii).

### **Inlet and outlet points (clause 6)**

6. Inlet Points and Outlet Points
- 6.1 Inlet Points and Outlet Points

- (a) The Inlet Points for this Contract are set out in the Access Request Form.
- (b) The Outlet Points for this Contract are set out in the Access Request Form.

## 6.2 Multi-shipper Agreement

The Shipper is taken to be a party to a current Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if at the Capacity Start Date there is an agreement, arrangement or understanding, whether or not in writing, between all shippers which use that Inlet Point or Outlet Point (which agreement, arrangement or understanding may include other parties which are not shippers, such as a Producer or REMCo), under which the Operator is notified of how the Gas Delivered to or Received from that Inlet Point or Outlet Point is allocated between those shippers, for as long as that agreement, arrangement or understanding continues in force.

## 6.3 Multi-shipper Inlet Point and Multi-shipper Outlet Point

- (a) For the purposes of this clause 6.3, the Gas streams delivered to a Multishipper Inlet Point by or on behalf of the Shipper and all other shippers delivering Gas at that Inlet Point are taken to be commingled at a point immediately upstream of that Inlet Point.
- (b) For any purpose under this Contract, the Shipper's proportional share of the Blended Gas at a Multi-shipper Inlet Point must be determined immediately upstream of the Inlet Point after all Gas streams are taken to have been commingled, and the Shipper's proportional share of the commingled outlet stream at a Multi-shipper Outlet Point must be determined immediately downstream of the Outlet Point.
- (c) Subject to any contrary provisions in a Multi-shipper Agreement, the Shipper's nominations, obligations and liabilities under this Contract in respect of any quantity, quality, temperature or pressure of Gas at a Multishipper Inlet Point must be determined solely in respect of the Shipper's proportional share of the Blended Gas determined under clause 6.4, and not by reference to any quantity, quality, temperature or pressure of any Gas delivered by or on behalf of the Shipper into the Blended Gas.
- (d) All shippers using an Inlet Point or an Outlet Point (as the case may be) may enter into (with or without other parties which are not shippers, such as a Producer or REMCo) a written agreement (**Multi-shipper Agreement**) with the Operator dealing with, amongst other things, the way in which Gas Delivered by them to an Inlet Point or Received by them from an Outlet Point must be allocated between them.
- (e) The Operator must promptly enter into a Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if all of the following apply to the Multi-shipper Agreement:
  - (i) if any one of A, B or C apply:
    - (A) the agreement contains a formula or mechanism for allocating Gas deliveries to the Inlet Point or Outlet Point (as the case may be) for each Gas Hour between the shippers in a manner which enables the Operator to determine the allocation by applying the formula or mechanism once it knows the total quantity of Gas delivered at that Inlet Point or Outlet Point (as the case may be) during the relevant Gas Hour;
    - (B) if the agreement relates to an Inlet Point and it provides that Gas deliveries at the Inlet Point are allocated between the

- shippers for each Gas Hour by a notice to the Operator from the Producer that delivers Gas into the Inlet Point on behalf of all shippers using that Inlet Point; or
- (C) if the agreement relates to an Outlet Point and it provides that Gas deliveries at that Outlet Point are allocated between the shippers for each Gas Hour by a notice provided to the Operator from one of the shippers at that Outlet Point or from a third party nominated by one of the shippers at that Outlet Point;
- (ii) the agreement allocates deliveries to the Inlet Point or Outlet Point (as the case may be) between the shippers for each Gas Hour;
- (iii) the agreement is between all shippers who use the Inlet Point or Outlet Point (as the case may be) and the Operator;
- (iv) the agreement provides that, as between each shipper and the Operator, for the purposes of each shipper's Gas transportation contract the Operator may rely upon the allocation of Gas delivered by the shippers at an Inlet Point, or received by the shippers at an Outlet Point, determined in accordance with the agreement, as being the quantity of Gas delivered by each of those shippers at the Inlet Point and the quantity of Gas received by each of those shippers at the Outlet Point;
- (v) the agreement provides that the Operator may, in order to give effect to a Curtailment of the Capacity of one or more of the shippers using the Outlet Point, physically reduce the Capacity of the Outlet Point by an amount up to the Contracted Capacity (or the equivalent under that shipper's contract) at that Outlet Point for the shipper to be Curtailed;
- (vi) the Operator is reasonably satisfied with the metering arrangements for any meters being used for the purpose of allocating Gas deliveries at the Inlet Point or Outlet Point (as the case may be);
- (vii) the agreement provides that the Operator is not liable to shippers where it acts in accordance with the provisions of the agreement; and
- (viii) the agreement does not impose any other obligations or liabilities upon the Operator (other than in relation to the provision of Metering Information) and does not directly or indirectly vary or amend this Contract or any other contract between a shipper and the Operator other than as specifically contemplated above.
- (f) A Multi-shipper Agreement (including a deemed Multi-shipper Agreement under the Retail Market Rules) in relation to a Notional Gate Point, may provide that:
- (i) whilst the Retail Market Rules are in force, Gas deliveries at that point are allocated by REMCo, on behalf of all shippers using that Notional Gate Point, by:
- (A) REMCo providing the Operator with an algorithm for doing so which can be applied by the Operator; or
- (B) REMCo providing the Operator a notice by electronic means within a reasonable period after each Gas Hour and after the end of each Gas Day.

- (g) Any Dispute relating to clause 6.3(e) is a Dispute on a Technical Matter and may be referred by any Party to an Independent Expert under clause 24.

#### 6.4 Allocation of Gas at Inlet Points

- (a) On any Gas Day when the Shipper is the only shipper Delivering Gas to the Operator at an Inlet Point, the Shipper is deemed to have Delivered all Gas Received by the Operator at the Inlet Point for that Gas Day and clauses 6.4(b) and 6.4(c) do not apply.
- (b) If the Shipper and any other shipper Delivers Gas to the Operator at an Inlet Point on a Gas Day then, unless the Operator duly receives written confirmation under clause 6.4(c) from or on behalf of the Shipper and every other shipper that so Delivers Gas of some other allocation of those Gas Deliveries:
  - (i) if there is a relevant Multi-shipper Agreement, the Shipper's proportional share of Gas Received by the Operator at the Inlet Point on that Gas Day will be as determined pursuant to that Multishipper Agreement; or
  - (ii) if there is no relevant Multi-shipper Agreement, the Operator (acting as a Reasonable And Prudent Person) must determine the Shipper's proportionate share of Gas Received by the Operator at that Inlet Point on that Gas Day which determination may be by (inter alia) reference to Daily Nominations at the Inlet Point for that Gas Day across all Capacity Services and Spot Transactions across all relevant shippers. The Shipper is deemed to have Delivered the proportionate share so determined of the Gas Received by the Operator at that Inlet Point on that Gas Day at a constant rate over that Gas Day.
- (c) If, by no later than 11:30 hours on the next Gas Day, the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper that Delivers Gas to that Inlet Point on a Gas Day of the quantity of Gas supplied by those shippers at that Inlet Point on that Gas Day, then whether or not there is a relevant Multi-shipper Agreement, and in the absence of evidence to the contrary, that confirmation is deemed to show the quantity of Gas Delivered by the Shipper and each such other shipper to the Operator at that Inlet Point on that Gas Day and may be relied upon by the Operator accordingly.
- (d) Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:
  - (i) first, Gas for any available P1 Service which includes Gas for any available Aggregated P1 Service;
  - (ii) second, Gas for any available Capacity Services (other than P1 Service) in the order set out in clause 8.8(a);
  - (iii) third, Gas for any available Capacity under any Spot Transaction; and
  - (iv) fourth, other gas.

#### 6.5 Allocation of Gas at Outlet Points

- (a) On any Gas Day when Shipper is the only person taking Delivery of Gas from Operator at an Outlet Point, Shipper shall be deemed to have taken Delivery

of all Gas Delivered by Operator at the Outlet Point for that Gas Day and clauses 6.5(b) and 6.5(c) shall not apply.

- (b) If Shipper and any other shipper take Delivery of Gas from Operator at the Outlet Point on a Gas Day then, if there is a Multi-shipper Agreement in relation to the Outlet Point, Shipper's proportional share of Gas at the Outlet Point must be determined under the Multi-shipper Agreement.
- (c) If there is no Multi-shipper Agreement in relation to an Outlet Point or if Shipper fails to otherwise reach agreement with other shippers at the Outlet Point in respect of the allocation of Gas Receipts or fails to provide Operator with a copy of a Multi-shipper Agreement referred to in clause 6.5(b) prior to the commencement of the relevant Gas Day, then Shipper's proportional share of Gas at the Outlet Point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Outlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper will be deemed to have Received that proportionate share so determined of the Gas Delivered to that Outlet Point on that Gas Day.
- (d) Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:
  - (i) first, Gas for any available P1 Service (which shall include any available Aggregated P1 Service);
  - (ii) second, Gas for any available Capacity Services (other than P1 Service) in the order set out in clause 8.8(a);
  - (iii) third, Gas for any available Capacity under any Spot Transaction; and
  - (iv) fourth, other gas.

#### 6.6 Design and installation of Inlet Stations

- (a) The Shipper must, at its own expense, design and install or procure the design and installation of all those parts of any required Inlet Station that are upstream of the Inlet Point.
- (b) If and whenever the Shipper and other shippers Deliver Gas to the Operator at an Inlet Point on the DBNGP, the Shipper and those other shippers must, at their joint expense allocated on such basis as they may agree, collectively design and install or procure the design and installation of all those parts of the Associated Inlet Station that are upstream of the Inlet Point.
- (c) The Shipper or, where applicable, the Shipper and other shippers must ensure that all those parts of any required Inlet Station that are upstream of the Inlet Point meet the requirements set out in clauses 6.9(a) to 6.9(f).

#### 6.7 Design and installation of Inlet Point Connection Facilities

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Inlet Point Connection Facilities. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Inlet Point Connection Facilities Works Agreement) by which the Shipper must agree either:

- (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Inlet Point Connection Facilities), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Inlet Point Connection Facilities Construction Costs); or
  - (ii) to include the Relevant Inlet Point Connection Facilities Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Inlet Point.
- (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Inlet Point Connection Facilities Works Agreement, but otherwise an Inlet Point Connection Facilities Works Agreement may be on such terms as the Operator and the Shipper agree.
- (c) The Operator must ensure that Inlet Point Connection Facilities meet the requirements set out in clauses 6.9(a) to 6.9(f).
- (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Inlet Point Connection Facilities to which the Operator has no rights of access for the purpose of maintaining and operating those Inlet Point Connection Facilities.

#### 6.8 Design and installation of Outlet Stations

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Outlet Station. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Outlet Station Works Agreement) by which the Shipper must agree either:
  - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Outlet Station), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Outlet Station Construction Costs); or
  - (ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station.
- (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Outlet Station Works Agreement, but otherwise an Outlet Station Works Agreement may be on such terms as the Operator and the Shipper agree.
- (c) The Operator must ensure that an Outlet Station meets the requirements set out in clauses 6.9(a) to 6.9(f).
- (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Outlet Station to which the Operator has no rights of access for the purpose of maintaining and operating that Outlet Station.

#### 6.9 Requirements relating to Inlet Stations and Outlet Stations

- (a) (i) The site for an Inlet Station or Outlet Station must:
  - (A) be within a security fenced enclosure;
  - (B) provide suitable vehicular access and an alternative means of personnel access;
  - (C) provide adequate space for the installation of all equipment; and
  - (D) have a concrete, sealed, or gravel surface to enable access in all weather conditions.
- (ii) Telemetry, power supply and other sensitive equipment at an Inlet Station or Outlet Station must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.
- (b) (i) Every Inlet Station or Outlet Station must provide a means, to a standard acceptable to a Reasonable and Prudent Person, of automatically:
  - (A) preventing the reverse flow of Gas through the Inlet Station or Outlet Station; and
  - (B) stopping or restricting Gas flow in the event of any excessive pressure upstream of, or any failure, leak or rupture within or downstream of, the Inlet Station or Outlet Station.
- (ii) The Operator, whenever it is permitted by any written Law or a contract to stop or reduce Gas flow (and whether or not there has been a failure, leak or rupture), may utilise for that purpose any mechanism installed under clause 6.9(b)(i).
- (iii) The Operator may at any time, for, or in anticipation of, the purposes of clause 6.9(b)(i), make any necessary connections, modifications or additions to any mechanism installed under clause 6.9(b)(i) to enable it to be utilised for the purposes of clause 6.9(b)(ii).
- (iv) The Operator must not charge the Shipper for any mechanism installed under clause 6.9(b)(i) or 6.9(b)(iii).
- (c) (i) Every Inlet Station must include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
- (ii) An Outlet Station must, whenever the Operator as a Reasonable and Prudent Person determines it to be necessary, include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
- (iii) The Operator may make a determination under clause 6.9(c)(ii) at any time, including after an Outlet Station is commissioned.
- (iv) For the purposes of clause 15.4, neither filters nor separators may be regarded as Metering Equipment.
- (d) All facilities upstream of an Inlet Point or downstream from an Outlet Point must be electrically isolated from the DBNGP by an isolating joint or flange located either:

- (i) at the Inlet Point or Outlet Point; or
- (ii) sufficiently close to the Inlet Point or Outlet Point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 6.9(d)(i), which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.
- (e) All facilities at an Inlet Station or Outlet Station must be connected to an effective earthing system of a type acceptable to a Reasonable and Prudent Person.
- (f) Any new equipment installed at an Inlet Station or Outlet Station must be compatible with existing equipment and systems.
- (g)
  - (i) The quantity of Gas passing through a Notional Gate Point in any period of time is taken to be the sum of the quantities metered as passing through all associated Physical Gate Points in that period of time.
  - (ii) Nothing in clause 6.9(g)(i) prevails over the deeming in clause 6.5 of the quantity of Gas taken by the Shipper or any other shippers at a Notional Gate Point.

#### 6.10 Notional Gate Point

- (a) There is a notional gate point for each Sub-network, at which all Outlet Point Contracted Capacity in respect of that Sub-network is taken to be located (Notional Gate Point).
- (b) All Curtailments of Capacity utilised to Deliver Gas into the Sub-network are taken to occur at the Notional Gate Point.
- (c) The Operator may, in its reasonable discretion in accordance with good industry practice, manage whether, at what times, to what extent and in what manner Gas deemed delivered at a Notional Gate Point is physically transported into the Associated Sub-network.

#### 6.11 Maintenance Charge for Inlet Stations and Outlet Stations

- (a) For the purposes of this clause 6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who use the Inlet station or Outlet station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:
  - (i) maintaining;
  - (ii) operating;
  - (iii) refurbishing;
  - (iv) upgrading;
  - (v) replacing; and

- (i) decommissioning,
- the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.
- (b) The Operator may only include costs associated with refurbishing or upgrading an Inlet Station or Outlet Station in accordance with clause 6.11(a) if:
- (i) the Shipper requests the relevant refurbishment or upgrade; or
  - (ii) the Operator determines, acting reasonably, that the refurbishment or upgrade is required in order to meet a statutory or contractual obligation.
- (c) At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.
- (d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that:
- (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause 6.11(d)(ii); and
  - (ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper does not have Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month.
- (e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a Outlet Station that is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point for the time being bears to the sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point for the time being.
- (f) Whenever a new Outlet Station is installed, or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who receive Gas from the Operator at the Notional Gate Point or Outlet Station, including shippers with grants of Capacity at the Notional Gate Point or Outlet Station made before the date of installation or enhancement.

- (g) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point or an Outlet Station, the Operator may have regard to the likely impact of clause 6.11(f).

#### 6.12 Provisions relating both to Relevant Construction Costs and Maintenance Charge

- (a) Nothing in clauses 6.6, 6.8 or 6.11 affects or derogates from charges payable under any other agreement between the Operator and the Shipper with respect to the installation, operation and maintenance of Inlet Stations and Outlet Stations and any upgrades, modifications and expansions to Inlet Points or Outlet Points.
- (b) The Operator is not entitled to impose any charges under clauses 6.6, 6.8 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995. Where such incremental costs are incurred, the Operator is entitled to impose charges on the Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause 6.11(d).

#### 6.13 Contribution Agreement

- (a) The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point, to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date if:
  - (i) the Inlet Point or Outlet Point is Associated with an Existing Station;
  - (ii) in the case of an Outlet Point, it is:
    - (A) owned by the Operator or an Operator Entity; or
    - (B) leased by the Operator or an Operator Entity under an equipment lease, and the Shipper has entered into a Contribution Agreement in respect of that Outlet Point; or
  - (iii) the Inlet Point or Outlet Point is not of a type referred to in clauses 6.13(a)(i) or 6.13(a)(ii)(A) or 6.13(a)(ii)(B) and the Shipper has reached an agreement, arrangement or understanding with the owner of the Inlet Point or Outlet Point, whether or not in writing, to use that Inlet Point or Outlet Point.

For the purposes of clause 6.13(a)(ii), an Operator Entity excludes any Related Bodies Corporate of Alcoa or Alinta Limited.

- (b) (i) a Contribution Agreement in respect of an Outlet Point is an agreement between the Operator and the Shipper by which the Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point, determined in accordance with clause 6.11;
- (ii) the Shipper's proportion of the Maintenance Charge is determined under clause 6.11(d), or is otherwise agreed in the Contribution Agreement; and
- (iii) the Shipper agrees that another shipper (New Shipper) may Receive Gas from the relevant Outlet Point, if:

- (A) the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause 6.11(d); and
- (B) the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper under clause 6.13(b)(iii)(A) so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.
- (c) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, a Contribution Agreement.
- (d) Nothing in this clause 6.13 requires the Shipper to enter into an agreement with any person other than the Operator.

#### 6.14 Shipper Specific Facility Agreement

The Operator must not grant to any shipper (New Shipper) access to or use of (or enter into any agreement or arrangement to do so) any Inlet Point, Outlet Point, Associated Inlet Station or Associated Outlet Station, or related equipment (Facility) which is or has been the subject of an agreement or arrangement under which the Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility (Facility Agreement) without ensuring that:

- (a) subject to clause 6.14(b), the New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.13(b)(iii); and
- (b) the Operator agrees to rebate to the Shipper the contributions it receives from the New Shipper under clause 6.14(a) in a manner consistent with clause 6.13(b)(iii).

#### 6.15 Total Physical Capacity

- (a) The Operator must not reduce or allow the reduction of the Total Physical Capacity of an Inlet Point or an Outlet Point, or a New Inlet Point or a New Outlet Point or any Inlet Point or Outlet Point to which or from which the Shipper is regularly Receiving Gas.
- (b) Subject to the terms of any Multi-shipper Agreement, and subject to the rights of other shippers with a contracted Capacity Service at an Inlet Point or Outlet Point, the Shipper may use all the Total Current Physical Capacity of an Inlet Point or Outlet Point.

#### 6.16 Certain installations taken to comply

Despite any other provisions of this Contract:

- (a) each Existing Station;
- (b) all facilities, ancillary equipment and services at each Existing Station; and
- (c) the metering arrangements entered into with the State Energy Commission of Western Australia prior to 1 January 1995 in respect of each Existing Station, are taken to comply in all respects with the provisions of this Contract, including clauses 6.6 to 6.10.

## ***Operating Specifications (clause 7)***

### 7. Operating Specifications

#### 7.1 Gas must comply with Gas specifications

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must comply with the Gas specifications set out in Item 1 of Schedule 3.

#### 7.2 Gas to be free from certain substances

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must be free, by normal commercial standards (as reasonably determined by the Operator), from dust and other solid or liquid matters, waxes, gums and gum forming constituents, aromatic hydrocarbons, hydrogen, mercury and any other substance or thing which might cause injury to or interfere with the proper operation of any equipment through which it flows.

#### 7.3 Gas to be free from objectionable odours

Gas Delivered by the Shipper to the Operator at an Inlet Point must be free, by normal commercial standards, from objectionable odours.

#### 7.4 Gas temperature and pressure

(a) The minimum and maximum temperatures and the minimum and maximum pressures at which the Shipper may Deliver Gas to the Operator at the Inlet Points, and the Operator may Deliver Gas to the Shipper at the Outlet Points, are those set out in Item 2 of Schedule 3.

(b) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Item 2 of Schedule 3.

(c) If at any time:

(i) the minimum and the maximum temperature and the minimum and maximum pressure of an Inlet Point or an Outlet Point are not set out in Item 2 of Schedule 3; and

(ii) the Shipper Delivers Gas to the Operator at that Inlet Point or the Shipper Receives Gas from the Operator at that Outlet Point,

then the Shipper is entitled to Deliver Gas at that Inlet Point or obliged to Receive Gas at that Outlet Point under this Contract,

(iii) if the Operator is then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator is Receiving Gas from or Delivering Gas to those other shippers; or

(iv) if the Operator is not then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator was last entitled to Deliver Gas or obliged to Receive Gas at that Inlet Point or Outlet Point under the terms of a contract with any other shipper.

#### 7.5 Notice of Out-of-Specification Gas

If either Party becomes aware that any Out-of-Specification Gas is to enter or has entered the DBNGP at an Inlet Point or is to leave or has left the DBNGP at an Outlet Point, it must as soon as reasonably practicable notify the other Party in accordance with clause 29.1(a).

#### 7.6 Operator and Shipper may refuse to Receive Out-of-Specification Gas

- (a) Subject to any agreement under clauses 7.7 and 7.9, the Operator may at any time without penalty refuse to Receive from the Shipper at an Inlet Point, and the Shipper may at any time without penalty refuse to Receive from the Operator at an Outlet Point, any Out-of-Specification Gas.
- (b) The Shipper is entitled to a refund of Capacity Reservation Charges for any Capacity it is unable to use on a Gas Day as a result of the Shipper refusing any Out-of-Specification Gas under clause 7.6(a) to the extent that the Operator caused the Gas in the DBNGP to be Out-of-Specification Gas.

#### 7.7 Operator may Receive Out-of-Specification Gas

The Operator may, at its own risk, agree to Receive Out-of-Specification Gas from the Shipper at an Inlet Point on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.

#### 7.8 Shipper's Liability for Out-of-Specification Gas

If any Out-of-Specification Gas Delivered by or on behalf of the Shipper enters the DBNGP without the Operator's agreement under clause 7.7:

- (a) the Shipper is liable to the Operator for any loss or damage arising in respect of the Out-of-Specification Gas; and
- (b) Without limitation on any of its other rights under any Law, the Operator is, to the extent necessary to allow it to deal with that entry of Out-of-Specification Gas:
  - (i) entitled to vent the Out-of-Specification Gas, and the Shipper is deemed not to have Delivered a quantity of Gas at the Inlet Point equivalent to the quantity of all Gas necessarily vented by the Operator; and
  - (ii) relieved of any obligation to Deliver Gas to the Shipper by an amount no greater than the quantity of Gas vented by the Operator under clause 7.8(b)(i) on the basis that the Shipper is deemed not to have Delivered that quantity of Gas at the Inlet Point.
- (c) The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Shipper's liability under clause 7.8(a).

#### 7.9 Shipper may Receive Out-of-Specification Gas

- (a) The Shipper may at its own risk, agree to Receive Out-of-Specification Gas from the Operator at an Outlet Point, on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.
- (b) If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9(a), then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas by delivering Out-of-Specification Gas to the Inlet Point, the Operator is liable to the Shipper for Direct Damage arising in respect of the Out-of-Specification Gas.

## 7.10 Change of Law

- (a) If:
- (i) at any time during the term of this Contract there is a change in any Law which requires the Operator to Receive Gas with an operating specification for one or more components outside the Operating Specifications applying to the component or those components of the Operating Specifications (as may be amended from time to time pursuant to this clause 7.10) (Permissible Specifications);
  - (ii) there is no shipper with an Inconsistent Existing Contractual Specification; and
  - (iii) the Operator actually Receives Gas outside the Operating Specifications but within the Permissible Specifications to such an extent that it is unable to comply with the Operating Specifications for an Outlet Point set out in Schedule 3, then the Operator must notify the Shipper that:
  - (iv) the Inlet Point Operating Specifications (and Item 1 of Schedule 3) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Inlet Point Operating Specification, for the operating specification of that component of the Inlet Point Operating Specification; and
  - (v) the Outlet Point Operating Specifications (and Item 1 of Schedule 3) is amended so as to broaden the specification for each component which has been amended in respect of the Inlet Point Operating Specification, by the same amount as the Inlet Point Operating Specification has been broadened by the operation of this clause 7.10.
- (b) In this clause 7.10 Inconsistent Existing Contractual Specification means:
- (i) in relation to an Inlet Point, if the amendments to the Inlet Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Producer Contract; or
  - (ii) in relation to an Outlet Point, if the amendments to the Outlet Point Operating Specifications were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Gas Supply Contract.

## 7.11 Amendment Notice

The notice under clause 7.10 must:

- (a) contain details of the change in Law;
- (b) specify the amended operating specification for each component of the Inlet Point Operating Specification;
- (c) specify the amended operating specification for each component of the Outlet Point Operating Specification; and
- (d) specify the amendments to Item 1 of Schedule 3 which are made to give effect to the amended operating specifications for each component of the Inlet Point Operating Specification and the Outlet Point Operating Specification.

## 7.12 Odorisation

The Operator will Deliver Gas to the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004 odorised to the specification set out in the Gas Standards Regulations 1983 (WA).

## 7.13 Weighted average gas flows

- (a) If on a Gas Day the Individual Gas Delivered by the Shipper to an Inlet Point that is a Multi-shipper Inlet Point is included in Blended Gas that meets the Blended Specifications then, despite clause 7.6, the Operator must Receive the Individual Gas from the Shipper even if the Individual Gas is Out-of-Specification Gas.
- (b) For the purpose of this clause 7.13:
  - (i) Blended Gas means all Gas Delivered to an Inlet Point under Relevant Contracts as a commingled stream and which is taken for the purposes of clause 6.3 to have been commingled at a point immediately upstream of that Inlet Point;
  - (ii) Blended Specifications means the notional operating specifications applying to the Blended Gas determined as a weighted average of the operating specifications for the relevant Inlet Point applying under all Relevant Contracts calculated by weighting:
    - (A) the value of each component comprising the Operating Specifications for the Inlet Point under each Relevant Contract; by
    - (B) the scheduled Nominations at the Inlet Point for the Gas Day across all Capacity Services under each Relevant Contract;
  - (iii) Individual Gas means Gas Delivered into a Blended Gas Stream immediately prior to it becoming Blended Gas; and
  - (iv) Relevant Contracts means the contracts for each shipper who is delivering Gas to the Inlet Point on that day.

## **Nominations (clause 8)**

### 8. Nominations

#### 8.1 Shipper may delegate to a Producer or an Appointed Agent

To the extent that this Contract prescribes certain things to be done by the Shipper which relate to Gas being Received by the Operator at an Inlet Point, the Shipper may by agreement with a Producer or an Appointed Agent, appoint the Producer or the Appointed Agent (as the case may be) to do those things, but nothing in any such agreement relieves the Shipper of its obligations to the Operator under this Contract.

#### 8.2 Requests for advance information

- (a) To assist in its planning and forecasting, the Operator may from time to time, acting as a Reasonable and Prudent Person, request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) in good faith of the Shipper's likely Nominations which information will be governed by the provisions of clause 28.

- (b) The Shipper must in good faith make reasonable endeavours to comply with any request made by the Operator under clause 8.2(a).
- (c) Except as provided in clause 8.2(d) below, the Shipper may, without penalty, make Nominations which differ materially from any estimates provided by it under clause 8.2(a).
- (d) Nothing in clause 8.2(c) limits any action against the Shipper if the Shipper fraudulently or negligently provides materially false information to the Operator under clause 8.2(a).

#### 8.3 Shipper's Daily Nominations do not affect Contracted Capacities

The scheduling of a Daily Nomination under this clause 8 does not affect or otherwise change the Shipper's Contracted Capacity.

#### 8.4 Nominations and Renominations must be in good faith

- (a) If the Shipper makes an Advance Nomination, an Initial Nomination, or a Renomination, it must do so in good faith, and must nominate for an amount of the Capacity Service which is the Shipper's best estimate as a Reasonable and Prudent Person of the amount of the Capacity Service it proposes to utilise.
- (b) The Operator and the Shipper acknowledge that the purpose of the Shipper making an Advance Nomination, an Initial Nomination or a Renomination is to:
  - (i) assist the Operator schedule compressor use on the DBNGP; and
  - (ii) provide a basis for the Operator to manage any Point Specific Curtailments.

#### 8.5 Operator to make available bulletins of available Capacity

- (a) The Operator must, on regular occasions during each Gas Day (sufficient to assist the Shipper in making its Initial Nomination, and any Renomination), make available on the CRS a bulletin specifying:
  - (i) for at least that Gas Day and the following Gas Day, the amount of Capacity available or anticipated to be available for Nomination or Renomination;
  - (ii) subject to obtaining the relevant shipper's consent, details of any Tradeable Capacity to be made available under clause 27.5; and
  - (iii) disclosures required by Law.
- (b) No obligation to schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's RP1 Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

#### 8.6 Shipper's Initial Nomination

- (a) The Shipper must, by notice to the Operator given no later than 14:00 hours on any Gas Day, nominate for the following Gas Day the quantity of Gas that the Shipper requires to Deliver to the Operator at each Nominated Inlet Point, and the quantity of Gas that the Shipper requires to Receive from the

Operator at each Nominated Outlet Point in the RP1 Service (Initial Nomination).

- (b) In addition to the information required by clause 8.6(a), the Shipper's Initial Nomination must:

- (i) set out:

- (A) the sum of those Nominations across all Inlet Points; and
    - (B) the sum of those Nominations across all Outlet Points,

which sums must be equal, except where the Shipper seeks to reduce any Accumulated Imbalance in accordance with clause 9.

- (ii) for each Nominated Inlet Point, identify the Producer or Producers which is or are to supply Gas to the Shipper for Delivery to the Operator and, if there is more than one, the quantity to be provided by each.

#### 8.7 Default provision for Daily Nomination

If the Shipper does not make an Initial Nomination complying with clause 8.6 or an Advance Nomination complying with clause 8.16 for a Gas Day for Capacity at an Inlet Point or at an Outlet Point, then the Shipper's Daily Nomination for that Gas Day for the Inlet Point or the Outlet Point (as the case may be) is taken as equal to the Shipper's Daily Nomination for the previous Gas Day at that Inlet Point or Outlet Point (as the case may be).

#### 8.8 Nominations priority

- (a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services (from superior to inferior) is, so far as is relevant to the Inlet Point or Outlet Point, set out in the column of Schedule 6 headed "Point Specific Curtailment" as supplemented by this clause 8 and clause 17.9.
- (b) Each category of Capacity Service described in a row of the Curtailment Plan (as relevant to the particular circumstance) refers separately to a **Type of Capacity Service** such that, for example, Alcoa's Priority Quantity is a **Type of Capacity Service**.

#### 8.9 Scheduling of Daily Nominations

- (a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9, for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 Capacity for each Nominated Inlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for P1 Service at that Inlet Point; and
  - (ii) subject to clauses 8.9(c) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Inlet Point.

- (c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service across all Inlet Points exceed the Shipper's Total Contracted P1 Capacity across all Inlet Points.
- (d) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service may exceed the Shipper's Total Contracted P1 Capacity across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.
- (e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 Capacity at each Nominated Outlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for P1 Service at that Outlet Point; and
  - (ii) subject to clauses 8.9(f) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Outlet Point.
- (f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service across all Outlet Points exceed the Shipper's Total Contracted P1 Capacity across all Outlet Points.
- (g) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service may exceed the Shipper's Total Contracted P1 Capacity across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

#### 8.10 Scheduling where there is insufficient available Capacity

- (a) In all cases, subject to it being Operationally Feasible, and unless this Contract provides otherwise (for example without limitation in clauses 8.9(b)(i), 8.9(b)(ii), 8.9(e)(i) and 8.9(e)(ii)), if for any Gas Day more than one shipper has made Nominations under different Types of Capacity Service or under the same Type of Capacity Service for delivery or receipt of Gas at an Inlet Point or an Outlet Point and the Operator determines that it is not Operationally Feasible to meet all those Nominations, the Operator must Curtail the shippers' Contracted Capacities and the available Capacity (if any, as determined by the Operator, acting as a Reasonable and Prudent Person) must be scheduled in respect of Capacity Services relating to those Nominations for that Inlet Point or Outlet Point (as the case may be) in accordance with the provisions of clause 17.9.
- (b) Subject to clause 17.9, if the Operator schedules a Capacity Service for P1 Service to the Shipper which is less than the Shipper's Initial Nomination for P1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference between the Shipper's Contracted P1 Capacity and the Capacity Service scheduled by the Operator for P1 Service for that Gas Day.

### 8.11 Shipper may give Renomination notice

The Shipper may once in respect of each Renomination time (as set out in clause 8.12) for a Gas Day request a variation of its Daily Nomination for the Gas Day (Renomination) for one or more Inlet Points or for one or more Outlet Points, by giving notice to the Operator specifying the amount and duration (which may be any duration up to and including the balance of the Gas Day in respect of which the Renomination is made) of the requested variation.

### 8.12 Times for Renomination and scheduling of revised Daily Nominations

- (a) Subject to clause 8.12(c), the Renomination times for each Gas Day are 07:00 hours (at which time Renominations may be given for the Gas Day just about to begin, not the Gas Day just about to end), and 12:00 hours and 20:00 hours in the Gas Day.
- (b) Subject to clause 8.12(c), if under clause 8.14 the Operator is required to schedule the Capacity Service in respect of a revised Daily Nomination in response to the Shipper's Renomination received prior to a Renomination time, the Operator must use reasonable endeavours to effect that scheduling within 1 hour after the Renomination time.
- (c) The Operator may, acting as a Reasonable and Prudent Person, from time to time by notice to the Shipper (which same notice must be given to all shippers) supplement or vary any one or more of the times prescribed in clause 8.12(a) or the period prescribed in clause 8.12(b).
- (d) A notice under clause 8.12(c) may be expressed to continue indefinitely or for a specified time, and may revoke, substitute or amend a previous notice.

### 8.13 Renominations reducing Daily Nomination

If a Renomination seeks to reduce the Shipper's Daily Nomination, the Operator must, by notice to the Shipper, schedule the relevant Capacity Service in respect of the Shipper's Daily Nomination in accordance with the Renomination.

### 8.14 Renominations increasing Daily Nomination

- (a) The Operator may only refuse to schedule the increased Capacity Service required in respect of the Shipper's Daily Nomination in response to a Renomination:
  - (i) if accommodating that increase is not Technically Practicable; or
  - (ii) to the extent that, after applying clauses 8.14(d) and 8.14(e) there is insufficient unscheduled Capacity to satisfy the Renomination for that Inlet Point or Outlet Point.
- (b) Subject to clause 8.14(a), if the Shipper's Renomination seeks to increase its Daily Nomination, the Operator must within the period prescribed in clause 8.12(b) (as varied, if applicable, by notice under clause 8.12(c)) by notice to the Shipper schedule the increased Capacity Service required in respect of revised Daily Nominations.
- (c) A notice under clause 8.14(b) must specify the period in respect of which the revised Daily Nominations are to apply.
- (d) Clause 8.9 applies (with appropriate modifications) to the Operator's scheduling of the increased Capacity Service required in respect of revised Daily Nominations under clause 8.14(b).

- (e) Without otherwise limiting the Operator's discretion in relation to Curtailment, the Operator must, to the extent practicable and Operationally Feasible in the circumstances, Curtail any Capacity in a Type of Capacity Service (the first Type of Capacity Service), whenever it is necessary to do so in order to satisfy any shipper's Renomination for Reserved Capacity in relation to a Type of Capacity Service which has priority over the first Type of Capacity Service according to the order of priority set out in the column of the Curtailment Plan headed "Point Specific Curtailment".

#### 8.15 Default provision for Renomination process

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by the Operator not providing information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then the Shipper's Daily Nominations are to remain unchanged from the previous Gas Day's nomination (but if the Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.12(b) it must do so).

#### 8.16 Aggregated P1 Service

Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for P1 Service which is, according to clause 8.16, deemed to be Aggregated P1 Service, shall be deemed to be a Nomination for a separate Type of Capacity Service which service ranks equally in priority with all other Aggregated P1 Service. For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated P1 Service shall be excluded from the P1 Service.

#### 8.17 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

Subject to this clause 8, Shipper is entitled to nominate that Gas be Delivered under Shipper's P1 Service:

- (a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for P1 Services; and
  - (b) in excess of Shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,
- (being Aggregated P1 Service).

#### 8.18 Shipper's Advance Nomination

- (a) The Shipper may nominate in advance for each Gas Day in any week or any month by giving notice complying with the requirements of clause 8.6 (with appropriate changes) for each of those Gas Days (**Advance Nomination**).
- (b) The Advance Nomination must be given:
  - (i) no later than 17:00 hours on the Wednesday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) at least 6 Working Days before the start of the nominated month (in the case of a Nomination a month in advance).

- (c) The Operator must, in response to an Advance Nomination, schedule a Daily Nomination for each nominated day determined in accordance with the provisions of clauses 8.9, and 8.8:
  - (i) no later than Friday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) within 5 Working days of receipt of the Advance Nomination (in the case of a Nomination a month in advance).
- (d) The Shipper may submit an Initial Nomination for a Gas Day in respect of which it has made an Advance Nomination and been scheduled a Daily Nomination, in which case:
  - (i) the Initial Nomination is not a Renomination; and
  - (ii) the Shipper's Advance Nomination for the Gas Day is of no effect.

## ***Imbalances (clause 9)***

### 9. Imbalances

#### 9.1 Operator to maintain balance

The Operator may do all things expected of a Reasonable and Prudent Person to maintain a balance between total Gas inputs to, and total Gas outputs from, the DBNPG, including (subject to the provisions of this clause and this Contract) restricting the quantity of Gas it Delivers to the Shipper at an Outlet Point, and restricting the quantity of Gas it Receives from the Shipper at an Inlet Point in accordance with this Contract.

#### 9.2 Shipper to maintain balance

On each Gas Day, the Shipper must endeavour to maintain an Accumulated Imbalance of zero, including restricting the quantity of Gas it Delivers to the Operator at an Inlet Point, and restricting the quantity of Gas it Receives from the Operator at an Outlet Point.

#### 9.3 Shipper's Accumulated Imbalance

At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus the Shipper's Daily Imbalance on the Gas Day. The Accumulated Imbalance at the Capacity Start Date is zero.

#### 9.4 Notice of the Shipper's imbalances

Before 13:30 hours on each Gas Day, except the Contract Commencement Date, the Operator must provide to the Shipper notice (Accumulated Imbalance Notice) of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day, and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate.

#### 9.5 Accumulated Imbalance Limit

- (a) The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's

Capacity Services (including P1 Service and any Capacity under Spot Transactions) for that Gas Day.

- (b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished then, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition:

- (i) will have a material adverse impact on the integrity or operation of the DBNRP; or
- (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for P1 Capacity, B1 Capacity, P1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,

then the Operator (acting as a Reasonable And Prudent Person) may, subject to clause 9.5(f):

- (iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or (ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and/or
  - (iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.
- (c) If the Operator issues a notice under this clause 9.5 and the Shipper's Accumulated Imbalance is:
    - (i) positive, the Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or
    - (ii) negative, the Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit.
  - (d) If, after the Operator issues a notice under clause 9.5(b)(iii):
    - (i) subject to clause 9.5(d)(ii), the absolute value of the Shipper's Accumulated Imbalance is reducing each Gas Day, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and
    - (ii) where the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii).
  - (e) If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the

purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

(f) The Operator may not:

- (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
- (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).

(g) The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit in accordance with clause 20 in respect of each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

(h) No Excess Imbalance Charge under clause 9.5(e) is payable in respect of that part (if any) of the imbalance that is attributable to:

- (i) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
- (ii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
- (iii) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(h)(i) or 9.5(h)(ii),

#### 9.6 Balancing in particular circumstances

- (a) If the Parties anticipate a failure of the Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit, in order to enable the Shipper to deposit additional Gas in the DBNGP in advance of that failure.
- (b) The Parties may, during a period in which the Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow the Shipper to exceed the Accumulated

Imbalance Limit, whether or not the Shipper has deposited additional Gas under clause 9.6(a) in anticipation of the failure of the Shipper's Gas supply.

- (c) Subject to clause 9.6(d), an agreement under clauses 9.6(a) or 9.6(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate. The agreement must be in writing (which may be contained in an email) and must be in place before the Shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.
- (d) The Operator may require an agreement under clause 9.6(b) to contain any reasonable provisions it sees fit, including any or all of the following provisions:
  - (i) that the Operator may from time to time during the duration of that agreement, by notice to the Shipper, specify a limit for the Shipper's Accumulated Imbalance, beyond which limit the Operator may refuse to Receive Gas from the Shipper at an Inlet Point or Deliver Gas to the Shipper at an Outlet Point, or both; and
  - (ii) that upon resumption of the Shipper's Gas supply, the Operator may require the Shipper to restore the absolute value of its Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.
- (e) Nothing in this clause compels a Party to enter into an agreement under clauses 9.6(a) or 9.6(b).

#### 9.7 Remedies for breach of imbalance limits

Except as provided in clause 9.9, the Operator may not exercise any rights or remedies against the Shipper for exceeding the Accumulated Imbalance Limit, other than:

- (a) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
- (b) to refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
- (c) any combination of the rights and remedies in clauses 9.7(a) and 9.7(b).

The Parties agree that, because the rights and remedies set out in this clause 9.7 apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.7, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

#### 9.8 Trading in imbalances

- (a) The Shipper may exchange all or part of its Accumulated Imbalances with another shipper on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts the Shipper has with the Operator for Capacity Services, in accordance with this clause 9.8.
- (b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator by 12:00 hours on the next Working Day following receipt from the Operator of the Shipper's Accumulated Imbalance Notice in

accordance with clause 9.4 for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.

- (c) On receipt of a notice under clause 9.8(b), the Operator must calculate adjustments in the Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.

#### 9.9 Cashing out imbalances at end of each Gas Month

- (a) The balancing process prescribed in this clause 9.9 is to be undertaken at the Capacity End Date.
- (b) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a positive number then, the Operator is to pay a fair market price to the Shipper for that Gas.
- (c) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a negative number, the Shipper is to pay a fair market price to the Operator for that Gas.

#### 9.10 Charges do not affect Daily Delivery

Nothing in this clause 9 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

### **Peaking (clause 10)**

#### 10. Peaking

##### 10.1 Hourly Peaking Limits

The Hourly Peaking Limits are:

- (a) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points on the DBNGP;
- (b) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10; and
- (c) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10B, (each of the limits in (a), (b) and (c) being an Hourly Peaking Limit).

##### 10.2 Shipper to stay within Hourly Peaking Limit

On each Gas Day, the Shipper must do all things expected of a Reasonable and Prudent Person to ensure that:

- (a) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points on the DBNGP does not exceed the relevant Hourly Peaking Limit described in clause 10.1(a);
- (b) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10 does not exceed the relevant Hourly Peaking Limit described in clause 10.1(b); and

- (c) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10B does not exceed the relevant Hourly Peaking Limit described in clause 10.1(c).

### 10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time the Shipper exceeds an Hourly Peaking Limit the Operator (acting as a Reasonable and Prudent Person), considers that a continuation of that condition:
  - (i) will have a material adverse impact on the integrity or operation of the DBNPG; or
  - (ii) will adversely impact, or is likely to adversely impact, on any other Capacity, or any Other Reserved Service,

the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:

- (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or (ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or procure compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and
  - (iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Quantity is within the Hourly Peaking Limit.
- (b) If the Operator issues a notice to the Shipper under clause 10.3(a)(iii) and the Hourly Peaking Limit being exceeded relates to Outlet Points:
    - (i) on the DBNPG generally, the Operator must issue a similar notice to all shippers;
    - (ii) in Pipeline Zone 10, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10; or
    - (iii) in Pipeline Zone 10B, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10B,

which are exceeding their Hourly Peaking Limit or the equivalent under their relevant contracts.
  - (c) If, after Operator issues a notice under clause 10.3(a)(iii):
    - (i) subject to clause 10.3(b), Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and
    - (ii) Shipper's Hourly Quantity calculated across the relevant outlet points is not within the Hourly Peaking Limit by the end of the following Gas Hour, Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).

- (d) If the Shipper does not comply and is not deemed pursuant to clause 10.3(c) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that the Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, the Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:
  - (i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause 10.5(e)); or
  - (ii) in excess of the Hourly Peaking Limit up to the Outer Hourly Peaking Limit (if a notice has been issued pursuant to clause 10.5(e)), in accordance with clause 20.
- (e) If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which the Shipper is no longer exceeding any of the Hourly Peaking Limits (after which the Shipper is not liable to pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii)).
- (f) If the Shipper exceeds more than one Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.3(d) is calculated using only the amount of the largest excess.
- (g) No Hourly Peaking Charge is payable in respect of any Gas Hour in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.
- (h) The Operator may not:
  - (i) issue a notice pursuant to clause 10.3(a)(iii) or refuse to Deliver Gas pursuant to clause 10.3(a)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Hourly Peaking Limit; or
  - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Deliver Gas pursuant to clause 10.3(a)(iv) without having issued a notice in accordance with clause 10.3(a)(iii).

#### 10.4 Charges do not affect Daily Delivery

Nothing in this clause 10 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

#### 10.5 Outer Hourly Peaking Limit

- (a) The Shipper's Outer Hourly Peaking Limits are:
  - (i) 140% of the aggregate MHQ calculated across all outlet points on the DBNPG;

- (ii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10; and
  - (iii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10B,
- (each of the limits in (i), (ii) and (iii) being an ***Outer Hourly Peaking Limit***).
- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.5(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.
  - (c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.5(b) is calculated using only the amount of the largest excess.
  - (d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.5(b) in respect of a Gas Hour, then the Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.5(b).
  - (e) If at any time the Shipper's take of Gas is such that the Operator, acting as a Reasonable And Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.5(e) is only valid for the purposes of clause 10.5(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

#### 10.6 Remedies for breach of peaking limits

The Operator must not exercise any rights or remedies against the Shipper for exceeding an Hourly Peaking Limit, other than:

- (a) for breach of clause 10.3(a)(iii) limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 10.3(a)(iii) is reduced by any Hourly Peaking Charge or Hourly Peaking Charges paid by the Shipper in respect of that failure;
- (b) to recover the Hourly Peaking Charge or Hourly Peaking Charges where permissible by and in accordance with this clause 10;
- (c) to refuse to Deliver Gas to the Shipper at an Outlet Point (in accordance with clause 10.3(a)(iv)); or
- (d) any combination of clauses 10.6(a), 10.6(b) and 10.6(c).

The Parties agree that, because the rights and remedies set out in this clause 10.6 apply across all of the Shipper's Capacity Services, when in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 10.6, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

### ***Overrun (clause 11)***

#### 11. Overrun

### 11.1 Overrun Charge

- (a) In respect of each GJ of Overrun Gas Received by the Shipper on a Gas Day, the Shipper must pay an Overrun Charge calculated by applying the Overrun Rate to the total Overrun Gas Received by the Shipper on that Gas Day in accordance with clause 20.
- (b) The Overrun Rate is the greater of:
  - (i) 115% of the P1 Tariff; and
  - (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,

**(Overrun Rate).**
- (c) All Overrun Gas Delivered on a Gas Day must be included in the calculation of the Shipper's Hourly Quantities, Total Inlet Quantity and Total Outlet Quantity for that Gas Day.

### 11.2 Unavailability Notice

- (a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for P1 Capacity, any Other Reserved Service or allocated Spot Capacity. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.
- (b) The Operator must use reasonable endeavours to give the Shipper and all other shippers advance notice (which may be by written notice or otherwise) which is reasonable in the circumstances of any unavailability or limited availability of Overrun Gas.
- (c) Any Curtailment Notice issued under clause 17 for any period is taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:
  - (i) is a Point Specific Curtailment;
  - (ii) does not affect Gas Transmission Capacity generally; and
  - (iii) does not affect the Inlet Point or Outlet Point at which the Overrun Gas is being Received by the Shipper.

### 11.3 Content of an Unavailability Notice

An Unavailability Notice:

- (a) may apply to the Gas Day on which the Unavailability Notice is issued even though, in order to comply with such an Unavailability Notice, the Shipper must cease taking Delivery of Overrun Gas upon receipt of the notice in accordance with clause 11.4;

- (b) must identify the Gas Day or Gas Days to which the notice applies;
- (c) may be expressed to continue indefinitely or for a specified period;
- (d) may revoke, substitute or amend a previous Unavailability Notice; and
- (e) must state the quantity of Overrun Gas which is available to the Shipper.

#### 11.4 Compliance with Unavailability Notice

- (a) The Shipper must use its best endeavours to comply immediately, and must:
  - (i) as soon as practicable and in any event no later than one hour after receipt of the notice to comply, or procure compliance, with an Unavailability Notice, by ensuring that the total of its Overrun Gas for each Gas Day to which the Unavailability Notice applies does not exceed the quantity of Overrun Gas (if any) indicated by the Unavailability Notice to be available to the Shipper; and
  - (ii) as soon as practicable after receipt of the notice to comply, provide notice to the Operator advising of the measures being taken to ensure compliance with 11.4(a)(i).

#### 11.5 Operator may refuse to Deliver Overrun Gas

In addition to any other rights the Operator has to refuse to Deliver Gas under clause 5.7, the Operator may refuse to Deliver Overrun Gas to the Shipper at an Outlet Point if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4.

#### 11.6 Unavailable Overrun Charge

In addition to any charge payable under clause 11.1, if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4, the Shipper must pay, in accordance with clause 20, an Unavailable Overrun Charge at the Unavailable Overrun Rate for each GJ of Gas taken by the Shipper in excess of the quantity of Overrun Gas specified in the Unavailability Notice as being available to the Shipper.

#### 11.7 Saving and damages

- (a) Nothing in this clause 11 limits, affects or prejudices the Operator's right to refuse to Receive Gas under clause 5.3 or to refuse to Deliver Gas under clause 5.7.
- (b) The Shipper's liability to the Operator for any Direct Damage suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with an Unavailability Notice is reduced by any Unavailable Overrun Charge paid by the Shipper under clause 11.6 in respect of that failure.
- (c) The Shipper is not liable to pay the Overrun Charge under clause 11.1 and the Unavailable Overrun Charge under clause 11.6 in respect of the same quantity of Overrun Gas.
- (d) The Shipper is not liable to pay the Unavailable Overrun Charge with respect to any Gas Day in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or

- (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect but only to the extent that the information is incorrect, but is liable to pay the Overrun Charge in respect to the relevant quantity of Overrun Gas as if an Unavailability Notice had not been issued.
- (e) The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.

## ***Additional Rights and Obligations of Operator (clause 12)***

### 12. Additional Rights and Obligations of Operator

#### 12.1 Commingling of Gas

The Operator will have the right to commingle the Gas Delivered by the Shipper at an Inlet Point with other Gas in the DBNGP during transportation and is entitled to Deliver different molecules to the Shipper at the Outlet Points from those received at the Inlet Points.

#### 12.2 Processing

Subject to its obligations under this Contract, the Operator may (but is not obliged to) compress, cool, heat, clean and apply other processes to Gas during transportation acting as a Reasonable and Prudent Person consistent with its operation of the DBNGP.

#### 12.3 Operation of Pipeline System

- (a) In operating, maintaining or expanding the DBNGP, the Operator must:
  - (i) comply with all its obligations under this Contract; and
  - (ii) use Good Gas Industry Practice.
- (b) Except as provided in clause 12.3(a), the Operator may decide the manner in which it will operate the DBNGP.
- (c) In acting under this Contract, the Shipper must use Good Gas Industry Practice.

#### 12.4 Delivery of Gas

The Operator may (but only if the Operator chooses to do so) satisfy its obligation to enable gas to be Delivered to the Shipper by using any means other than the DBNGP, provided that the Operator otherwise meets its obligations under this Contract.

## ***Control, Possession and Title to Gas (clause 13)***

### 13. Control, Possession and Title to Gas

#### 13.1 Warranty of Title

- (a) The Shipper warrants that, at the time it Delivers Gas to the Operator at an Inlet Point, the Shipper has good title to the Gas free and clear of all liens, encumbrances and claims of any nature inconsistent with the Operator's operation of the DBNGP.
- (b) Subject to clause 13.1(a) being true and correct at all times, the Operator warrants that at the time it Delivers Gas to the Shipper at an Outlet Point, the Operator has good title to the Gas free and clear of all liens, encumbrances and claims of any nature whatsoever.

### 13.2 Control, Possession, Responsibility and Title of Shipper

The Shipper warrants to the Operator at each relevant time that the Shipper:

- (a) is in Possession of the Gas immediately prior to its Delivery to the Operator at an Inlet Point and immediately after its Delivery to the Shipper at an Outlet Point; and
- (b) has legal responsibility and liability for Gas while it is within the Possession of the Shipper.

### 13.3 Title, Custody, Control and Responsibility of Operator

- (a) The Operator must:
  - (i) take title to, and is taken to be in Possession of, Gas from the Receipt of Gas from the Shipper at an Inlet Point until Delivery of Gas to the Shipper at an Outlet Point; and
  - (ii) have legal responsibility and liability for Gas while it is within the Operator's Possession.
- (b) (i) The Operator must Deliver good title to Gas Delivered to the Shipper at an Outlet Point; and
  - (ii) the Shipper must take title to Gas immediately after its Delivery to the Shipper at an Outlet Point,

free and clear of all liens, encumbrances and claims of any nature whatsoever.

### 13.4 Entitlements to Receive Gas

- (a) Subject to clause 13.4(c), upon the transfer from the Shipper to the Operator of title to and possession of a quantity (in terajoules) of Gas Delivered at an Inlet Point, the Shipper becomes entitled to:
  - (i) Receive Gas from the Operator at an Outlet Point other than a Notional Gate Point; or
  - (ii) subject to clause 13.5(b), Receive Gas from the Operator at an Outlet Point that is a Notional Gate Point.
- (b) The quantity of Gas that the Shipper becomes entitled to Receive in aggregate under clause 13.4(a) is a quantity equivalent (in terajoules) to the quantity of Gas Delivered at the Inlet Point.
- (c) Clauses 13.4(a) and 13.4(b) do not affect a provision of this Contract entitling the Operator to Curtail wholly or partially or interrupt the Shipper's use of Capacity or to refuse wholly or partially to Deliver Gas to the Shipper and do

not affect the obligations of the Shipper to Deliver Gas and Receive Gas in such a manner as complies with this Contract, including so as to ensure the Shipper remains within the limits prescribed by this Contract in clauses 9 and 10.

### 13.5 Title at Outlet Points

- (a) Unless the Delivery is at an Outlet Point that is a Notional Gate Point, the Delivery of the Gas by the Operator to the Shipper at an Outlet Point is a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Outlet Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.
- (b) If the Delivery is at an Outlet Point that is a Notional Gate Point, then:
  - (i) the Delivery of the Gas by the Operator is followed immediately by a Delivery of the Gas from the Shipper back to the Operator at the Outlet Point (for transport to a Physical Gate Point associated with the Notional Gate Point) and no transfer of title to and possession of the Gas is involved;
  - (ii) the Operator may in its discretion as a Reasonable and Prudent Person manage the times, extent and manner that Gas deemed to be delivered at a Notional Gate Point is physically transported into the Associated sub-network; and
  - (iii) subject to any Law or any other agreement to which both the Operator and the Shipper are parties, the Delivery of Gas by the Operator at a Physical Gate Point is, by force of this clause 13.5, a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Physical Gate Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.

## **Relocation (clause 14)**

### 14. Relocation

#### 14.1 Request for relocation of Contracted Capacity

The Shipper may, by notice in writing to the Operator, request a relocation of all or any part of its Contracted Capacity from an Existing Inlet Point to a New Inlet Point or from an Existing Outlet Point to a New Outlet Point (Requested Relocation).

#### 14.2 Assessment of Requested Relocation

- (a) The Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable and Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to, among other things, the order, relative to its receipt of equivalent notices received from other shippers, in which the Shipper's Requested Relocation was received, (but for the avoidance of doubt the Parties intend this priority to apply only to the extent that requested relocations compete or conflict with each other for utilisation of capacity).
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:

- (i) the Requested Relocation would cause the sum (after the relocation) of all shippers':
    - (A) quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including RP1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Inlet Point is located; or
    - (B) quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including RP1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located;
  - (ii) in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible; or
  - (iii) the Requested Relocation is such that the Inlet Point would be downstream of the Outlet Point and it would change the normal direction of Gas flow in the DBNGP.
- (c) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:
- (i) the Requested Relocation would result in the New Inlet Point being downstream of the Existing Inlet Point;
  - (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including P1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements; and
  - (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.
- (d) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:
- (i) the Requested Relocation would result in the New Outlet Point being upstream of the Existing Outlet Point;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements;
  - (iii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including P1 Services and all Other Reserved Services) at the New Outlet Point

to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNPG at which the New Outlet Point is located; and

- (iv) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

#### 14.3 Operator to notify Shipper

As soon as practicable after completing its assessment under clause 14.2(a), the Operator must give notice in writing to the Shipper advising either that the Requested Relocation is:

- (a) not an Authorised Relocation; or
- (b) an Authorised Relocation.

#### 14.4 Requested Relocation is an Authorised Relocation

If the Operator gives notice that the Requested Relocation is an Authorised Relocation under clause 14.3(b):

- (a) the Operator and the Shipper must negotiate in good faith regarding the cost to the Shipper (which in no case may be less than the Operator's out-of-pocket costs and must include a reasonable charge for the Operator's management time) in respect of any new facilities (including the New Inlet Point or New Outlet Point) which the Shipper will be wholly or partially utilising.
- (b) If such agreement is not reached, the matter must be regarded as a Dispute to be resolved as a Technical Matter and will be dealt with in accordance with clause 24.
- (c) the Shipper must pay the charges specified in clause 14.7 in accordance with clause 20.

#### 14.5 Requested Relocation is not an Authorised Relocation

If the Operator gives notice that the Requested Relocation is not an Authorised Relocation under clause 14.3(a), the Operator and the Shipper (acting reasonably) may agree (on any fair and reasonable terms and conditions, including terms and conditions as to price) the operational restrictions which will apply to the use by the Shipper of the New Inlet Point or New Outlet Point which will enable the Parties to implement the Requested Relocation of Contracted Capacity.

#### 14.6 Relocated Contracted Capacity to be on same terms and conditions

Subject to clauses 14.7 and 14.8 and unless the Parties agree in writing to the contrary, any Contracted Capacity relocated under this clause 14 must be on the same terms and conditions as the Contracted Capacity at the Existing Inlet Point or the Existing Outlet Point (as the case may be).

#### 14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional

reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.

- (b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.
- (c) If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated:
  - (i) remains on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
  - (ii) is treated under this Contract as though it was Full Haul Capacity.

#### 14.8 Pressures at New Inlet Point and New Outlet Point

The Operator may in its discretion as a Reasonable and Prudent Person specify the range of pressures within which the Shipper may Deliver Gas to the Operator at a New Inlet Point, and within which the Operator may Deliver Gas to the Shipper at a New Outlet Point but in no case may the specified range of pressures be substantially different from the DBNGP operating pressure range at that point.

#### 14.9 Contract amended to reflect relocation

If the Parties reach agreement under clause 14.4 or 14.5, the Requested Relocation and the terms and conditions so agreed must be given effect to by an amendment of the Access Request Form in accordance with clause 38.

### **Metering (clause 15)**

#### 15. Metering

##### 15.1 Shipper's responsibility

The Shipper must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense, supply, install, Operate and Maintain Inlet Metering Equipment at each Inlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) ensure that at all times all data required by the Operator from Inlet Metering Equipment is electronically accessible by the Operator.

##### 15.2 Operator's responsibility

The Operator must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense supply, install, Operate and Maintain Outlet Metering Equipment at each

Outlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and

- (b) calculate and record:
  - (i) the quantity of Gas Delivered to the Operator by the Shipper; and
  - (ii) the quantity of Gas Delivered to the Shipper by the Operator.

### 15.3 Metering uncertainty

- (a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:
  - (i) measurement to within a maximum uncertainty of:
    - (A) plus or minus 0.75% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of 5 TJ/d or greater; and
    - (B) plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and
  - (ii) measurement to within a maximum uncertainty of plus or minus one quarter of one percent of Higher Heating Value at a minimum of the 95% confidence level.
- (b) Subject to clauses 15.3(a), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.
- (c) In this clause 15, **95% confidence level** has the meaning given to that expression by ISO 5168.

### 15.4 Primary Metering Equipment

- (a) Primary Metering Equipment must:
  - (i) continuously compute and record:
    - (A) (in the case of Inlet Metering Equipment) the quantity and quality of Gas Delivered by the Shipper to the Operator under this Contract; and
    - (B) (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by the Operator to the Shipper under this Contract; and
    - (C) any information reasonably required by the Operator from time to time to assist the Operator to comply with any Law.
  - (ii) be of a standard of manufacture acceptable to the Operator acting as a Reasonable and Prudent Person;
  - (iii) comply with AS 2885 and any Australian or international standards required from time to time by the Operator;
  - (iv) subject to clauses 15.4(b) and 15.4(c), encompass newest proven technology;

- (v) be able in all streams to withstand Gas flows of up to 120% of the design flow;
  - (vi) provide data signals in the form of galvanically isolated 4-20 milliamp current loops or potential free contacts, as appropriate, or in such other form as the Parties as Reasonable and Prudent Persons may agree; and
  - (vii) include facilities to enable electronic data collection by the Operator's Electronic Data Collection System.
- (b) Primary Metering Equipment with a design maximum flow rate of 5 TJ/d or more must include:
- (i) alternative Metering Equipment capable of measuring Gas quantity and (for Inlet Metering Equipment) Gas quality;
  - (ii) a means for detecting a fault in Duty Equipment which is likely to materially affect the accuracy of any measurements produced by the Duty Equipment, and a means in the event of such a fault for automatically switching metering from the faulty Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i); and
  - (iii) a means for manually switching metering from Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i).
- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
- (i) delivery and metering temperature;
  - (ii) delivery and metering pressure;
  - (iii) instantaneous energy flow rate in TJ/d;
  - (iv) instantaneous mass flow rate in Tonnes per day
  - (v) totalised energy flow in GJ;
  - (vi) totalised mass flow in Tonnes;
  - (vii) Relative Density;
  - (viii) Higher Heating Value in megajoules per cubic metre and megajoules per kilogram;
  - (ix) Wobbe Index;
  - (x) nitrogen content in mole percent;
  - (xi) carbon dioxide content in mole percent;
  - (xii) hydrocarbon content in mole percent for each of the fractions;
  - (xiii) sulphur content in milligrams per Cubic Metre;
  - (xiv) oxygen content in mole percent;

- (xv) moisture level in milligrams per Cubic Metre;
  - (xvi) instantaneous hydrocarbon dew point in degrees Celsius; and
  - (xvii) all primary measurements and Derived Variables used in any computation required by clauses 15.4(c)(i) to 15.4(c)(xvi).
- (d) Unless the Operator and the Shipper as Reasonable and Prudent Persons agree to the contrary, Outlet Metering Equipment may utilise Gas quality data from equipment which is not located at the Outlet Station in question (the **Remote Data**), in which case:
- (i) the Operator may as a Reasonable and Prudent Person adopt procedures relating to that utilisation, including relating to the use of preset Gas quality values when the Remote Data is unavailable for any reason; and
  - (ii) clauses 15.9 and 15.12 apply, with appropriate modifications, to any procedures adopted under clause 15.4(d)(i).
- (e) Outlet Metering Equipment must provide digital signals Associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables Associated with Gas quantity:
- (i) delivery temperature;
  - (ii) delivery pressure;
  - (iii) instantaneous energy flow rate in terajoules per day derived using the Higher Heating Value;
  - (iv) totalised energy flow in GJ;
  - (v) all primary measures and Derived Variables used in any computation required by clauses 15.4(e)(i) to 15.4(e)(iv); and
  - (vi) Higher Heating Value in megajoules per cubic metre.
- (f) The Inlet Metering Equipment, and any building erected for such equipment, is the property of the Shipper (or its nominee), and the Outlet Metering Equipment, and any building erected for such equipment, is (subject to clause 15.4(g)) the property of the Operator.
- (g) To the extent that:
- (i) the Shipper has paid for the Outlet Metering Equipment and any building erected for such equipment;
  - (ii) the Outlet Metering Equipment is detachable from the DBNGP without any damage to or effect on the DBNGP;
  - (iii) no third party has any interest in or title to the Outlet Metering Equipment or the building; and
  - (iv) no third party (including any other shipper) is deriving any benefit from the Outlet Metering Equipment,

the Outlet Metering Equipment and any building erected for such equipment is, at the end of this Contract, to become the property of the Shipper, and may be detached and removed at the expense and risk of the Shipper.

#### 15.5 Provision of information to Shipper

- (a) The Operator must, on request by and at the expense and risk of the Shipper, make available to the Shipper access to:
  - (i) the galvanically isolated analogue or digital data signals in a form agreed by the Parties from any Outlet Metering Equipment at the Outlet Station Associated with the Outlet Point at which the Shipper has Contracted Capacity; and
  - (ii) any other form of metering data requested by the Shipper from time to time and consented to by the Operator acting reasonably and taking into account, inter alia, the commercial sensitivity of the data, whether the data relates solely to the Shipper, any requirements of confidentiality, any Law, and provided that such disclosure does not materially or directly detrimentally affect other shippers in the context of their dealings with the Operator, but only insofar as that data relates solely to the Shipper.
- (b) The Operator takes no responsibility for the accuracy of any data obtained by the Shipper under clause 15.5(d)(i) and is not liable for any Direct Damage or Indirect Damage suffered by the Shipper as a result of any reliance placed by the Shipper on any data obtained by the Shipper under clause 15.5(d)(i).
- (c) In complying with clause 15.5(a), the Operator must allow the Shipper access to unverified delivery data signals insofar as is relevant to the information referred to in clause 15.5(a).
- (d) The Operator must make available to the Shipper via the CRS or a similar communications system:
  - (i) within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by the Shipper at each Outlet Point during that Gas Hour;
  - (ii) within 3 hours after the end of each Gas Day, the unverified quantities of Gas in that Gas Day Delivered by the Shipper to each Inlet Point and Delivered by the Operator to the Shipper at each Outlet Point excluding all Physical Gate Points; and
  - (iii) within three Working Days after the end of the Gas Month, the verified quantities of Gas Delivered by the Shipper at each Inlet Point and each Outlet Point for each Gas Day during the previous Gas Month,

collectively **Metering Information**.
- (e) The Operator must make available to the Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:
  - (i) Received by the Shipper in a Gas Day at each Physical Gate Point; and

- (ii) Received by the Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.
- (f) The Operator must make available to the Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:
  - (i) Received by the Shipper in that Gas Day at each Physical Gate Point; and
  - (ii) Received by the Shipper aggregated across all outlet points including all Physical Gate Points.
- (g) Clauses 15.5(e) and (f) only apply for as long as the Shipper is a Distribution Networks Shipper.

#### 15.6 Changes to requirements for Metering Equipment

The Operator may by notice in writing require the Shipper to modify, or to allow and arrange for the Operator to modify, existing Metering Equipment to comply with requirements or standards specified by the Operator after that equipment was installed, and if the modification is necessary to comply with safety Laws of general application, or to comply with the standard required by an amendment to this Contract implementing such Laws, the modification must be made at the Shipper's expense, and otherwise the modification must be made at the Operator's expense.

#### 15.7 Approval of Inlet Metering Equipment

- (a) The Shipper must obtain, or must procure that a third party obtains:

- (i) prior to commencing the construction, installation or modification of any Inlet Metering Equipment or any component thereof; and also
- (ii) prior to the commissioning of any newly constructed, installed or modified Inlet Metering Equipment or any component thereof, the Operator's written approval (which may not be unreasonably withheld) of, or of any amendment to, the design, location and construction of, and the proposed Operating and Maintenance procedures in relation to, that equipment or component.
- (b) For the purposes of clause 15.7(a), the Shipper must give to the Operator not less than one month's notice of the anticipated date of commencement of the relevant construction, installation or modification.
- (c) The Operator must, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to the Shipper of the Operator's approval of or refusal to approve the Inlet Metering Equipment.
- (d) Without limiting the generality of clause 37, the Shipper must, for the purposes of clause 15.7(a), prior to and during the construction, installation, modification or commissioning of any Inlet Metering Equipment or any component thereof, afford all reasonable rights of entry and inspection (including all relevant data, drawings and components) to the Operator and its agents at the Operator's expense and risk.

#### 15.8 Check Metering Equipment

- (a) The Shipper may at its own expense at an Outlet Station, and the Operator may at its own expense at an Inlet Station, supply, install, Maintain and

Operate Check Metering Equipment for the purpose of monitoring the accuracy of the Primary Metering Equipment.

- (b) Check Metering Equipment (and any associated pressure or quantity control regulators or other equipment) must be located downstream of, and must not interfere with the operation of, the Primary Metering Equipment.
- (c) Check Metering Equipment at the Outlet Station is the Shipper's property, and Check Metering Equipment at the Inlet Station is the Operator's property.
- (d) The expenses of any Verification of the accuracy of Check Metering Equipment must be borne by the Party owning that equipment.
- (e) Subject to clause 15.14(d)(i), data from Check Metering Equipment may not be used for billing purposes.

#### 15.9 Preservation of accuracy

- (a) All Primary Metering Equipment must be installed in a manner which permits an Accurate measurement of the quantity and, for Inlet Metering Equipment, the quality of Gas Delivered, and a ready Verification of the Accuracy of measurement.
- (b) Each Party must, in the installation, Maintenance and Operation of any Metering Equipment, exercise the care of a Reasonable and Prudent Person to prevent any inaccuracy in the measurement of the quantity of Gas Delivered under this Contract.

#### 15.10 Presumptions of accuracy

- (a) Subject to clause 15.13, a measurement of the quantity or quality of Gas from any Primary Metering Equipment is presumed to be correct.
- (b) If any 2 consecutive Verifications show any Metering Equipment to be operating within the Prescribed Limits of Uncertainty, the Metering Equipment is presumed to have been operating within the Prescribed Limits of Uncertainty throughout the intervening period.
- (c) The presumptions in clauses 15.10(a) and 15.10(b) apply until the contrary is shown.
- (d) If either or both of the presumptions in clauses 15.10(a) and 15.10(b) is, or are, shown to be incorrect in respect of any period or periods, clauses 15.13 and 15.14 apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

#### 15.11 Verification of Primary Metering Equipment

- (a) The Operator:
  - (i) must, at least once each month (or other period agreed between the parties) during the duration of this Contract; and
  - (ii) may, at such greater frequency or on any occasion that either Party may request,

verify the accuracy of any Primary Metering Equipment in accordance with a procedure described in clause 15.11(b).

- (b) The Verification procedure consists of:

- (i) a comparison between simultaneous independent measurements of Gas flows;
  - (ii) the physical substitution of the Primary Metering Equipment to be Verified with similar Metering Equipment having a demonstrated accuracy within the Prescribed Limits of Uncertainty; or
  - (iii) any Metering Equipment testing procedure complying with applicable Australian or International standards that the Parties agree in writing to use.
- (c) Each Party may have representatives present at the time of any Verification of the Accuracy of any Primary Metering Equipment (unless the number of persons present must be restricted for safety or logistical reasons, in which case the Parties are to agree on which representatives must be present), and the Operator must give the Shipper sufficient notice of an intended Verification to enable the Shipper's representative to be present.
- (d) The results of any Verification are binding on both Parties unless within 7 Working Days after Verification either Party gives notice to the other Party that it disputes the conduct of the Verification, in which case:
- (i) the provisions of clause 24 apply; and
  - (ii) any reference in this clause 15.11 to accuracy figures produced by Verification means the accuracy figures finally determined for that Verification under a dispute resolution process adopted in accordance with clause 24.
- (e) Subject to clause 15.11(f), the Shipper must bear the expense of any Verification under clause 15.11(a), provided that the Operator must bear the cost of attendance of the Operator's representatives.
- (f) If a Verification requested by the Operator under clause 15.11(a)(ii) reveals that the accuracy of the Primary Metering Equipment is within the Prescribed Limits of Uncertainty, the Operator must bear the expense of the Verification and must also pay to the Shipper the Shipper's reasonable expenses of that Verification, in accordance with clause 20.

#### 15.12 Adjustment or replacement of defective equipment

- (a) Subject to clause 15.12(b), if at any time any component of Primary Metering Equipment is found to be defective or otherwise out of service or operating outside the Prescribed Limits of Uncertainty, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, forthwith either:
- (i) adjust it to measure within the Prescribed Limits of Uncertainty; or
  - (ii) if such adjustment is not possible, replace it with a serviceable component.
- (b) If at any time Primary Metering Equipment with a design maximum flow rate of less than 5 TJ/d is found to be operating outside the Prescribed Limits of Uncertainty for any reason, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, cause the Primary Metering Equipment to Operate within the Prescribed Limits of Uncertainty within 48 hours.

### 15.13 Inaccurate equipment

- (a) If any Verification reveals that any Primary Metering Equipment is operating outside the Prescribed Limits of Uncertainty but is measuring the quantity of Gas with an inaccuracy of less than or equal to:
  - (i) plus or minus 1.5% for Metering Equipment with a design flow of 5 TJ/d or greater; and
  - (ii) plus or minus 3% for Metering Equipment with a design flow of less than 5 TJ/d,
 then the measurements from that Primary Metering Equipment are taken to be correct.
- (b) If any Verification reveals that any Primary Metering Equipment is measuring the quantity of Gas with an inaccuracy of greater than the relevant limit prescribed by clause 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) or agreed under clause 15.3(b), then (unless the Parties agree otherwise) all measurements affected or potentially affected by that inaccuracy must be determined in accordance with clause 15.14.
- (c) If the Parties have agreed under clause 15.3(b) to limits of uncertainty for a component or components of Primary Metering Equipment, then the Parties may agree to limits which are to apply in substitution for the limits prescribed in clauses 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) for that Primary Metering Equipment, and clause 15.13(a) has effect accordingly.

### 15.14 Correction of measurements

- (a) All measurements made prior to the Previous Verification are taken to be correct.
- (b) The period between the Previous Verification and the Current Verification must be divided into an earlier period and a later period, being:
  - (i) if the time at which the Primary Metering Equipment became Inaccurate can be established, respectively the period before and the period after that time; or
  - (ii) if the time at which the Primary Metering Equipment became Inaccurate cannot be established, 2 equal periods.
- (c) The measurements produced by the Primary Metering Equipment for the earlier period must be taken to be correct.
- (d) The measurements for the later period must be estimated:
  - (i) if Check Metering Equipment is installed and is established to the reasonable satisfaction of both Parties to have been operating during the later period within the Prescribed Limits of Uncertainty, by using the measurements recorded by that Check Metering Equipment;
  - (ii) if clause 15.14(d)(i) does not apply and if the percentage of error in the measurements is ascertainable to the reasonable satisfaction of both Parties by calibration test or mathematical calculation, by calculating a correction for that percentage error; or

- (iii) in any other circumstance, by reference to measurements made under similar conditions when the Primary Metering Equipment was registering accurately.
- (e) Following the correction of any measurements in accordance with this clause 15.14, the Parties will determine the relevant overpayment or underpayment that has resulted under this Contract from the measurement error and the appropriate Party must make an adjusting payment to the other in accordance with clause 21.6.

#### 15.15 Metering records

- (a) Any record produced by Primary Metering Equipment:
  - (i) in paper form must be retained for 2 years after the date of production; and
  - (ii) in electronic form must be retained for 5 years after the date of production,

by and at the expense of the Party owning the equipment which produces the record.
- (b) The records and other information produced by, and any calculations and other information derived from, any Primary Metering Equipment or Check Metering Equipment remain the property of the Party owning that equipment.
- (c) Each Party must use reasonable endeavours to, within 20 Working Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by its Primary Metering Equipment which solely relate to the other Party, for inspection and verification by that other Party and the other Party may make and return any copies of those records and other information and must return the originals within 10 Working Days of their receipt.

#### 15.16 Unused Outlet Points

- (a) If:
  - (i) the Shipper has no Contracted Capacity at an Outlet Point; and
  - (ii) such point has not been used, or is, in the Operator's opinion (acting reasonably and after consulting with the Shipper), unlikely to be used, to Deliver Gas to the Shipper for a period, in aggregate, greater than 12 continuous months,

then the Operator may, at the cost of the Operator, decommission, remove and deal with or dispose of as it sees fit (including selling for its own benefit) any part or the whole of that Outlet Point and any Associated Outlet Station. Upon the commencement of such decommissioning, such Outlet Point, subject to clause 15.16(b), ceases to be an Outlet Point for the purpose of this Contract.

- (b) If requested by the Shipper, the Shipper and the Operator will discuss in good faith deferring the decommissioning of the Outlet Point and any Associated Outlet Station on the basis that the Shipper will pay ongoing maintenance charges incurred by the Operator in maintaining the Outlet Point and any Associated Outlet Station.

- (c) If subsequent to the commencement of such decommissioning, the Shipper wishes to use such point as an Outlet Point under this Contract, the Shipper must give at least 10 months written notice to the Operator and must fully indemnify the Operator for all costs, losses, liabilities and expenses incurred by the Operator in respect of such recommissioning of the point as an Outlet Point for the purposes of this Contract and in respect of recommissioning any Associated Outlet Station.
- (d) An Outlet Point recommissioned in accordance with clause 15.16(c) is subject to Charges in accordance with clause 6.11.

## **Un-used clause (clause 16)**

16. Not Used

## **Curtailment (clause 17)**

17. Curtailment

### 17.1 Operator's obligations and Curtailment principles

- (a) The Operator must use its best endeavours to minimise the magnitude and expected duration of any Curtailment of the RP1 Service.
- (b) A Curtailment may affect one or more Inlet Points or Outlet Points on the DBNGP. Unless the Curtailment affects only one Inlet Point or Outlet Point, it is a System Curtailment.
- (c) Curtailment occurs in two stages, although in some instances the Operator will not need to move to the second stage:
  - (i) **Stage 1:** the Operator identifies that a Curtailment is necessary and, acting as a Reasonable and Prudent Person, determines how much Capacity needs to be Curtailed. In most circumstances this will be a System Curtailment.
  - (ii) **Stage 2:** If it is necessary (at the same time or subsequently) for the Operator to resolve incompatible demands by shippers for the use of a single Inlet Point or Outlet Point, the Operator undertakes a Point Specific Curtailment at each such point.
- (d) In a Curtailment, whether System Curtailment or in any Point Specific Curtailments, Contracted Capacity at a particular point (**incumbent capacity**) has priority for the use of that point above capacity relocated from another point for that Gas Day, unless the incumbent capacity has been fully curtailed by virtue of the application of the Curtailment Plan in a System Curtailment which affects a Curtailment Area greater than a Point Specific Curtailment.

### 17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

- (a) if there is an event of Force Majeure where the Operator is the Affected Party;
- (b) whenever it needs to undertake any Major Works; and

- (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;
- (d) for any Planned Maintenance; and
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

#### 17.3 Curtailment without liability

- (a) Subject to clause 17.3(b), the Operator is liable to the Shipper only for Direct Damage caused by or arising out of a Curtailment or interruption of the Shipper's P1 Service. For the avoidance of doubt, the giving of a Curtailment Notice constitutes a Curtailment and the provision by the Operator of Capacity equal to the Shipper's reduced Contracted Capacity under clause 17.7(e) during the currency of the Curtailment Notice which gave effect to that reduced Contracted Capacity is a Curtailment for the purposes of this clause 17.3(a).
- (b) The Operator has no liability to the Shipper whatsoever for a Curtailment under clause 17.2 in any of the following circumstances:
  - (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the P1 Service during the Gas Year does not cause the P1 Permissible Curtailment Limit to be exceeded;
  - (ii) where the Curtailment is in accordance with any of clauses 17.2(a), (b) or (c); or
  - (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

- (c) The P1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
  - (i) a Curtailment in circumstances set out in clause 17.2(a) or 17.2(b);
  - (ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and
  - (iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied, is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

#### 17.4 Refund of Capacity Reservation Charge

To the extent that the Shipper's P1 Service is Curtailed for any reason other than:

- (a) an event of Force Majeure where the Shipper is the Affected Party; or

- (b) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment,

the Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.

#### 17.5 Operator's rights to refuse to Receive or Deliver Gas

Subject to clauses 5.5 and 5.9, where the Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (the Operator may refuse to Receive Gas);
- (b) clause 5.7 (the Operator may refuse to Deliver Gas),

such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(b).

#### 17.6 Curtailment Notice

- (a) The Operator must give the Shipper a notice (Curtailment Notice) setting out the matters referred to in clause 17.7(a) and the expected duration of an impending Curtailment and otherwise complying with this clause 17.
- (b)
  - (i) Where the reason for the Curtailment is Major Works, the Operator must give the Shipper:
    - (A) an initial notice (Initial Notice) at least 60 days in advance of the starting time of the Curtailment; and
    - (B) a Curtailment Notice no later than one Gas Day before the Gas Day on which the Curtailment commences.
  - (ii) In any case other than one described in clause 17.6(b)(i):
    - (A) subject to clause 17.6(b)(ii)(B), the Operator must use its reasonable endeavours to give the Shipper a Curtailment Notice a reasonable period in advance of the starting time of the curtailment but in any event at least one hour in advance of the starting time of the Curtailment; and
    - (B) where as a result of Force Majeure or by reason of an emergency it is not reasonably possible to give a Curtailment Notice at least one hour in advance of the starting time of the Curtailment, the Operator must give the Shipper a Curtailment Notice as soon as it is practicable to do so, whether that is before or after the starting time of the Curtailment.
- (c) The Operator must send a copy of the Curtailment Notice in accordance with clause 29.1(a) (Notices) and must also endeavour to telephone the Shipper to advise that the Curtailment Notice has been or will be provided.
- (d) The Operator is not required to inform all affected Producers and downstream entities that relate to the Shipper of the notification of the Curtailment or the Curtailment Notice.
- (e) The Operator must, on a reasonable request by the Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to explain the issue of a Curtailment Notice.

## 17.7 Content of a Curtailment Notice and Initial Notice

- (a) A Curtailment Notice must specify the following details:
  - (i) the reasons for the Curtailment;
  - (ii) the starting time of the Curtailment (which must not be any time before the Gas Day on which the Curtailment Notice is given), including the Gas Day or Gas Days to which the Curtailment Notice applies; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.
- (b) An Initial Notice must specify the Operator's estimate of:
  - (i) the reasons for the Curtailment;
  - (ii) the starting time of the Curtailment; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.
- (c) A Curtailment Notice:
  - (i) takes effect from the time specified in the Curtailment Notice;
  - (ii) may apply to the Gas Day on which the Curtailment Notice is issued even if, in order to comply with a Curtailment Notice, the Shipper must use best endeavours to, and to procure persons to whom the Shipper supplies Gas to, cease taking delivery of any Gas upon receipt of the Curtailment Notice in accordance with clause 17.8(a);
  - (iii) may be expressed to continue indefinitely or for a specified time;
  - (iv) may revoke, substitute or amend a previous Curtailment Notice;
  - (v) must not require the Shipper to reduce its Receipt of Gas for the Gas Day as a whole to a level less than the Shipper has already actually Received for the Gas Day before the Curtailment Notice takes effect (that is, the Curtailment Notice must not be impossible to comply with); and
  - (vi) does not retrospectively affect the Shipper's compliance with Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes the Shipper's compliance with those limits for an hour must be determined having regard to the Shipper's Contracted Capacity at the commencement of the hour).
- (d) The Operator may at any time, whether or not it has specified in a Curtailment Notice an end time for a Curtailment, give notice to the Shipper (in accordance with clause 29) wholly or partly terminating a Curtailment either immediately or from any time in the future.
- (e) A Curtailment Notice constitutes a variation of this Contract while the Curtailment Notice is in force reducing the Shipper's Contracted Capacity to the extent, and in accordance with the apportionment (if any), specified in the notice, except for the purposes of calculating the Charges payable by the Shipper under clause 20 and for ascertaining whether the Shipper has been Curtailed under this clause 17, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form. Further, in respect of a particular shipper when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity

Service, Inlet Point or Outlet Point) the amount must not include any capacity Curtailed under clause 17.8 either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point, and the material equivalent to such clause in any of the shipper's contracts for Capacity Service.

- (f) If a Curtailment Notice takes effect before the Shipper's next Nomination or Renomination under clause 8, the Shipper's Daily Nominations are taken to be reduced (if a reduction is required) to the same amount of Capacity Service as the Shipper is to have available under the Curtailment Notice given in respect of the Shipper's Contracted Capacity.
- (g) The Shipper may not:
  - (i) Nominate or Renominate under clause 8 for Contracted Capacity; or
  - (ii) Deliver Gas to or Receive Gas from the Operator,
 in excess of whichever is the lower of:
  - (iii) its reduced Contracted Capacity because of clause 17.7(f); or
  - (iv) the quantity specified in a Curtailment Notice as the maximum quantity which the Operator will Receive from, or Deliver to, the Shipper.

#### 17.8 Compliance with Curtailment Notice

- (a) Where the Curtailment is a Point Specific Curtailment, the Shipper must use its best endeavours to comply immediately, and must as soon as practicable and in any event no later than one hour after receipt of the notice comply, or procure compliance, with the requirements of a Curtailment Notice by:
  - (i) not Delivering any Gas at the Inlet Points; or
  - (ii) not Receiving any Gas delivered to the Shipper at the Outlet Points,
 in excess of the quantity specified for that Inlet Point or Outlet Point, as the case may be, in the Curtailment Notice.
- (b) Where the Curtailment is not a Point Specific Curtailment, the Shipper must comply, or procure compliance, with the requirements of the Curtailment Notice in accordance with its terms.
- (c) If the Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a), the Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from the Shipper at an Inlet Point or refusing to Deliver Gas to the Shipper at an Outlet Point.
- (d) If the Operator refuses to Receive or Deliver Gas under clause 17.8(c) in order to give effect to the requirements set out in a Curtailment Notice and the Operator incidentally refuses to Receive or Deliver Gas in excess of the requirements of the Curtailment Notice (Excess Curtailment), to the extent that such Excess Curtailment occurred despite the Operator acting as a Reasonable and Prudent Person in attempting to avoid or minimise (as the case may be) such Excess Curtailment is not to be regarded as a Curtailment under this Contract.
- (e) If the Curtailment is a Point Specific Curtailment and the Shipper Delivers Gas to the Operator at an Inlet Point or Receives Gas from the Operator at an Outlet Point in excess of the quantity specified in the Curtailment Notice for

that Inlet Point or Outlet Point (as the case may be), then the Shipper must pay the Operator an Unavailable Overrun Charge under clause 11 at the Unavailable Overrun Rate in respect of each GJ of Gas which the Shipper's actual receipts or deliveries (or both) vary from those specified in the Curtailment Notice.

- (f) Other than when due to Force Majeure or by reason of an emergency it is unable to do so, the Operator must give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c).
- (g) The Shipper is not liable to pay the Unavailable Overrun Charge under clause 17.8(e) in respect of a Gas Day in respect of which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is materially inaccurate.

#### 17.9 Priority of Curtailment

- (a) Any Curtailment of the Shipper's Total Contracted Capacity must be conducted in accordance with the Curtailment Plan. In applying the Curtailment Plan in a Point Specific Curtailment or System Curtailment, a Type of Capacity Service will only be Curtailed once all Types of Capacity Services listed below it in that column in the Curtailment Plan have been reduced to zero.
- (b) The general principle in clause 17.9(a) is subject to the following:
  - (i) Any Laws regulating the priority of Capacity Services (which for the purposes of this clause include capacity under a Spot Transaction) on the DBNGP.
  - (ii) Where the Curtailment is a Point Specific Curtailment, the Curtailment Plan will be subject to any Multi-shipper Agreement relating to that Inlet Point or Outlet Point.
  - (iii) Any Point Specific Curtailment of the Aggregated P1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded to the extent that the Shipper is entitled to give a Renomination Notice in respect of either of the following:
    - (A) (subject to clause 17.9(b)(iii)(B)) one or more inlet points or outlet points (as the case may be) where the Shipper has unutilised Contracted Capacity for the P1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the P1 Service at that or those inlet points or outlet points (as the case may be);
    - (B) one or more inlet points or outlet points (which may be points referred to in clause 17.9(b)(iii)(A) above) where the Shipper can otherwise utilise Capacity.

(iv) If and to the extent that, because of the default, negligence, breach of contractual term, or other conduct of a shipper (in this clause 17.9(b)(iv) the **defaulting shipper**):

- (A) a reduction in Gas Transmission Capacity is caused that makes necessary any Curtailment of the use of Gas Transmission Capacity by any shipper; or
- (B) the Operator is entitled to refuse to Receive Gas from or Deliver Gas to any shipper (or, if applicable, to Curtail the use of Gas Transmission Capacity by any shipper),

the Operator must, to the extent that it is entitled to do so, wholly refuse to Receive Gas from or Deliver Gas to the defaulting shipper and must reduce the defaulting shipper's use of Gas Transmission Capacity of any kind (but only to the extent necessary to correct the default of the shipper) before it reduces any shippers' (other than the defaulting shipper's) use of Gas Transmission Capacity of any kind, and the Operator is not liable to the defaulting shipper for any Direct Damage or Indirect Damage (whatsoever) arising from that Curtailment or refusal.

(v) To the extent that:

- (A) the use of Gas Transmission Capacity by a particular shipper would, but for this clause 17.9(b)(v), be included in an apportionment of a Curtailment; and
- (B) in the view of the Operator (acting fairly and reasonably) the inclusion of that Gas Transmission Capacity would because of the location of the particular shipper's Inlet Point or Inlet Points or Outlet Point or Outlet Points in relation to the circumstances which gave rise to the need to Curtail be unlikely to wholly or partially reduce the need to Curtail any other shipper's use of Gas Transmission Capacity,

the Operator may exclude that Gas Transmission Capacity from the apportionment of Curtailments (despite what would otherwise be the Operator's obligation to include that Gas in the apportionment).

(vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the Shipper's:

(A) Aggregated P1 Service which derives from Contracted Capacity for P1 Services at the Outlet Points located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) not be included in the Aggregated P1 Service; and
- (2) be included in the P1 Service,

available to the Shipper in the Curtailment Area; and

(B) Aggregated P1 Service which derives from Contracted Capacity for P1 Services at any Outlet Point located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) be included in the Aggregated P1 Service;
  - (2) not be included in the P1 Service,
- available to the Shipper in the Curtailment Area.
- (vii) Despite any provision of the Curtailment Plan or any contract, the Delivery of Gas to the Shipper is at all times subject to the Operator's absolute right to utilise part of the DBNGP's capability to transport Gas which is required by the Operator for operational purposes in relation to the DBNGP.
  - (viii) The Operator must enforce any rights it may have under the Alcoa Exempt Contract in relation to allocating to, and Delivering to, Alcoa no more than Alcoa's Exempt Delivery Entitlement during a Curtailment, including taking the full benefit of any force majeure provisions of the Alcoa Exempt Contract when and to the extent that it is entitled to do so.
  - (ix) Nothing in this clause 17 limits or affects the Operator's right to refuse to Receive or Deliver Gas under clauses 5.3 or 5.7.
  - (x) This clause 17 is subject to any contrary agreement reached between Shipper and other shippers as to the manner of treating Curtailments between them.
- (c) (i) Subject to clause 17.9(c)(ii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

$$\text{Available Capacity} \times \frac{A}{B}$$

where:

**Available Capacity** = the total amount of relevant capacity which the Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

**A** = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of P1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that P1 Service on that Gas Day); and

**B** = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of P1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that P1 Service on that Gas Day)

- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service (other than a Tp Service or a Tx Service), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.
- (iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.

#### 17.10 Apportionment of Shipper's Curtailments

- (a) Subject to clause 17.10(b), if the Shipper has:
  - (i) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one Inlet Point, the Operator must apportion any refusals to Deliver Gas across those Inlet Points in the manner required by the Shipper;
  - (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to Receive Gas across those Outlet Points; or
  - (iii) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points.
- (b) The Operator is not required to make the apportionment referred to in clause 17.10(a) if:
  - (i) acting as a Reasonable and Prudent Person, the Operator considers it is not Technically Practicable to do so;
  - (ii) acting as a Reasonable and Prudent Person, the Operator considers the circumstances do not reasonably allow the Operator to consult with Shipper as to the apportionment or wait for the Shipper's response following such consultation; or
  - (iii) the Operator has requested the Shipper notify the Operator of its apportionment, and the Shipper has not done so by the end of the relevant Gas Day,  
in which case the Operator may apportion the refusal across the relevant inlet points or outlet points (as the case may be) in the manner it considers appropriate.
- (c) The Shipper may at any time and from time to time propose to the Operator an apportionment mechanism which will operate as a standing requirement as to how the Operator must apportion any:
  - (i) refusals to Receive Gas across Inlet Points;
  - (ii) refusals to Deliver Gas across Outlet Points; or
  - (iii) Curtailments across Inlet Points and Outlet Points.

- (d) The Operator and the Shipper must, in good faith, attempt to agree any apportionment mechanism for the purposes of this clause 17.10. If the Operator and the Shipper have not agreed an apportionment mechanism for the purposes of this clause 17.10 within 1 month from the date of the Shipper's proposal, either Party may refer this Dispute to an Independent Expert under clause 24 for determination as a Technical Matter.
- (e) If the Operator and the Shipper have agreed an apportionment mechanism or an apportionment mechanism has been determined by an Independent Expert for the purposes of this clause 17.10, then the Operator must apportion any:
  - (i) refusals to Receive Gas;
  - (ii) refusals to Deliver Gas; or
  - (iii) Curtailments, in accordance with that mechanism.
- (f) If no apportionment mechanism has been proposed by the Shipper or agreed or determined under clause 17.10(d), and it becomes necessary to effect an apportionment of the kind referred to in clause 17.10(c), the apportionment may be effected by the Operator acting as a Reasonable and Prudent Person and must in that case be notified by the Operator to the Shipper as soon as practicable after the end of the relevant Gas Day.

## **Maintenance and Major Works (clause 18)**

### 18. Maintenance and Major Works

- (a) By 31 March of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 July (**Maintenance Year**) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) Within 30 days of receiving the schedule referred to in clause 18(a), the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works for the DBNGP for the Maintenance Year (**Annual DBNGP Maintenance Schedule**), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.
- (c) The Operator must issue a copy of the Annual DBNGP Maintenance Schedule to all shippers who provided the Operator with a schedule pursuant to clause 18(a).
- (d) At the Shipper's request, the Operator must provide the Shipper with its estimate of the Curtailment to Capacity available to the Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.
- (e) The Operator to the extent practical will notify the Shipper of changes to its schedule of Major Works and Planned Maintenance issued to shippers under clause 18(c).
- (f) The Operator must, as a Reasonable and Prudent Person, endeavour to:
  - (i) comply with the Annual DBNGP Maintenance Schedule; and

- (ii) give the Shipper as much advance notice as is reasonably practicable (in the form of regular outage schedules or otherwise) of any material departure from the Annual DBNPG Maintenance Schedule that is likely to affect the Shipper. However, the Operator will not be bound by any notification it provides pursuant to this clause 18(f)(ii).
- (g) If the Shipper is affected by any planned Curtailment arising out of any Planned Maintenance, or any Major Works, the Operator must use its reasonable endeavours to:
  - (i) consult with the Shipper concerning the scheduling and duration of;
  - (ii) accommodate the needs of the Shipper in scheduling; and
  - (iii) minimise the duration and impact of,
 the Curtailment.
- (h) Despite clause 18(b), but subject to clauses 17.6(b)(i)(A) 18(f) and 18(g), the Operator may determine the timing and extent of any Curtailment necessitated by Major Works in its discretion.

## **Force Majeure (clause 19)**

19. Force Majeure
  - (a) A Party (the Affected Party) is excused from performance of, and is not liable for any failure in carrying out any of its obligations under this Contract, to the extent that it is prevented from doing so by Force Majeure.
  - (b) Subject to clause 19(f), an obligation to pay money is not excused by Force Majeure.
  - (c) Without prejudice to the Shipper's entitlement to a refund under clause 17.4 in circumstances where a Curtailment is other than as a result of an event of Force Majeure where the Shipper is the Affected Party, the Shipper is not relieved of its obligation to pay the Capacity Reservation Charge by the occurrence of an event of Force Majeure in respect of it however caused.
  - (d) If a Party claims the benefit of Force Majeure, it must:
    - (i) promptly give notice to the other Party of the occurrence and circumstances in which the claim arises;
    - (ii) use its best endeavours to remedy the consequences without delay; and
    - (iii) resume full performance of its obligations under this Contract as soon as reasonably practicable.
  - (e) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the Party claiming the benefit of this clause and the Party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
  - (f) The Shipper is relieved from paying the Surcharges to the extent that it was unable to prevent such Surcharges accruing due to some event of Force Majeure affecting it.

- (g) For the avoidance of doubt, the Parties acknowledge that lack of finances, lack of funds or access to funds, or inability to borrow funds are not in any circumstances an event of Force Majeure under this Contract.

## Charges (clause 20)

### 20. Charges

#### 20.1 Obligation to pay Charges

The Shipper must pay the Charges and any other amounts payable under this Contract to the Operator in the manner and at the times set out in this Contract, including the charges set out in clauses 20.2, 20.3 and 20.4 (inclusive). The Charges must be invoiced and paid in accordance with clause 21.

#### 20.2 Capacity Reservation Charge

- (a) The Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by calculating the sum of Contracted Capacity for P1 Services at each Outlet Point multiplied by the P1 Capacity Reservation Tariff.
- (b) Subject to clause 17.4, the Capacity Reservation Charge is payable for each Gas Day during the Period of Supply regardless of whether the Shipper provides Gas at any Inlet Point and regardless of whether the Shipper takes Gas at any Outlet Point.

#### 20.3 Commodity Charge

The Commodity Charge will be calculated for each Gas Day during the Period of Supply by calculating the multiple of the P1 Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for P1 Services at all Outlet Points by the Operator on that Gas Day.

#### 20.4 Other Charges

- (a) The following charges apply to this Contract:
  - (i) Excess Imbalance Charge (clause 9.5(g));
  - (ii) Hourly Peaking Charge (clauses 10.3(d));
  - (iii) Overrun Charge (clause 11.1(a));
  - (iv) Unavailable Overrun Charge (clauses 11.6 and 17.8(e)); and
  - (v) any charges or other sums payable under clauses 6.6, 9.9(c), 14.7 and 15.11 or elsewhere in this Contract,

(together ***Other Charges***).
- (b) The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by the Operator or is otherwise a penalty or constitutes penal damages.

- (c) To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers.

#### 20.5 Adjustment to P1 Tariff

- (a) The Parties acknowledge that:
  - (i) as at the commencement of this Contract, the P1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism;
  - (ii) any adjustment of the P1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.

#### 20.6 Goods and Services Tax

- (a) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST.
- (b) If a supply under this Contract is subject to GST then the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount must be reduced by any part of that loss, cost expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) The additional amount payable under clause 20.6(b) is payable at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it is payable within 10 days of a Tax Invoice being issued by the Party making the supply.
- (e) Where in relation to this Contract a Party makes a taxable supply, that Party must provide a Tax Invoice in respect of that supply at or before the time the payment to which the supply relates is payable.
- (f) If a Party becomes aware of an adjustment event, that party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the Supplier has satisfied itself that the adjustment event has occurred.
- (g) If an amount is paid by a Party under the Contract as an additional amount under clause 20.6(b) and the amount of GST is not payable or the amount of GST is less than or greater than the additional amount paid, the payer must pay the difference to the supplier or shall be entitled to recover the amount paid from the supplier by serving notice on the supplier (as the case may require).
- (h) For the purposes of this clause:

- (i) **GST** means GST as that term is defined in the GST Law; and
- (ii) the terms GST group, member, recipient, representative member, supply, consideration, input tax credit, taxable supply, adjustment, adjustment event and adjustment note have the same meaning as in the GST Law.

## 20.7 Tax Changes Variation

- (a) The Operator has established the P1 Tariff for the P1 Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Access Arrangement applicable during the Term being included in the Operator's forecast operating expenditure (**Included Taxes and Carbon Costs**)
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Term, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNPG whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:
  - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services (Rule 91 Criteria) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator must vary the P1 Tariff to deal with the financial impact of the Tax Change; and
  - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator may vary the P1 Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the P1 Tariff under clause 20.7(a), the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
  - (i) in the case of a Tax Change where the changed amount of the relevant included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;
  - (ii) outlines the amount of the relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure in the Access Arrangement applicable during the Term;
  - (iii) provides evidence of the amount of the Tax Change;
  - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;

- (vi) specifies the scope of the financial impact of the Tax Change;
- (vii) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
- (d) The Operator must not vary the P1 Tariff under clause 11.3(b)(ii) in the Access Arrangement unless:
  - (i) the Operator provides a Tax Change Notice to the Regulator; and
  - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the P1 Tariff commences to have effect is 15 Business Days.
- (g) If the Tax Change Notice results in a reduction in the P1 Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a P1 Service an amount equal to the difference between:
  - (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the P1 Tariff commenced to have effect; and
  - (ii) the Charges that the Shipper would have paid for that period if the variation to the P1 Tariff had taken effect on the Date of the Tax Change.

## **Invoicing and Payment (clause 21)**

### 21. Invoicing and Payment

#### 21.1 Monthly payment of Capacity Reservation Charge

- (a) The Operator must, no later than 20 days before the start of each month, provide the Shipper a Tax Invoice in respect of the Capacity Reservation Charges payable by the Shipper for that Gas Month under this Contract. The Tax Invoice must separately show the Capacity Reservation Charges for each Capacity Service.
- (b) The Shipper must, no later than 3 days before the start of each month, pay to the Operator in advance all Capacity Reservation Charges payable by it for that Gas Month as specified in the Tax Invoice referred to in clause 21.1(a).

#### 21.2 Monthly invoicing

The Operator must, within 5 Working Days after the end of each month, provide the Shipper a Tax Invoice or Tax Invoices for that Gas Month showing:

- (a) the quantity of Gas Delivered by the Shipper at each Inlet Point and the quantity of Gas Delivered by the Operator at each Outlet Point on each Gas Day in the month for each Capacity Service;
- (b) the Commodity Charges for the month for each Capacity Service;
- (c) all Other Charges payable for the month for each Capacity Service;

- (d) any other amounts which under this Contract are payable in arrears or refundable for the month;
- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous months and the interest payable thereon;
- (f) in the case of the Tax Invoice for the final Gas Month in a Gas Year, any funds payable to the Shipper for that Gas Year by reason of any Curtailment of the Shipper's P1 Service; and
- (g) such other information as may be agreed between the Parties.

#### 21.3 Payment within 10 Working Days

Subject to clause 21.1(b), the Shipper must, within 10 Working Days of receipt of a Tax Invoice, pay to the Operator in the manner shown on the Tax Invoice all amounts shown on the Tax Invoice as payable under this Contract.

#### 21.4 Default in payment

- (a) If the Shipper fails by the relevant due date to make full payment of any:
  - (i) Capacity Reservation Charge;
  - (ii) Commodity Charge;
  - (iii) Other Charges; or
  - (iv) any other amount or amounts payable by it under this Contract and shown on a Tax Invoice,

then, without prejudice to the Operator's other rights and remedies under this Contract or in equity, the Shipper must (unless the Operator in its absolute discretion waives this requirement) pay interest on the unpaid amount (after as well as before judgment), calculated and compounded daily at the Prescribed Interest Rate from the due date until payment.

- (b) The Prescribed Interest Rate calculated for a day from which interest is payable on an amount referred in clause 21.4(a) or clause 21.5 applies until payment of that amount, and is not to be recalculated despite any change in the Bank Bill Rate during that period.
- (c) This clause 21.4 applies with appropriate changes to a default by the Operator in paying or allowing any credit, rebate or other sum under this Contract.

#### 21.5 Disputed Tax Invoices

- (a) If the Shipper disputes that any amount or amounts set out in a Tax Invoice is due or payable, then the Shipper must pay the undisputed portion (if any) of the amount shown on the Tax Invoice in accordance with clause 21.3, and must, within 10 Working Days of the date of the Tax Invoice, give notice in writing to the Operator that it disputes the amount or amounts and full details of the dispute.
- (b) Any amount withheld by the Shipper under this clause but subsequently found to have been payable is, without prejudice to the Operator's other rights, to attract interest calculated daily at the Prescribed Interest Rate from 10 Working Days after the date of the Tax Invoice until payment. The Shipper

must pay any interest payable under this clause 21.5 at the same time as it pays the amount withheld.

#### 21.6 Correction of payment errors

- (a) If a Party detects any underpayment or overpayment by a Party of any amount and clauses 20.6(f) and 21.5 do not apply, then the detecting Party must within a reasonable time give notice to the other Party of the underpayment or overpayment. An adjusting payment must be made by the appropriate Party within 10 Working Days of that notice together with interest on the amount of the payment calculated and compounded daily at the Prescribed Interest Rate from the date of underpayment or overpayment until payment.
- (b) Subject to clauses 21.4 and 21.5, in circumstances where there has been an underpayment or overpayment to which clause 21.6(a) applies and the underpayment or overpayment did not result from a failure of the Party which is obliged to pay interest under clause 21.6(a) to perform its obligation under this Contract, the Prescribed Interest Rate for the purposes of clause 21.6(a) is the Bank Bill Rate plus an annual interest rate of 1 percent.

### ***Default and Termination (clause 22)***

#### 22. Default and Termination

##### 22.1 Default by Shipper

The Shipper is in default under this Contract only if:

- (a) the Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract. For the avoidance of doubt, withholding of a disputed amount in accordance with clause 21.5 is not considered a default;
- (b) the Shipper defaults in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in this Contract and such default is material in the context of the Contract as a whole;
- (c) without the Operator's prior consent, the Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking, so far as that undertaking relates to the use of Gas Delivered under this Contract;
- (d) the Shipper suffers an Insolvency Event;
- (e) there is any adverse change in the business or financial condition of the Shipper or any event occurs which could, in the reasonable opinion of the Operator, in any way jeopardise the ability of the Shipper to meet its obligations to the Operator under this Contract; or
- (f) the Shipper is found to be materially in breach of any warranty given to the Operator in this Contract, or if any statement or representation made by any means or in any document by the Shipper to the Operator, is found to be false or misleading in any material particular, and the Shipper fails to remedy that event within the relevant period determined in accordance with clause 22.3(b) following the giving of a Shipper Default Notice by the Operator.

##### 22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing to the Shipper specifying the nature of the default and requiring the Shipper to rectify the default (**Shipper Default Notice**).

#### 22.3 When Operator may exercise remedy

- (a) Subject to clause 22.3(b), the Operator may exercise a remedy under clause 22.4 at any time during which the Shipper remains in default under this Contract.
- (b) The Shipper is not in default under this Contract and the Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):
  - (i) in respect of an event described in clauses 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days have elapsed after the Shipper receives that Shipper Default Notice; and
  - (ii) in respect of an event described in clauses 22.1(b), 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after the Shipper receives that Shipper Default Notice, and the event has not been remedied within the relevant period specified in (i) or (ii) above.
- (c) A default of the kind referred to in clause 22.1(d) is deemed to be remedied when the relevant Insolvency Event is no longer continuing.

#### 22.4 Remedies for Shipper's default

Subject to clause 22.3, if the Shipper is in default under this Contract, then the Operator may in its sole discretion:

- (a) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point until such time as:
  - (i) all amounts the failure to pay which constitutes the event described in clause 22.1(a), plus interest on those amounts at the Prescribed Interest Rate, have been paid in full; and
  - (ii) all other events described in clause 22.1 have been remedied, ceased or removed; or
- (b) by notice in writing to the Shipper terminate this Contract which termination takes effect immediately upon receipt of such notice.

#### 22.5 Default by Operator

The Operator is in default under this Contract only if:

- (a) the Operator repudiates, disclaims or defaults in the performance of, any obligation under this Contract and such repudiation, disclaimer or default is material in the context of the Contract as a whole; or
- (b) an Insolvency Event occurs in respect of the Operator, and the Operator fails to remedy that event within the relevant period determined in accordance with clause 22.7 following the giving of an Operator Default Notice by the Shipper.

#### 22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing to the Operator specifying the nature of the default and requiring the Operator to rectify the default (Operator Default Notice).

#### 22.7 When Shipper may exercise remedy

- (a) Subject to clause 22.7(b), the Shipper may exercise a remedy under clause 22.8 at any time during which the Operator remains in default under this Contract.
- (b) The Operator is not in default under this Contract and the Shipper may not terminate this Contract under clause 22.8 for a default under this Contract:
  - (i) in respect of an event described in clause 22.5(a), unless it has given an Operator Default Notice, and until 20 Working Days have elapsed after the Operator receives that Operator Default Notice; and
  - (ii) in respect of an event described in clause 22.5(b), unless it has given an Operator Default Notice, and until 5 Working Days have elapsed after the Operator receives that Operator Default Notice, and the event has not been remedied within the relevant period specified in clause 22.7(b)(i) or 22.7(b)(ii).
- (c) A default of the kind referred to in clause 22.5(b) is deemed to be remedied when the relevant Insolvency Event is no longer continuing. A default of the kind referred to in clause 22.5(a) that relates to the repudiation or disclaimer of a contract, agreement or deed is deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.

#### 22.8 Remedies for Operator's default

Subject in all cases to clauses 22.7 and 22.9, if the Operator is in default under this Contract and:

- (a) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(b), then the Shipper may in its sole discretion by notice in writing to the Operator terminate this Contract, which termination takes effect at the start of the Gas Day immediately following the Operator's receipt of the notice of termination; or
- (b) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(a), then the Shipper may, in its sole discretion, terminate this Contract by notice in writing to the Operator, which termination takes effect on the date the Shipper specifies in the notice of termination but the date must not be a date exceeding 3 years after the Operator receives the notice of termination.

#### 22.9 [Deleted]

#### 22.10 Saving of other remedies

Except where expressly excluded or limited by this Contract, the right to terminate this Contract under this clause 22 is in addition to and is not in substitution for any other rights and remedies available to a Party, whether under this Contract or under any Law.

#### 22.11 Effect of termination

- (a) Termination of this Contract by the Operator under clause 22.4(b) or the Shipper under clauses 22.8:
  - (i) does not prejudice the rights or remedies accrued to either Party at the date of termination or any of the provisions of clauses 17.2 or 17.3, clauses 23.1 to 23.7 (inclusive), and clause 29; and
  - (ii) subject to clause 22.11(b), relieves each Party of all further obligations under this Contract to the other Party.
- (b) Termination of this Contract by the Operator under clause 22.4(b) does not relieve the Shipper of its obligations under this Contract to (subject to clause 22.11(c)) pay the Capacity Reservation Charges for the balance of the Period of Supply (but for the termination of this Contract) and to pay all amounts outstanding (and then due and payable) at the time of termination, and termination of this Contract by the Shipper under clause 22.8 does not relieve the Operator of its obligations to pay all amounts outstanding (and then due and payable) at the time of termination.
- (c) The Shipper is relieved of its obligation under clause 22.11(b) to continue to pay an amount if and to the extent that the Operator subsequently enters into a contract for Capacity Services, and receives payment from the Shipper or any other shipper for, some or all of the Contracted Capacity (Terminated Capacity) made spare by the termination of this Contract.
- (d) For the purposes of clause 22.11(c), Terminated Capacity in any Capacity Service must be assumed to be the last Capacity available to be committed under a contract for Gas Transmission Capacity, and any amounts received by the Operator under such contract must be assumed to be applied last to any Terminated Capacity committed under that contract.

## **Liability (clause 23)**

### 23. Liability

#### 23.1 Liability limited to Direct Damage

Subject to the terms and conditions of this Contract, a Party who:

- (a) is negligent; or
- (b) defaults in respect of its obligations to the other Party under this Contract, is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and must indemnify the other Party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage caused by or arising out of the negligence or default.

#### 23.2 Liability for fraud

A Party who is fraudulent in respect of its obligations to the other Party under this Contract is liable to the other Party for, and must indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of the fraud, and the exclusion of Indirect Damage in clause 23.3 does not apply.

#### 23.3 No liability for Indirect Damage

- (a) Subject to clause 23.3(c), neither Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.
- (b) Subject to clause 23.3(c), the Operator hereby releases the Shipper from, and agrees to indemnify the Shipper against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Operator and the Shipper hereby releases the Operator from, and agrees to indemnify the Operator against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Shipper.
- (c) Where this Contract states that "the exclusion of Indirect Damage in clause 23.3(a) does not apply", or words to the same effect, in relation to a matter, then:
  - (i) the exclusion of Indirect Damage in clause 23.3(a) and the release and indemnity in clause 23.3(b) do not apply in relation to that matter; and
  - (ii) the Parties' respective liability in relation to the matter must be determined by Law and, to avoid doubt, the definition of "Indirect Damage" in this Contract must be disregarded for the purposes of that determination.

#### 23.4 No liability arising out of any approval by Operator

Without limiting the generality of clause 23.3, the Operator is not, except as provided in clauses 23.1 and 23.2, in any circumstances to be liable to the Shipper for any Direct Damage or Indirect Damage arising out of any approval by the Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the DBNGP.

#### 23.5 Saving of contractual payments

Nothing in this clause 23 limits the liability of either Party to make all payments due under this Contract.

#### 23.6 Shipper responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Shipper alone is liable for any:
  - (i) injury to or death of any person employed by the Shipper or by any person (except the Operator) contracting with the Shipper; and
  - (ii) loss of or damage to any property of the Shipper or of any person (except the Operator) contracting with or employed by the Shipper,

however caused, except to the extent this liability was contributed to by an act or omission of the Operator or any person (except the Shipper) contracting with the Operator, or the Operator's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP, or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Shipper must indemnify the Operator and any person (except the Shipper) contracting with the Operator, and their respective directors,

servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.6(a).

#### 23.7 Operator responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Operator alone is liable for any:
  - (i) injury to or death of any person employed by the Operator or by any person (except the Shipper) contracting with the Operator; and
  - (ii) loss of or damage to any property of the Operator or of any person (except the Shipper) contracting with or employed by the Operator,

however caused, except to the extent this liability was contributed to by an act or omission of the Shipper or any person (except the Operator) contracting with the Shipper, or the Shipper's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Operator must indemnify the Shipper and any person (except the Operator) contracting with the Shipper, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.7(a).

#### 23.8 Each limitation separate

Each limitation or exclusion created by this clause 23 and each protection given to the Operator or the Shipper or to their respective directors, servants, consultants, independent contractors and agents by this clause 23 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 23 is held inapplicable in any circumstances.

### ***Dispute Resolution and Independent Experts (clause 24)***

#### 24. Dispute Resolution and Independent Experts

##### 24.1 Method of Resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause.

##### 24.2 Acknowledgment

The Parties acknowledge that while Disputes may arise from time to time, their common intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

##### 24.3 Service of Notice

If a Dispute arises at any time which is between the Parties, then either Party may give the other Party a notice in writing which is dated, signed, and must specify the precise nature of the Dispute (***Dispute Notice***).

#### 24.4 Meeting

Within 5 Working Days of service of a Dispute Notice, the Parties must meet and use all their reasonable efforts to resolve the Dispute (by negotiation or otherwise).

#### 24.5 Senior Officers

If the Dispute is not resolved within 10 Working Days after the meeting between the Parties under clause 24.4, the Parties must immediately refer the Dispute to their respective senior executive officers who must meet within 5 Working Days and use all reasonable efforts to resolve the Dispute.

#### 24.6 Failure to Resolve Dispute

If the Parties are unable to resolve the Dispute in accordance with clause 24.5, and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 24.7), then either Party may require that the Dispute be determined by an independent expert (***Independent Expert***) under clauses 24.8, 24.9 and 24.10 and if the Dispute is not a Technical Matter or a Financial Matter then either Party may commence proceedings in a court of competent jurisdiction in Western Australia.

#### 24.7 Technical and Financial Matters

In this clause 24:

- (a) a ***Technical Matter*** means a matter involving issues relating to the receipt, transportation and delivery of Gas under this Contract which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which the Operator has issued an Unavailability Notice); and
- (b) a ***Financial Matter*** means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

#### 24.8 Appointment of Independent Expert

- (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
- (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then, in relation to a Technical or Financial Matter, either Party may refer the matter to the Australian Commercial Disputes Centre and request that a suitably qualified person be nominated by the Australian Commercial Disputes Centre, in accordance with the Rules of Expert Determination of the Australian Commercial Disputes Centre as amended from time to time, to act as Independent Expert to determine the Dispute.
- (c) If the Australian Commercial Disputes Centre ceases to exist or otherwise ceases to provide the relevant expert nomination service, then the Institute of Arbitration and Mediation Australia is to substitute for the Australian Commercial Disputes Centre as the nominating body and nomination is to

occur in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators Australia as amended from time to time.

#### 24.9 Expert not an Arbitrator

The Independent Expert appointed under clause 24.8:

- (a) will act as an expert and not as an arbitrator;
- (b) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) will not be a current or former employee or representative of, or a person who provides consultancy services on a regular basis to, a Party or to a Related Body Corporate of a Party; and
- (d) must disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which may conflict with his or her position.

#### 24.10 Representation, Evidence, Confidentiality, Powers and Costs

- (a) Each Party may be legally represented at any hearing before the Independent Expert.
- (b) Each Party will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute.
- (c) Each Party will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (d) The Independent Expert will not be bound by the rules of evidence and, subject to abiding by the rules of natural justice, the Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent Expert must determine the procedures to be followed in resolving the Dispute (including whether or not any hearing will take place) and the Parties must co-operate promptly with those procedures, but the Independent Expert must in any event:
  - (i) provide the Parties with a fair opportunity to make written submissions;
  - (ii) provide written reasons for the Independent Expert's determination; and
  - (iii) prior to handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity to lodge written submissions concerning the proposed determination which the Independent Expert must consider before settling and handing down the Independent Expert's determination.
- (f) (i) Subject to clause 24.10(f)(ii), all information, material and evidence obtained or made available in the course of or for the purpose of the determination will be kept confidential by the Independent Expert and all the Parties.
  - (ii) Clause 24.10(f)(i) does not apply if:

- (A) all the Parties otherwise agree; or
  - (B) the disclosure is authorised by Law or the disclosure is required by or under a written Law of the State or the Commonwealth.
- (iii) If either Party becomes legally compelled to disclose information, material or evidence obtained in the course of or for the purpose of the determination, that person must immediately provide the other Party with written notice so that the other Party may seek appropriate relief and may only disclose information, material or evidence which is legally required to be disclosed.
- (iv) This clause does not make confidential, information, material or evidence which is in the public domain at the time it is obtained in the course of or for the purpose of the determination.
- (v) The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.
- (g) Subject to any time prescribed anywhere else in this Contract, the Independent Expert will make a determination on the Dispute within a reasonable period of his or her appointment.
- (h) The determination of the Independent Expert:
- (i) will be final and binding upon the Parties so far as the Law allows, except where a Party has been denied natural justice; and
  - (ii) will determine what, if any, adjustments may be necessary between the Parties.
- (i) The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:
- (i) unless the Parties otherwise agree before the reference of the Dispute, the remuneration of the Independent Expert will be finally determined by the President for the time being of the appropriate body referred to in clause 24.8(b) who will have the power to fix the remuneration of the Independent Expert at the conclusion of the determination or, if requested by the Independent Expert, to determine a fair rate at which the Independent Expert will be remunerated at any time during the conduct of the determination process; and
  - (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of:
    - (A) the determination; and
    - (B) each Party's own costs (including out of pocket costs) incurred in the preparation and presentation of any submissions or evidence to the Independent Expert,

and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.

#### 24.11 Urgent Relief Condition Precedent to litigation

- (a) A Party must not commence any proceedings before any court in respect of a Dispute which a Party requires to be determined by an Independent Expert under clause 24.6 unless the Dispute has first been referred to an Independent Expert and the Independent Expert does not determine the Dispute within 6 months of the date of the dispute being referred to the Independent Expert.
- (b) Nothing in this clause 24.11 will preclude either Party from seeking any urgent interlocutory, injunctive or declaratory relief, or from commencing proceedings before any court to prevent its claim from being statute barred under the *Limitation Act 1935 (WA)* or any other relevant statute of limitation.

### **Assignment (clause 25)**

#### 25. Assignment

##### 25.1 No assignment except under this clause

Subject to this clause 25 and to clause 27, neither Party may assign any right, interest or obligation under this Contract.

##### 25.2 Charges

- (a) A Party may, without the consent of the other Party (but subject to all other necessary consents and approvals), charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the charge enters into a tripartite deed with the other Party substantially in the form of Schedule 7. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.
- (b) The granting of a charge under this clause 25.2 does not constitute the assignment of a right, interest or obligation referred to in this clause 25.

##### 25.3 Assignment

- (a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:
  - (i) such assignment does not release the assignor from liability;
  - and
  - (ii) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.
- (b) Subject to clauses 25.3(c), 25.3(d) and 25.4, either Party may, with the prior written consent of the other Party, which must not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.
- (c) Without limitation, the Operator may withhold its consent to an assignment by the Shipper if the Operator reasonably considers that the proposed assignee

is not in a position to meet the Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to the Operator, acting reasonably.

- (d) Without limitation, the Shipper may withhold its consent to an assignment of the Operator's obligations under this Contract if the proposed assignee does not have:
  - (i) the contractual, statutory or ownership rights to access the DBNGP for the purposes of performing all of the Operator's obligations under this Contract; or
  - (ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNGP and to perform all of Operator's obligations under this Contract.

#### 25.4 Assignment: deed of assumption

- (a) A Party (in this clause 25.4 the **Assignor**) must not assign all or part of its rights and interests under this Contract (other than by way of a Bare Transfer under clause 27.1) without requiring the assignee to enter into a deed of assumption to the reasonable satisfaction of the other Party under which the assignee assumes all, or the relevant portion, of the Assignor's obligations under this Contract.
- (b) Upon the fulfilment of the relevant conditions specified in clause 25.3 and the entry into of a deed of assumption contemplated by this clause 25.4, the Assignor is released from all future liability and obligations under this Contract to the extent that the assignee agrees to perform them under the deed of assumption, but this release does not apply to an assignment to a Related Body Corporate under clause 25.3(a) effected without the written consent of the other Party.

#### 25.5 Pipeline Trustee's Acknowledgments and Undertakings

- (a) In this clause 25.5, **dispose** means, in relation to the DBNGP, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the DBNGP (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee:
  - (i) acquiring any equitable interest in the DBNGP, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the DBNGP; or
  - (ii) otherwise acquiring legal or equitable rights against the DBNGP which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the DBNGP itself.
- (b) The Pipeline Trustee, in its capacity as trustee of the DBNGP Pipeline Trust (**Pipeline Trust**), undertakes to the Shipper that the Pipeline Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Operator under:
  - (i) this Contract; and
  - (ii) any other contract with the Shipper entered into by, or undertaking given in favour of the Shipper by, the Operator which requires the use

or application of any asset owned by the Pipeline Trust, including the DBNPG, in order to be able to perform the contract or comply with the undertaking, except to the extent that such obligations are observed, performed or discharged by the Operator.

- (c) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to the Shipper that if for any reason the DBNPG Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNPG (whether imposed on the Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by the Operator had the DBNPG Operating Agreement not been terminated.
- (d) The Shipper acknowledges and agrees that:
  - (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.5(b) and 25.5(c) (**Relevant Agreements**) to the same extent that the Operator would have had to comply with those obligations under the Relevant Agreements;
  - (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement and expressed to be for the benefit of the Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25.5(b) and 25.5(c); and
  - (iii) nothing in clauses 25.5(b) and 25.5(c) gives the Shipper any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that the Shipper would have been entitled to against the Operator for that failure.
- (e) The Pipeline Trustee represents and warrants that it is the legal owner of the DBNPG and owns the DBNPG in its capacity as trustee of the DBNPG Pipeline Trust.
- (f) Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, the Pipeline Trustee shall not dispose of the whole or any part of its right, title or interest in the DBNPG without requiring the donee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:
  - (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be released to the extent that the Pipeline Trustee's obligations are assumed); and
  - (ii) acknowledges that its obligations under such assumption of obligations extend to Operator's obligations under the Relevant Agreements,

consistent with this clause 25.5.
- (g) Subject to clause 25.5(h), if the donee is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the donee, execute the deed of assumption in terms of clause 25.5(f).

- (h) If the donee is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.5(g) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the donee. Nothing in clause 25.5(g) or this clause 25.5(h) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

#### 25.6 Utilising other shippers' Daily Nominations

Neither clause 25.1 nor clause 27.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

### **General Right of Relinquishment (clause 26)**

#### 26. General Right of Relinquishment

##### 26.1 Shipper may make Relinquishment Offer

- (a) In addition to its rights under this Contract to relinquish Contracted Capacity in certain circumstances, Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to Operator (**Relinquishment Offer**).
- (b) The Relinquishment Offer must specify the amount of Contracted Capacity under this Contract to be relinquished (**Relinquishable Capacity**) at an Inlet Point, and at an Outlet Point.
- (c) The Relinquishment Offer may specify how a Relinquishment Acceptance is to apportion any Relinquished Capacity between Shipper's Contracted Capacities for each Period.
- (d) A Relinquishment Offer, unless accepted under clause 26.3(a), has no effect on this Contract.

##### 26.2 Withdrawal of Relinquishment Offer

Shipper may at any time before Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to Operator that it wishes:

- (a) to withdraw that Relinquishment Offer; or
- (b) to amend that Relinquishment Offer,

and that Relinquishment Offer is by force of this clause 26.2 withdrawn or amended, as the case requires, from the time when that notice is received by Operator.

##### 26.3 Operator may accept Relinquishment Offer

- (a)
  - (i) Operator may at any time give notice in writing to Shipper accepting a Relinquishment Offer (**Relinquishment Acceptance**).
  - (ii) A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.
  - (iii) A Relinquishment Acceptance must not apportion Relinquished Capacity between Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(d).

- (b) A Relinquishment Acceptance must specify:
  - (i) the amount of Relinquishable Capacity that Operator has agreed to relinquish (***Relinquished Capacity***);
  - (ii) the changes to the Access Request Form which are required to give effect to the relinquishment of the Relinquished Capacity; and
  - (iii) the date the relinquishment is to take effect.
- (c) Subject to clause 26.3(b), Operator's discretion in determining:
  - (i) whether or not to give a Relinquishment Acceptance;
  - (ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and
  - (iii) the order in which it accepts offers of relinquishment from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,

is to be absolute and unfettered.
- (d) Operator's discretion is not to be limited by:
  - (i) any circumstances of Shipper;
  - (ii) the current or projected level of utilization of capacity of the DBNRP;
  - (iii) the number or magnitude of current or anticipated offers of relinquishment from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or
  - (iv) the order in which offers of relinquishment are received by Operator from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

#### 26.4 Effect of Relinquishment Acceptance

- (a) Upon receipt by Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:

- (i) Shipper's Contracted Capacity is amended in accordance with the Relinquishment Acceptance;
- (ii) if, as a result of a reduction under clause 26.4(a)(i), Shipper's Contracted Capacity is reduced to zero, then this Contract is terminated; and
- (iii) if the Relinquishment Acceptance is given in respect of:
  - (A) part only of the Relinquishable Capacity, the Relinquishment Offer remains in effect, subject to clause 26.2, in respect of the Relinquishable Capacity which has not become Relinquished Capacity; or
  - (B) all of the Relinquishable Capacity, the Relinquishment Offer ceases to have effect.
- (b) Subject to clause 26.4(a)(ii), this Contract, as amended under clause 26.4(a)(i), remains in effect after receipt by Shipper of the Relinquishment Acceptance, and Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by Shipper.

#### 26.5 Notification of relinquishment of capacity by other shippers

If another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, Operator must, whenever requested by Shipper to do so, provide Shipper, at Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26.

#### 26.6 Administrative expenses

Shipper must, when requested by Operator to do so, reimburse Operator for all reasonable expenses incurred by Operator by reason of any:

- (a) Relinquishment Offer;
- (b) notice given under clause 26.2(a); or
- (c) Relinquishment Acceptance.

### ***Trading or Transferring Contracted Capacity (clause 27)***

#### 27. Trading or Transferring Contracted Capacity

##### 27.1 No transfer of Contracted Capacity other than by this clause

- (a) The Shipper must not Transfer any of its Contracted Capacity other than in accordance with this clause 27 or clause 25, as the case may be.
- (b) Subject to clause 25.6, neither clause 27.1(a) nor clause 25.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

##### 27.2 Transfer by way of sub-contract

Shipper may, without Operator's consent, transfer all or any of Shipper's contracted capacity to a third party by way of sub-contract in accordance with rule 105(2) of the Rules, subject to Shipper immediately giving notice to Operator of:

- (a) the subcontract and its likely duration;
- (b) the identity of the other shipper; and
- (c) the amount of contracted capacity which is being transferred.

#### 27.3 Replacement Shipper must be another shipper or an Approved Prospective Shipper

Other than a transfer in accordance with clause 27.2, the Shipper may Transfer Contracted Capacity only to a person who is, prior to the Transfer, another shipper or an Approved Prospective Shipper (**Replacement Shipper**).

#### 27.4 Transfer of Capacity by Shipper - Approval of transfer terms

- (a) If the Shipper desires to transfer all or part of its Contracted Capacity to a Replacement Shipper, the Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (**Tradeable Capacity**), make a written request to the Operator for the approval of the Transfer of that Tradeable Capacity (**Request for Approval**).
- (b) A Request for Approval must set out in detail the terms and conditions on which the Shipper is prepared to Transfer the Tradeable Capacity to a Replacement Shipper, including:
  - (i) the duration of the Transfer;
  - (ii) the Inlet Point or Inlet Points and the Outlet Point or Outlet Points at which the Tradeable Capacity is to be Transferred;
  - (iii) the circumstances in which, and the terms on which, the Shipper may interrupt a Replacement Shipper;
  - (iv) the quantity of Tradeable Capacity; and
  - (v) whether there are any rights reserved in respect of the Tradeable Capacity by the Shipper.
- (c) The Shipper may retain a right in specified circumstances to Resume the Traded Capacity, either permanently or temporarily.
- (d) The Operator must, within 5 Working Days of receipt of the Request for Approval, notify the Shipper that it either approves, or rejects, the Transfer Terms. The Operator may reject the Transfer Terms if the Operator as a Reasonable and Prudent Person considers for any reason that its operation of the DBNGP cannot accommodate:
  - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; or
  - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (e) The Operator must not unreasonably withhold its approval of Transfer Terms if the Transfer is to an existing shipper who is not in default of any of its contracts for Capacity Services and Spot Transactions and, the Operator (acting as a Reasonable and Prudent Person) believes the DBNGP can accommodate:

- (i) the Transfer of the Tradeable Capacity on the Transfer Terms; and
  - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (f) If the Operator does not notify the Shipper that it rejects the Transfer Terms in the terms and within the time stipulated in clause 27.4(d), then the Transfer of the Tradeable Capacity on the Transfer Terms is deemed to have been approved by the Operator.
- (g) If:
- (i) the Operator notifies the Shipper that it approves the Transfer of the Tradeable Capacity; or
  - (ii) the Operator is taken to have approved the Transfer of the Tradeable Capacity, (in either case **Approved Tradeable Capacity**) on the Transfer Terms, then (subject to clause 27.6) the Shipper may Transfer the Tradeable Capacity to a Replacement Shipper on those terms.

## 27.5 Posting of Tradeable Capacity

- (a) The Operator may, if requested by the Shipper, notify all other shippers of which the Operator is aware who are or may be interested in taking a Transfer of Tradeable Capacity are notified of details of Approved Tradeable Capacity in such a way that they all receive notice (by the CRS or otherwise) at approximately the same time as the Operator makes available to the shippers any bulletin dealing with the amount of Capacity available for Nomination or Renomination on a Gas Day.
- (b) The Operator may provide a statement of the current details of all other shippers' Approved Tradeable Capacity at the Shipper's request.

## 27.6 Notification of traded capacity

The Shipper must notify the Operator of a Transfer of Approved Tradeable Capacity to a Replacement Shipper at least 2 Working Days before the Transfer of Approved Tradeable Capacity takes effect.

## 27.7 Replacement Contract

- (a) A Transfer of Approved Tradeable Capacity to a Replacement Shipper is deemed to be a contract between the Operator and the Replacement Shipper in respect of the Approved Tradeable Capacity.
- (b) A Replacement Contract is governed by the terms and conditions of this Contract.
- (c) A Replacement Contract is deemed to include a provision that the Traded Capacity is subject to all the Operator's rights over that Traded Capacity under this Contract.
- (d) Prior to the Operator exercising any rights to terminate the Replacement Contract as a result of the Replacement Shipper's default, the Operator must give at least 20 Working Days notice to the Shipper specifying the nature of the default, and the Operator must not terminate the Replacement Contract if within that period the Shipper:
  - (i) cures the default; or

(ii) resumes the Tradeable Capacity (having cured the default).

#### 27.8 Shipper's Contract

- (a) Subject to this clause 27, this Contract remains in full force and effect following any Transfer of Traded Capacity and the Operator is not obliged to release any deposit, bond, security or other form of assurance provided by the Shipper.
- (b) For the duration of the Replacement Contract, this Contract is deemed to be amended so that the Shipper's Contracted Capacity in respect of the relevant Inlet Point or Inlet Points or Outlet Point or Outlet Points is reduced by the amount of the Traded Capacity.

#### 27.9 Resumption of Traded Capacity by Shipper

- (a) If the Shipper wishes to exercise a right under the Transfer Terms to resume the Traded Capacity, the Shipper must give a Resumption Notice to the Operator and the Replacement Shipper, specifying the amount of Capacity Resumed and the duration of the Resumption.
- (b) The Operator, on receipt of a Resumption Notice, must as soon as practicable confirm to the Shipper and the Replacement Shipper that the Capacity has been Resumed.
- (c) In any proceedings brought against the Operator in relation to a Resumption, a Resumption Notice is conclusive proof of the validity of its issue and of its contents.
- (d) To the extent that a Resumption Notice is invalidly issued or a purported Resumption is not authorised by the Transfer Terms, a Replacement Shipper's remedy lies against the Shipper.
- (e) For the duration of a Resumption, this Contract and the Replacement Contract is deemed to be amended to the extent necessary to reflect the Resumption of Traded Capacity and the duration and terms of that Resumption.
- (f) Traded Capacity which is resumed by the Shipper, or Capacity which is otherwise transferred or reverts to the Shipper, is subject to the terms of this Contract and treated as the same Capacity Service that applied prior to its Transfer, regardless of the terms applying to it prior to the resumption.

#### 27.10 Administrative expenses

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator by reason of the Request for Approval and any Resumption.

### ***Confidential Information (clause 28)***

#### 28. Confidentiality

##### 28.1 Confidential Information

- (a) Subject to clauses 28.2 and 28.3, each Party must keep the terms and conditions of this Contract, and all information specifically relating to or provided pursuant to or in accordance with this Contract or in the negotiations

leading to the execution of this Contract (***Confidential Information***), confidential.

- (b) To avoid doubt Confidential Information includes all information received by the Operator in the Operation and Expansion of the DBNGP which relates to the Shipper, the disclosure or misuse of which might reasonably be expected to materially affect the Shipper's commercial interests, including information relating to the Shipper's gas flows and flow rates, billing, and the Shipper's maintenance schedules and plant availability.
- (c) A reference in this clause 28 to information being disclosed to or received by a Party, includes information being communicated to or created, ascertained, discovered or derived by it or on its behalf.

## 28.2 Exceptions to Confidentiality

Either Party may disclose Confidential Information which:

- (a) at the time when it is disclosed to the Party, is publicly known;
- (b) subject to clauses 28.4 and 28.5, at the time when it is disclosed to the Party, is already known to the Party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 28.1, and which the Party can prove by prior or contemporaneous written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) after the time when it is disclosed to the Party, comes into the public domain otherwise than as a result of any breach of the confidentiality undertaking owed pursuant to clause 28.1;
- (d) subject to clauses 28.4 and 28.5, the other Party acquires from a source other than that Party or any Related Body Corporate or representative of that Party where such source is entitled to disclose it and such disclosure is not subject to confidentiality restrictions under this Contract;
- (e) that Party is required by the ASX, court order, Law, the Regulator, or requested by the ACCC to disclose, and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be);
- (f) is necessary in relation to any discovery of documents, or any proceedings before a court, tribunal, ACCC, other governmental agency or stock exchange, and in such cases, the disclosing Party must promptly notify the other Party of that requirement;
- (g) with the consent of the other Party and subject to any conditions of that consent;
- (h) it is necessary or convenient in relation to any notification by the Shipper to ACCC or ERA under clause 28.7;
- (i) is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a Party, a Related Body Corporate of a Party, the Diversified Utility and Energy Trust No 1 and No 2 or the POWERS Trust, or any funding vehicle of any of those parties;

- (j) is requested by an operator of a pipeline which is inter-connected with the DBNGP, subject to the Confidential Information being relevant to and necessary for the operation of the inter-connected pipeline;
- (k) is required by Law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the DBNGP and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be); or
- (l) comprises the terms of the Operator's Standard Shipper Contract.

### 28.3 Permitted Disclosure

- (a) Either Party may disclose Confidential Information to:
  - (i) subject to clauses 28.4 and 28.5, its, and its Related Bodies Corporate, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers (and for the purpose of this clause 28.3(a) Alcoa, WestNet and the System Operator must be considered Related Bodies Corporate of the Operator); and
  - (ii) subject to clauses 28.4 and 28.5, a bona fide proposed or prospective transferee (and their employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial advisers, Related Entities, co-bidders or bid consortium members and actual or proposed joint venturers) of:
    - (A) a 20% or more legal or equitable interest in a relevant part or the whole of a Party's business;
    - (B) a 20% or more legal or equitable interest in any property to which the information relates;
    - (C) 20% or more of the shares in a Party; or
    - (D) 20% or more (by value) of the shares or units (or both) in a company or trust (or both) which, directly or indirectly, controls (as that term is defined in the Corporations Act) a Party, to the extent those persons have a need to know the Confidential Information.
- (b) Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:
  - (i) any person who is directly involved in:
    - (A) the distribution of Gas to customers through the Western Australia – Natural Gas Distribution System as that term is used in the National Third Party Access Rules for Natural Gas Pipeline Systems (as amended from time to time);
    - (B) the retailing of Gas within Western Australia;
    - (C) the generation or sale of electricity in Western Australia;
    - (D) contracting for Capacity on the DBNGP; or

- (E) the management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or
  - (ii) such person's employees, officers, agents, contractors consultants and technical advisers who are themselves directly involved in any of the activities described in clause 28.3(b)(i), except to the extent that such person is:
  - (iii) the System Operator and requires the disclosure of information to it by the Operator or by it to enable it to perform its obligations to the Operator under the relevant operating and maintenance services contract (provided that at no time may the System Operator or its employees, officers, agents, contractors, consultants and technical advisers (which, without limiting clauses 28.4 and 28.5, does not include WestNet to the extent it provides corporate and other head office services to the System Operator) be directly or indirectly involved in anything listed in clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D) or clause 28.3(b)(i)(E) to the extent it relates to clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D));
  - (iv) a director or senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate through which they have a direct or indirect equity interest in the DBNPG, and requires the disclosure of information in connection with the management of their respective equity interests in the DBNPG; or
  - (v) a senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate, who:
    - (A) is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or
    - (B) by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv), which disclosure under clauses 28.3(b)(iii), 28.3(b)(iv) and 28.3(b)(v) is, subject to clauses 28.4 and 28.5, permitted in accordance with the provisions of this clause 28.3.
- (c) Any Party seeking to disclose information under clause 28.3(a)(ii) must:
- (i) seek the consent of the other Party as to the protocols, arrangements and agreements which will govern the disclosure of the information and the prevention of further disclosure of the information, which consent is not to be unreasonably withheld or unreasonably delayed; and
  - (ii) consult with the other Party to ascertain whether there is any commercially sensitive information which may not be disclosed at all or may only be disclosed on terms and conditions agreed between the Parties, and must give effect to the reasonable requirements of the other Party in these respects.
- (d) The Operator will comply with the ring fencing obligations in Chapter 4, Part 2 of the National Gas Law.

#### 28.4 Disclosure by recipient of Confidential Information

- (a) Any Party disclosing information under clauses 28.2 or 28.3 must ensure that persons receiving Confidential Information from it, or from any person or persons to whom the Confidential Information has been disclosed, do not:

- (i) disclose the information except in circumstances permitted in clauses 28.2 or 28.3 (as the case may be); and
  - (ii) use the information except in the circumstances permitted by clause 28.5.
- (b) If the Operator and the System Operator disclose information to a person under clauses 28.3(b)(iii), 28.3(b)(iv) or 28.3(b)(v), then the Operator must ensure that (unless in the circumstances of a particular case it is not possible to do so) the information is disclosed in a manner which minimises the disclosure of the Confidential Information referred to in clause 28.1(b), including by one or more of aggregating the information with like information from other shippers, presenting it in summary form, or presenting it (so far as is practicable) in a form which does not identify it as relating to the Shipper.

#### 28.5 Use of Confidential Information

A Party who has received Confidential Information from another under this Contract must not use it, and a Party who has disclosed Confidential Information to a person under clause 28.3 must procure that that person, and any person or persons to whom the Confidential Information is subsequently disclosed, does not use it, except for the purpose of exercising the Party's rights or performing the Party's obligations under this Contract or as otherwise contemplated under this Contract, with the exception of those persons set out in clause 28.3(a)(ii), who must not use the Confidential Information received from another under this Contract except for and in relation to assessing the value of, and preparing a bid for, the relevant interest under clause 28.3(a)(ii) that is proposed to be acquired and who must comply with the protocols, arrangements and agreements agreed under clause 28.3(c)(i).

#### 28.6 Information received by Operator

- (a) The Operator must develop, implement and enforce, policies and procedures to:
  - (i) give effect to its obligations under:
    - (A) clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c); and
    - (B) clauses 28.4 and 28.5 to the extent related to disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b);
  - and
  - (ii) ensure that all shippers are treated equally and fairly, and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.
- (b) The Operator recognises that some information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that where the information is commercially sensitive (as determined by the Operator acting reasonably), in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that

those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP. The Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.

- (c) The Operator must make available to the Shipper upon request a copy of the policies and procedures developed and implemented under clause 28.6(a). Despite this clause 28, the Shipper may in any submissions to the ERA or the ACCC disclose this clause 28 and the policies and procedures developed and implemented under clause 28.6(a).
- (d) Nothing in clause 28.6(c) requires the Operator to consult with the Shipper regarding, or to seek the Shipper's agreement with, any policies and procedures developed and implemented under clause 28.6(a).

#### 28.7 Breach by Operator

- (a) The Shipper must notify the Operator immediately if it has evidence able to be substantiated of a breach by the Operator, or any party for whom the Operator is responsible under this clause 28, of any of:
  - (i) clauses 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c);
  - (ii) clauses 28.4 or 28.5 to the extent related to disclosure under clause 28.3(a)(i), 28.3(b) or 28.6(b); or
  - (iii) the policies or procedures referred to in clause 28.6(a),  
(each a **Relevant Breach**).
- (b) Within 30 days after receipt of a notice under clause 28.7(a), the Operator must:
  - (i) notify the Shipper as to whether or not it agrees that a Relevant Breach has occurred; and
  - (ii) if it agrees that a Relevant Breach has occurred, specify the manner in which the Operator proposes to address the breach and ensure that it is not repeated and if applicable make a proposal of compensation for the Shipper's loss (which proposal must take into account the fact that the exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under clauses 28.7(c) and 28.7(e)).
- (c) If the Operator does not agree that a Relevant Breach has occurred, or if the Operator's response under clause 28.7(b) does not resolve the matter to the Shipper's reasonable satisfaction or include a proposal of compensation acceptable to the Shipper acting reasonably, or if the Operator does not respond within the time required by clause 28.7(b), the Shipper may notify the ACCC. If the ACCC confirms that there was a Relevant Breach of this clause 28, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(c).
- (d) If, following notification from the Shipper to ACCC under clause 28.7(c), the ACCC does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ACCC, the Shipper may notify the ERA.

- (e) If, following notification from the Shipper to ERA under clause 28.7(d), the ERA confirms that there was a Relevant Breach of this clause 28 or does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ERA, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(e).
- (f) If the Shipper considers that a breach of this clause 28 has occurred by the Operator or any party for whom the Operator is responsible under this clause 28 but the Shipper does not have evidence of such breach, then the Shipper may notify the Operator.
- (g) Within 30 days after receipt of a notice under clause 28.7(f), the Operator must:
  - (i) notify the Shipper as to whether or not it agrees that a breach has occurred; and
  - (ii) if it agrees that a breach has occurred, confirm the manner in which the Operator proposes to address the breach and ensure that it is not repeated.
- (h) If the Operator's response under clause 28.7(g) does not address the Shipper's concern to the Shipper's reasonable satisfaction, the Shipper may notify the ERA.
- (i) Following notification under clause 28.7(h), if the ERA determines that there was a breach of this clause 28 it may suggest an appropriate remedy, however the Parties agree that the Operator is not liable to the Shipper for any damages in these circumstances.
- (j) The procedures outlined in clauses 28.7(a) to 28.7(i) represent the sole and exclusive means by which the Shipper may obtain damages in relation to such breaches or alleged breaches by the Operator. No right of termination arises for a Relevant Breach. This clause 28.7(j) does not limit clause 28.10.
- (k) If, and for so long as, either or both of the ERA and the ACCC are unable to accept the role intended for them under this clause 28.7, the Parties agree that the references to the ERA or ACCC, as applicable, is deemed to be to an Independent Expert under clause 24 and the provisions of clause 24 will apply subject only to the following modifications:
  - (i) the matter will be considered a Technical Matter;
  - (ii) the appointing authority in clause 24.8(b) will in the first instance be the Chairman for the time being of the ERA or, if he or she fails or declines to make the appointment within 10 days of being asked to do so, then it will revert to the appointing body as set out in 24.8(b); and
  - (iii) the following will be added to clause 24.10(g): "and the Independent Expert must, and the Parties must assist as applicable to, make a determination within 30 days of his appointment".
- (l) The Parties agree to cooperate to make submissions to the applicable person or body to seek the conferral of the relevant power on the ERA or ACCC, as applicable, in order that they may accept the role intended for them under this clause 28.7.

## 28.8 Publicity

A Party must not make press or other announcements or releases relating to this Contract and the transactions the subject of this Contract without the approval of the other Party as to the form and manner of the announcement or release (which approval must not be unreasonably withheld or delayed) unless and to the extent that the announcement or release is required to be made by the Party by Law or by a stock exchange. This clause 28.8 does not apply:

- (a) if the second Party unreasonably delays or withholds approval; or
- (b) to the extent that the proposed announcement or release relates to a matter regarding which the Parties are in a bona fide dispute or disagreement.

Nothing in this clause 28.8 authorises the disclosure of Confidential Information.

## 28.9 No disclosure of terms of this Contract

Except as otherwise agreed or duly required by Law or any regulatory authority, no Party may disclose the terms of this Contract to any person other than pursuant to clauses 28.2(d) to 28.2(f) and 28.3.

## 28.10 Remedies

The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause 28 and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

## 28.11 Survival

This clause 28 survives termination (for whatever reason) of this Contract.

## **Notices (clause 29)**

### 29. Notices

#### 29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading

- (a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5, 9.9(c), and 17.6(a) must be communicated by facsimile to the facsimile number set out in the Access Request Form, until further notice is given under clause 29.3(c).
- (b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.
- (c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each install and maintain a dedicated facsimile machine on a separate facsimile number for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new facsimile number which takes effect in substitution for the number set out in the Access Request Form.

#### 29.2 The CRS

- (a) Subject to clauses 29.2(b) and 29.2(c), Accumulated Imbalance Notices, Resumption Notices, and all notices under clause 8 (Nominations) may be provided through the CRS.
- (b) If at any time and for any reason the CRS fails to function properly, then each of the notices specified in clause 29.2(a) that are required to be given during the period of failure, must be communicated by the method set out in clause 29.1.
- (c) The terms and conditions of access to the CRS will be as published by the Operator from time to time, provided that the CRS must not be used for giving notices which have contractual effect unless the Shipper has agreed to the terms and conditions (such agreement not to be unreasonably withheld).

#### 29.3 Notices generally

- (a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- (b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses and facsimile numbers of the Parties are as set out in the Access Request Form.
- (c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- (d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

#### 29.4 Receipt of notices

- (a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or facsimile machine, or posted to the CRS, by no later than that time.
- (b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.
- (c) When the time printed on the transmission report referred to in clause 29.4(b) is between:
  - (i) 00:00 hours and 09:00 hours; or
  - (ii) 17:00 hours and 24:00 hours,

on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.

- (d) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in the Access Request Form (**Dedicated Email Address**). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4, taken to be given and received at the time the sender receives an automatic response message to the email.
- (e) For the purposes of this Contract, a notice sent by certified mail is taken to be received on the earlier of the date of receipt or on the second Working Day after the notice was committed to post.
- (f) For the purposes of this Contract:
  - (i) a notice sent by the CRS between 00:00 hours and 17:00 hours on a Working Day will be taken to have been received on that Working Day; and
  - (ii) the other notices sent by the CRS will be taken to have been received at the commencement of the next Working Day.

## ***Representations and Warranties (clause 30)***

### 30. Representations and Warranties

#### 30.1 Operator's Representations and Warranties

- (a) The Operator represents and warrants to the Shipper that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental and Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental and Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract and to allow those obligations to be enforced;
  - (iii) it has in full force and effect all materially necessary leases, licences or easements to construct, Operate and Maintain the Outlet Point Station at each Outlet Point specified in the Access Request Form and all metering and other facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) the Operator does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

- (vi) this Contract and any transaction under it does not contravene the Operator's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
  - (vii) it is the operator of the DBNGP;
  - (viii) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the person except debts mandatorily preferred by Law;
  - (ix) the Operator is not in default under a Law affecting it or its assets, or any obligation or undertaking by which it or any of its assets are bound which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (x) the Nominations Plan will be applied to the allocation of Gas Transmission Capacity to all shippers on the DBNGP and the Curtailment Plan will be applied to the Curtailment of the Delivery of Gas to all shippers on the DBNGP; and
  - (xi) it will not enter into a contract arrangement or understanding for a Capacity Service that has a priority of allocations of Nominations for the purposes of clause 8.8, and for the purposes of Curtailments under clause 17.7(a), that is inconsistent with clause 8.8 and in particular, but without limitation, it will not allow a Capacity Service to have a priority of allocation of Nominations which sits between Alcoa's Exempt Delivery Entitlement and the P1 Service, or between any of the Types of Capacity Services listed in the Curtailment Plan.
- (b) The representations and warranties in clause 30.1(a) are made on and from the Capacity Start Date, and must be taken to be made anew on each day thereafter for the duration of this Contract.

### 30.2 Shipper's Representations and Warranties

- (a) Subject to clause 30.2(b), the Shipper represents and warrants to the Operator that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental And Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract, and to allow those obligations to be enforced;
  - (iii) it has, or its Producers have, in full force and effect all necessary leases, licences or easements to construct, Operate and Maintain all facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) this Contract and any transaction under it does not contravene the Shipper's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;

- (vi) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the Shipper except debts mandatorily preferred by Law;
  - (vii) neither the Shipper nor any of its Related Bodies Corporate is in default under a Law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
  - (viii) there is no pending or threatened action or proceeding affecting the Shipper or any of its Related Bodies Corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (ix) neither the Shipper nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
  - (x) the Shipper is not an agent or trustee in relation to this Contract or in relation to the Gas to be Received or Delivered under this Contract.
- (b) The representations and warranties in clause 30.2(a) are made on and from the Capacity Start Date, and are taken to be made anew on each day thereafter for the duration of this Contract.

### 30.3 Pipeline Trustee's Representations and Warranties

- (a) The Pipeline Trustee represents and warrants to the Shipper that:
  - (i) it is empowered by the constitution of its Trust to enter into and perform this Contract, to carry on its business as now conducted or contemplated and to own its assets in its capacity as trustee of the Pipeline Trust, and there is no restriction on or condition of its doing so;
  - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the constitution of its Trust for it to enter into and perform this Contract;
  - (iii) it is the sole trustee and responsible entity of the Pipeline Trust;
  - (iv) no property of the Pipeline Trust has been re-settled or set aside or transferred to any other trust;
  - (v) the Pipeline Trust has not been terminated, nor has any event for the vesting of the assets of the Pipeline Trust occurred;
  - (vi) its right of indemnity out of, and lien over, the assets of the Pipeline Trust has not been limited in any way (other than as required by section 601GA(2) of the Corporations Act) including, without limitation, it has no liability which may be set off against that right of indemnity;
  - (vii) the constitution of its Trust complies with all applicable Laws; and (viii) it has complied in all material respects with its obligations and duties under the constitution of its Trust and the Corporations Act.

- (b) The representations and warranties in clause 30.3(a) are made on and from the Capacity Start Date and must be taken to be made anew on each day thereafter for the duration of this Contract.

#### 30.4 Creditworthiness of Shipper

The Operator may from time to time seek confirmation from the Shipper (including provision of the most recent audited financial accounts of the Shipper) that the Shipper is in a position to meet its obligations under this Contract.

#### 30.5 Failure to Satisfy Operator of Creditworthiness

If the Operator is (acting reasonably) not sufficiently certain that the Shipper is in a position to meet or continue to meet its obligations under this Contract, the Operator may require, and the Shipper must provide, security for those obligations to the Operator's reasonable satisfaction.

### **Records and Information (clause 31)**

#### 31. Records and Information

- (a) Except where otherwise provided in this Contract, both the Operator and the Shipper must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to this Contract, and must retain those books, accounts, records and inventories for at least seven years.
- (b) If the Shipper requests (which it may not do more frequently than every 12 months) and without limiting any other obligation on the Operator to provide information under this Contract, another contract or at Law, the Operator shall provide the Shipper with a non-binding indicative summary of its material planned expansions (if any) of the Gas Transmission Capacity for the following 5 years. The Shipper agrees that these plans will be prepared and provided to the Shipper without any warranty or undertaking that such planned expansions will be undertaken, or if undertaken will be effective and available to the Shipper.

### **Insurances (clause 32)**

#### 32. Insurances

- (a) Subject to clause 32(d), the Shipper must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
  - (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment (if any) at the Inlet Point Station or Outlet Point Station; and
  - (iii) liability insurance for such amount as the Operator may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.

- (b) Subject to clause 32(d), the Shipper must:
  - (i) arrange for the Operator's interest to be noted on the policies referred to in clauses 32(a)(ii) and 32(a)(iii) to the reasonable satisfaction of the Operator so that the Operator is covered under those policies; and
  - (ii) use all reasonable endeavours to arrange for the insurers to waive rights of subrogation against the Operator.
- (c) Subject to clause 32(d), the Shipper must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Operator with certificates of currency of the insurances and endorsements required by this clause 32.
- (d) The Operator may waive compliance by the Shipper with any or all of the requirements of clauses 32(a), 32(b) and 32(c), if the Operator:
  - (i) is satisfied that the Shipper has adequate alternative arrangements; or
  - (ii) accepts the Shipper as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.
- (e) Subject to clause 32(h), the Operator must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
  - (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Operator's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the DBNGP and all associated equipment; and
  - (iii) liability insurance for such amount as the Shipper may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.
- (f) Subject to clause 32(h), the Operator must use all reasonable endeavours to arrange for:
  - (i) (A) endorsement on the policies referred to in clauses 32(e)(ii) and 32(e)(iii) of the Shipper as an insured or co-insured; or
  - (B) the Shipper's interest to be noted on those policies to the satisfaction of the Shipper so that the Shipper is covered under those policies; and
  - (ii) the insurers to waive rights of subrogation against the Shipper.
- (g) Subject to clause 32(h), the Operator must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Shipper with certificates of currency of the insurances and endorsements required by this clause.

- (h) The Shipper may waive compliance by the Operator with any or all of the requirements of clauses 32(e), 32(f) and 32(g), if the Shipper:
  - (i) is satisfied that the Operator has adequate alternative arrangements;
  - (ii) accepts the Operator as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.

## No Waiver (clause 33)

### 33. No Waiver

No failure or delay by a Party in exercising any of its rights under this Contract operates as a waiver of the Party's rights or prevents the Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of this Contract.

## Entire Agreement (clause 34)

### 34. Entire Agreement

This Contract constitutes the entire agreement between the Parties on the subject matter of this Contract and supersedes all prior negotiations, representations and agreements between the Parties.

## Severability (clause 35)

### 35. Severability

If any clause or provision of this Contract is held to be illegal or unenforceable by any judgment of a court, arbitrator, tribunal or authority having competent jurisdiction, the judgment does not affect the remaining provisions of this Contract which remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included in this Contract.

## Entry and Inspection (clause 36)

### 36. Entry and Inspection

- (a) Each Party must grant to, or use its reasonable endeavours to procure for, the other Party all reasonable rights of entry:
  - (i) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP);
  - (ii) to inspect for safety or other reasons the construction, installation, Operation, Maintenance and repair of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP); and
  - (iii) for any other purpose connected with or arising out of this Contract.
- (b) Any entry under clause 36(a) is made in all respects at the expense and risk of the entering Party, who must, subject to clause 23 make good any damage occasioned by or resulting from the entry.

- (c) Except in the case of emergency, a Party must:
  - (i) when it seeks to exercise a right of entry under this clause 36, give reasonable notice to the other Party specifying the proposed time and duration of entry; and
  - (ii) take all reasonable steps to ensure that during the entry its employees, servants, consultants, independent contractors and agents cause as little inconvenience to the other Party as possible and at all times comply with all reasonable safety standards and other requirements of that Party.
- (d) To the extent that any equipment or thing is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a right of entry to that third person's premises.

## ***Ownership, Control, Maintenance and Risk (clause 37)***

### 37. Ownership, Control, Maintenance and Risk

- (a) In the absence of any agreement between the Parties to the contrary, the Inlet Point and the Outlet Point on the DBNGP mark the boundaries of ownership of all plant, equipment, pipelines and facilities and, as between the Parties and in the absence of evidence to the contrary:
  - (i) the Shipper is presumed to own any relevant thing upstream of the Inlet Point and downstream of an Outlet Point; and
  - (ii) the Operator is presumed to own any relevant thing between the Inlet Point and the Outlet Point.
- (b) In the absence of any agreement between the Parties to the contrary, the responsibility to install, commission, Operate and Maintain, and the risk in relation to, all plant, equipment, pipelines and facilities follows ownership.

## ***Revocation, Substitution and Amendment (clause 38)***

### 38. Revocation, Substitution and Amendment

- (a) The Operator and the Shipper may at any time agree in writing to revoke, substitute or amend any provision of this Contract (including the Access Request Form).
- (b) Clause 38(b) does not prevent the Shipper from:
  - (i) relocating Contracted Capacity under this Contract;
  - (ii) making a Nomination or Renomination for and being scheduled Capacity under this Contract which exceeds the Shipper's Contracted Capacity;
  - (iii) contracting for and having Capacity transferred to it by another shipper; or
  - (iv) varying this Contract in accordance with clauses 14.9 or 17.7(f).
- (c) If the Parties agree to an increase in Contracted Capacity, this Contract (including the Access Request Form) is to be amended to reflect this.

## **No Common Carriage (clause 39)**

39. No Common Carriage

Neither the Operator nor the Shipper is a common carrier of Gas transported through the DBNGP.

## **Operator not a Supplier of Gas (clause 40)**

40. Operator Not a Supplier of Gas

Nothing in this Contract requires the Operator to supply Gas to the Shipper but the Operator is required to Deliver Gas from time to time in accordance with this Contract.

## **Stamp Duty (clause 41)**

41. Stamp duty

The Shipper must pay all stamp duty payable in respect of this Contract.

## **No Third Party Benefit (clause 42)**

42. No Third Party Benefit

Subject to clauses 24.4(c) and 23, no person other than the Operator or the Shipper obtains any right, benefit or entitlement under this Contract, despite that person being referred to in this Contract or belonging to a class of persons which is referred to in this Contract.

## **Governing Law (clause 43)**

43. Governing Law

This Contract must be construed and interpreted in accordance with the Law of Western Australia and the Parties entering into this Contract submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **General (clause 44)**

44. General

44.1 Operator's discretion

In circumstances in which the Operator has a discretion to take action under this Contract, including any of clauses 9.7, or 10.3(a)(iii) that may limit the amount of Capacity available to the Shipper, or that may affect the way in which the Shipper may use Capacity, during a certain period, which action is not governed by the provisions of clauses 8.8, or 8.9, relating to Nominations or clauses 17.9 or 17.10 relating to Curtailment, the Operator must treat the Shipper fairly and reasonably in the circumstances with all other shippers who should or may be subject to similar action.

44.2 Refusal to Receive or Deliver Gas

Where the Operator is entitled under this Contract to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, then the Operator may take whatever action it believes, acting as a Reasonable and Prudent Person, is necessary to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, including by physically reducing, interrupting or stopping completely or in part the flow of Gas at the Inlet Point or Outlet Point.

## ***Non-discrimination clause (clause 45)***

### 45. Non-Discrimination Clause

#### 45.1 Access to DBNGP information

If the Operator, the System Operator or any of their contractors or agents, or any person or persons to whom information from the Operator or the System Operator has been disclosed, provides any information to any shipper or a Related Body Corporate or officer of a shipper (acting in their respective capacity as shippers) about availability of Capacity, including:

- (a) information relating to planned and unplanned maintenance;
- (b) policies and procedures under which the market for Spot Capacity and Curtailment is administered; or
- (c) DBNGP flow data between each compressor station and each other significant point,

then, other than to the extent that such information relates to an inlet point, outlet point or gate station which is specific to an individual shipper, the Operator must ensure that the Shipper receives that information at substantially the same time and in the same format.

Nothing in this clause 45.1 limits the Operator's obligations under clause 28.

#### 45.2 Arms' length dealings

The Operator must, and must procure that the System Operator does, in Operating and Expanding the DBNGP and exercising the discretions afforded to the Operator under this and other contracts:

- (a) treat all shippers (including shippers which are Associates of a Relevant Company) on an arms' length basis; and
- (b) ensure that no shipper which is an Associate of a Relevant Company receives a benefit, compared with another shipper which is not, unless the benefit is attributable to an arms' length application of the two shippers' respective contractual entitlements entered into on terms and conditions that are comparable with the Standard Shipper Contract.

## ***Pipeline Trustee's Limitation of Liability (clause 46)***

### 46. Pipeline Trustee's Limitation of Liability

- (a) The Pipeline Trustee enters into this Contract only in its capacity as trustee of the Pipeline Trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Pipeline Trustee only to the extent to which it can be satisfied out of property of the Pipeline Trust out of which the Pipeline Trustee is actually indemnified for the liability. Except as provided in clause 46(b), this limitation of the Pipeline Trustee's

liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Pipeline Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.

- (b) Clause 46(a) does not act to limit:
- (i) the Shipper's entitlements to seek orders against the Pipeline Trustee (in its capacity as trustee of the Pipeline Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Shipper under any Law; or
  - (ii) Pipeline Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

### ***Unused Clause (clause 47)***

47. Not Used

# Terms and Conditions for the B1 Service

## Interpretation (clause 1)

### 1. Interpretation

In this Contract:

**ACCC** means the Australian Competition and Consumer Commission.

**Access Arrangement** means the access arrangement from time to time for the DBNGP under the Access Regime, as changed, varied or replaced from time to time (including by the change made by the Corrigenda of 12 January 2004).

**Access Arrangement Information** means the access arrangement information forming part of an access arrangement proposal from time to time in accordance with the provisions of the National Gas Access (Western Australia) Law.

**Access Regime** means any legislative, legislative and administrative or administrative regime from time to time governing the terms and conditions of third party access to Capacity Services or Spot Capacity on the DBNGP, and at the time of this Contract includes the *National Gas Access (WA) Act 2009* (WA), the National Gas Access (Western Australia) Law and the Rules, and any access arrangement approved under the National Gas Access (Western Australia) Law and in force for the DBNGP.

**Access Request Form** means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.

**Accumulated Imbalance** means the accumulated imbalance calculated under clause 9.3 and, if applicable, adjusted under clause 9.8.

**Accumulated Imbalance Limit** has the meaning given in clause 9.5(a).

**Accumulated Imbalance Notice** has the meaning given in clause 9.4.

**Accurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be.

**Actual Mass Flow Rate** means either:

- (a) a directly measured variable; or
- (b) a Derived Variable computed by multiplying the instantaneous actual volume flow of Gas, as measured by the Primary Metering Equipment, by the density of the Gas, the density being either:
  - (i) measured as the instantaneous measured density of the Gas; or
  - (ii) calculated in accordance with the full detail method defined in AGA Report No. 8 Compressibility Factor of Natural Gas and Related Hydrocarbon Gasses (1994) standards, as the Operator determines, or in accordance with such other Gas industry standards as the Parties may agree.

**Advance Nomination** means a Nomination by the Shipper under clause 8.18.

**Affected Party** has the meaning given in clause 19(a).

**Alcoa** means Alcoa of Australia Limited ABN 93 004 879 298.

**Alcoa's Exempt Capacity** means the Gas Transmission Capacity necessary to transport the quantity of Gas which the Operator is required to Deliver from time to time to Alcoa under the Alcoa Exempt Contract (including Alcoa's Exempt Delivery Entitlement).

**Alcoa Exempt Contract** means the contract originally between the State Energy Commission of Western Australia and Alcoa and now between the Operator and Alcoa dated 7 February 1983 as amended from time to time, and including any changes to the quantities of Alcoa's entitlements under that contract taking effect after the date of execution of the Deed of Amendment No 5 of that contract which result from an exercise of rights by Alcoa under that contract which existed upon the execution of Deed of Amendment No 5 of that contract, but excluding any amendments having effect after the date of execution of Deed of Amendment No 5 of that contract which in any way relate to the Capacity the Operator must provide to Alcoa under that contract including for the purposes for which that Capacity may be used and the prices Alcoa pays for that Capacity if it uses that Capacity for other than a purpose specified in that contract.

**Alcoa's Exempt Delivery Entitlement** means the quantity of Gas (including Alcoa's Priority Quantity) of which Alcoa is entitled to take Delivery under the Alcoa Exempt Contract during a Curtailment, which may exceed Alcoa's Priority Quantity.

**Alcoa's Priority Quantity** means 40 TJ/d of Alcoa's Exempt Delivery Entitlement.

**Appointed Agent** means a person appointed by the Shipper by way of a written agreement to act as agent of the Shipper in respect of some or all of those matters this Contract contemplates may be performed by a Producer or an Appointed Agent on behalf of the Shipper.

**Approved Prospective Shipper** means a person who is not a shipper but who has satisfied the Operator of its creditworthiness such that, in the Operator's reasonable opinion, that person would be capable of meeting the obligations imposed under any relevant contract for Gas Transmission Capacity on the DBNGP.

**Approved Tradeable Capacity** has the meaning given in clause 27.4(g).

**AS** followed by a designation, refers to the text from time to time amended and for the time being in force of the document so designated issued by Standards Australia.

**ASX** means ASX Limited ABN 98 008 624 691.

**Associate** has the meaning given in section 11 of the Corporations Act as at the Execution Date.

**Associated**, when used to describe the relationship between:

- (a) an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and
- (b) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point.

**Authorisation** means:

- (a) any authorisation, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption of any Governmental Authority; and
- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Authority intervenes or acts in any manner within a specified period after notification to it, the expiry of that period without intervention or action of the relevant Governmental Authority.

**Authorised Relocation** means a Requested Relocation that has been authorised by the Operator under clause 14.2.

**B1 Capacity Reservation Tariff** has the meaning given in clause 3.5(b) of the Access Arrangement.

**B1 Contract** means any contract between the Operator and a shipper for a T1 Service, and to avoid doubt includes this Contract.

**B1 Commodity Tariff** has the meaning given in clause 3.5(b) of the Access Arrangement.

**B1 Permissible Curtailment Limit** has the meaning given in clause 17.3(c).

**B1 Service** has the meaning given in clause 3.2(a) and clause 3.5(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**B1 Tariff** means the reference tariff for B1 Service set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time

**Back Haul** means a Gas transportation service on the DBNGP where the Inlet Point is downstream of the Outlet Point.

**Bank Bill Rate** means, for the day of calculation, the average mid rate for bills having a tenor closest to 90 days, as displayed on the "BBSY" page of the Reuters Monitor System on that day. However, if the average mid rate is not displayed by 10:30am (Sydney time) on that Day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate (expressed as a yield to maturity) set by the Operator in good faith and acting reasonably at approximately 10:30am on that day, having regard, to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the "BBSW" page of the Reuters Monitor System). The rate set by the Operator must be expressed as a percentage rate per annum and be rounded up to the nearest sixth decimal place.

**Blended Gas** means all Gas Delivered at a Multi-shipper Inlet Point in a commingled inlet stream.

**Blended Specifications** has the meaning given in clause 7.13.

**Capacity** means:

- (a) at an Inlet Point or a proposed Inlet Point - the capacity of the DBNGP to take delivery at and to transport Gas from that Inlet Point; and
- (b) at an Outlet Point or a proposed Outlet Point - the capacity of the DBNGP to transport and deliver Gas to that Outlet Point,

and must be expressed in TJ/d. For the avoidance of doubt, unless otherwise expressly stated, a reference in this Contract to Capacity is a reference to Capacity averaged across a Gas Day.

**Capacity End Date** means 08:00 hours on the date determined in accordance with clause 4 and is 08:00 hours on the date on which the Shipper's access to the particular Contracted Capacity is to end.

**Capacity Reservation Charge** means a component of the price for Gas Transmission Capacity to which the Shipper has access under this Contract, calculated in accordance with clause 20.2.

**Capacity Service** means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided.

**Capacity Start Date** means 08:00 hours on the date specified in clause 4.1 of this Contract as the date at which the Shipper's access to the particular Contracted Capacity is to start or has started.

**Carbon Cost** means any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

**Charges** means the Capacity Reservation Charge, Commodity Charge and Other Charges.

**Check Metering Equipment** means any Metering Equipment or other equipment installed, maintained or operated by a Party under clause 15.8(a) for checking measurements of Gas quality and quantity.

**Commodity Charge** means the charge set out in clause 20.3.

**Confidential Information** has the meaning given in clause 28.1.

**Contract** means this contract as revoked, substituted or amended from time to time under clause 38, including the queuing policy of the Access Arrangement, Access Request Form and these terms and conditions and the Schedules attached hereto.

**Contracted Capacity** has the meaning given in clause 3.3 and, in the context of any other contract in respect of a particular Capacity Service, has the meaning given in that contract.

**Contracted Firm Capacity** means Alcoa's Exempt Capacity and Capacity under a T1 Service, B1 Service or P1 Service or a Firm Service.

**Contract Year** means the period from the Capacity Start Date until 31 December in the same calendar year and thereafter the period commencing 1 January in a calendar year and ending on 31 December in the same calendar year, with the last Contract Year ending on the earlier of the Capacity End Date and the sooner termination of this Contract.

**Contribution Agreement** has the meaning given to it in clause 6.13(b).

**Control** has the meaning given in the Corporations Act as at the Execution Date.

**Controller** has the meaning given in the Corporations Act as at the Execution Date.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**CPI** means the Consumer Price Index, all groups; weighted average of eight capital cities as published for each quarter by the Australian Bureau of Statistics or, if the Consumer Price Index, all groups; weighted average of eight capital cities ceases to be published, such alternative index as the Operator as a Reasonable and Prudent Person may determine.

**CRS** means the Operator's electronic customer reporting system.

**CS7** means compressor station no.7 on the DBNGP.

**Cubic Metre** or m<sup>3</sup> means a cubic metre at MSC.

**Current Verification** means the Verification at which the Primary Metering Equipment is found to be Inaccurate.

**Curtail** means reduce, interrupt or stop, or any combination of them, completely or in part.

**Curtailment Area** means, in relation to a particular Curtailment, the area affected by the relevant Curtailment and unless the Curtailment is a Point Specific Curtailment, includes all areas of the DBNGP downstream of that area.

**Curtailment Notice** has the meaning given in clause 17.6(a).

**Curtailment Plan** means the regime governing Curtailments of Capacity set out in Schedule 6 and clause 17.9.

**Daily Imbalance** means, for a particular Gas Day, the Shipper's Total Inlet Quantity minus the Shipper's Total Outlet Quantity for that Gas Day across all of its Capacity Services.

**Daily Nomination** means:

- (a) in respect of a Type of Capacity Service at an Inlet Point on a Gas Day – the Capacity for the quantity of Gas that the Shipper is to Deliver to the Operator at the Inlet Point on a Gas Day under that Type of Capacity Service; and
- (b) in respect of a Type of Capacity Service at an Outlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is to Receive from the Operator at the Outlet Point on a Gas Day under that Type of Capacity Service,

in each case as set out in the Initial Nomination for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled under a Renomination process.

**DBNGP** means the Gas transmission pipeline system that runs between Dampier and Bunbury in Western Australia, described in Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015) as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists at the Execution Date.

**DBNGP Corridor** has the meaning given in the DBP Act.

**DBNGP Operating Agreement** means the document so titled dated 25 March 1998 between the Operator and the Pipeline Trustee as amended and extended from time to time, under which the Pipeline Trustee grants to the Operator a sublicense of the pipeline licence for the DBNGP and the right and obligation to operate the DBNGP.

**DBNGP Trustee** means DBNGP Holdings Pty Ltd ABN 16 110 721 081.

**DBP Act** means the *Dampier to Bunbury Pipeline Act 1997 (WA)*.

**Deliver** means to deliver or supply Gas and includes Gas deemed by this Contract to be delivered or supplied at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Derived Variable** means a value computed by electronic, analogue or digital means from primary measurements or other derived variables or a combination of both.

**Direct Damage** means loss or damage which is not Indirect Damage.

**Dispute** means any dispute or difference concerning:

- (a) the construction of;
- (b) anything contained in or arising out of; or
- (c) the rights, obligations, duties or liabilities of a Party under,

this Contract and includes any issue which a provision of this Contract contemplates may be referred to dispute resolution under clause 24.

**Distribution Network** means any Gas distribution system which receives Gas from the DBNGP and includes any Gas distribution system owned or operated by Networks which receives Gas from the DBNGP.

**Distribution Networks' IPQ** means 40 TJ/d or such greater or lesser amount as may be agreed between the Parties.

**Distribution Networks Shipper** means any shipper delivering Gas into a Distribution Network (subject to any Law which excludes that shipper from participating in a share of the Distribution Networks' IPQ), from time to time, and may include the Shipper.

**Duty Equipment** means the Metering Equipment in service at a particular time.

**Electronic Data Collection System** means the system and equipment for collecting, receiving and transferring electronic signals and data from Metering Equipment, used for the measurement of Gas delivered to shippers and for billing.

**Environmental and Safety Law** means a Law relating to environmental, building, construction, engineering, planning, health, safety or occupational health and safety matters.

**Equity** means the body of law referred to as equity in section 24 of the *Supreme Court Act 1935 (WA)*.

**ERA** means the Economic Regulatory Authority established by the *Economic Regulation Authority Act 2003 (WA)*.

**Excess Imbalance Charge** means the charge payable by the Shipper identified in clause 9.5(c).

**Excess Imbalance Rate** means the rate set out in row 1 of Schedule 2.

**Execution Date** means the date on which this Contract is signed by the last of the Parties to sign it.

**Existing Gas Supply Contract** means a contract between a shipper and a customer for the sale and or transport of Gas to a customer of a shipper under which the Gas is or will be supplied to the customer at or immediately downstream of an Outlet Point, which was in existence as at the date of the relevant change in Law as contemplated in

clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Inlet Point** means an Inlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Inlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Outlet Point** means an Outlet Point on the DBNGP from which the Shipper proposes to relocate Contracted Capacity, being an Outlet Point specified in this Contract (including by a prior amendment under clause 14.9) at the time the Requested Relocation is made.

**Existing Producer Contract** means a contract between a shipper and a Producer for the sale of Gas to the shipper under which the Gas is or will be supplied to the shipper at or immediately upstream of an Inlet Point, which was in existence as at the date of the relevant change in Law as contemplated in clause 7.10, and excluding any amendments to that contract having effect after such date.

**Existing Station** means:

- (a) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that was installed and commissioned on or before 1 January 1995; or
- (b) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that is the subject of a Facility Agreement (which has the meaning given in clause 6.14) or similar agreement, as at the Capacity Start Date,

all of which are listed in Schedule 5.

**Expansion** means all work required to be undertaken to or in connection with the DBNGP in order to expand the Gas Transmission Capacity of the DBNGP, including to provide additional Capacity for Alcoa pursuant to the Alcoa Exempt Contract, but excluding (subject to the following sentence) any expansion which causes the DBNGP to exceed the geographical confines of the DBNGP Pipeline Corridor created under Part 4 of the DBP Act as at the date of this Contract. The preceding exclusion does not apply to expansion within the extended corridor as contemplated by the expansion project of the easement for the corridor under the DBP Act which was occurring at or about 27 October 2004.

**Facility** has the meaning given in clause 6.14.

**Facility Agreement** has the meaning given in clause 6.14.

**Financial Matter** has the meaning given in clause 24.7.

**Firm Service** has the meaning given in the Access Arrangement in the form the Access Arrangement was in on 13 January 2004.

**Force Majeure** means any event or circumstance not within a Party's control and which the Party, by the exercise of the standards of a Reasonable and Prudent Person, is not able to prevent or overcome, including (provided the foregoing tests are satisfied):

- (a) acts of God, including epidemics, land slides, lightning, earthquakes, fires, storms, floods, wash outs and cyclones;
- (b) strikes, lock outs, stoppages, restraints of labour and other industrial disturbances;

- (c) acts of the enemy including wars, blockades and insurrection;
- (d) acts of terror, terrorism or terrorists;
- (e) riots and civil disturbances;
- (f) valid Laws of the Commonwealth or any Commonwealth statutory authority;
- (g) valid Laws of the State or a local government or any State statutory authority;
- (h) shortage of necessary equipment, materials or labour;
- (i) [deleted]
- (j) refusal or delay in obtaining any necessary consent or approval from any Commonwealth, State or local government or a Commonwealth or State statutory authority;
- (k) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the Party's operations;
- (l) any DBNGP shutdown or interruption which is validly required or directed by any Commonwealth, State or local government agency or any Commonwealth or State statutory authority having authority to so require or direct;
- (m) any DBNGP shutdown or interruption required to conform with design or regulatory limits on DBNGP facilities, whether arising due to environmental conditions or circumstances or otherwise;
- (n) DBNGP ruptures; and
- (o) collisions or accidents.

**Forward Haul** means a gas transportation service on the DBNGP where the Inlet Point is upstream of the Outlet Point.

**Full Haul** means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.

**Gas** means any naturally occurring gas or mixture of gases, intended for use:

- (a) as a fuel; or
- (b) in any chemical process.

**Gas Day** means the period starting at 08:00 hours on a day and ending at 08:00 hours on the following day and the date of a Gas Day is the date on which it commences.

**Gas Hour** means a period of 60 minutes, commencing and ending on the hour.

**Gas Month** means the period starting at 08:00 hours on the first day of a calendar month and ending at 08:00 hours on the first day of the following calendar month.

**Gas Transmission Capacity** means the capacity of the DBNGP to transport Gas.

**Gas Year** means the period starting at 08:00 hours on 1 January and ending at 08:00 hours on the following 1 January.

**Good Gas Industry Practice** means the practices, methods and acts engaged in or approved by a firm or body corporate which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons engaged in providing services to the Australian gas industry under the same or similar circumstances and conditions, and includes complying with the terms of this Contract and taking reasonable steps to ensure that:

- (a) manufacturers' instructions and operating manuals are complied with;
- (b) adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;
- (c) sufficient experienced and trained operating personnel are available to undertake its responsibilities under this Contract;
- (d) appropriate monitoring and testing is carried out to ensure that the equipment will function properly under normal and emergency conditions;
- (e) equipment is operated and maintained in accordance with any Laws applicable to that equipment;
- (f) in accordance with all applicable Laws:
  - (i) it acts in a sound and workmanlike manner;
  - (ii) it acts with due skill, care and applying standards required or accepted by a company experienced in the delivery of similar works and the provision of similar services;
  - (iii) it acts with due expedition and without unnecessary or unreasonable delays; and
  - (iv) it acts in a manner which allows for the work to be efficiently and cost-effectively performed with due regard to safety.

**Governmental Authority** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, responsible minister, department, office, commission, delegate, authority, instrumentality, tribunal, board, agency, entity or organ of government, whether federal, state, territorial or local, statutory or otherwise.

**GST** means GST as that term is defined in the GST Law and as imposed by the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

**Higher Heating Value** means the gross amount of heat energy (measured in megajoules) produced by the complete combustion of one Cubic Metre of dry Gas with air of the same temperature and pressure, when the products of combustion are cooled to the initial temperature of the Gas and air and when all water formed by combustion is condensed to the liquid state, corrected to a water - vapour free basis and expressed at MSC, and determined using ISO 6974 for the analysis of natural Gas and using ISO 6976 for the calculations from that analysis.

**Hourly Peaking Charge** means the charge payable under clause 10.3([ed](#)).

**Hourly Peaking Limit** has the meaning given in clause 10.1.

**Hourly Peaking Rate** means the rate specified in row 2 of Schedule 2.

**Hourly Quantity** means, in respect of a particular shipper for a Gas Hour, the total quantity (across all Outlet Points in the relevant Pipeline Zone or Zones (as the case may be)) of Gas Received by the shipper from the Operator during that Gas Hour, expressed in terajoules.

**Inaccurate** means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a greater extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii) (as the case may be).

**Independent Expert** means an expert chosen under clause 24.8.

**Indirect Damage** means, in respect of a person:

- (a) any indirect loss or damage suffered by that person, however caused, including any:
  - (i) consequential loss or damage;
  - (ii) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
  - (iii) business interruption,
 whether or not the indirect loss or damage was foreseeable; and
- (b) any liability of that person to any other person, or any claim, demand, action or proceeding brought against that person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding.

**Inert Gases** means any one or any mixture of helium, neon, argon, krypton, xenon, radon, nitrogen and carbon dioxide.

**Initial Nomination** means a Nomination by the Shipper under clause 8.6, unless no such Nomination has been made, in which case it means an Advance Nomination (if the Shipper has made an Advance Nomination).

**Initial Notice** has the meaning given to it in clause 17.6(b)(i)(A).

**Inlet Metering Equipment** means the Metering Equipment referred to in clause 15.1(a).

**Inlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator and, where the context requires, means a flange, joint or other point specified in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

**Inlet Point Connection Facilities** means that part of the DBNGP that comprises facilities and equipment between an Inlet Point and the main trunkline structure of the pipeline, and includes:

- (a) any facilities to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
  - (b) all standby, emergency and safety facilities; and
  - (c) all ancillary equipment and services,
- constituting that part of the DBNGP.

**Inlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Inlet Sales Agreement** means the form of inlet sales agreement which is published on the Operator's website from time to time.

**Inlet Station** means the Metering Equipment site Associated with an Inlet Point, and includes:

- (a) any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement and telemetry;
- (b) all standby, emergency and safety facilities; and
- (c) all ancillary equipment and services.

**Insolvency Event** means, in respect of a Party (the *first person*) any one or more of:

- (a) any execution or other process of any court or authority being issued against or levied upon any material part of the first person's property or assets being returned wholly or partly unsatisfied;
- (b) an order being made or a resolution being passed for the winding up or dissolution without winding up of the first person otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other Party has given consent;
- (c) a Controller being appointed in respect of the whole or a material part of the first person's property, undertaking or assets;
- (d) the first person entering into any arrangement, reconstruction or composition with or for the benefit of its creditors;
- (e) an administrator of the first person being appointed or the board of directors of the first person passing a resolution to the effect of that specified in section 436A(1) of the Corporations Act;
- (f) the first person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand for an amount in excess of \$1 million; or
- (g) an event having a substantially similar effect to an event described in any of paragraphs (a) to (f) (inclusive) which happens in connection with the first person under the law of any jurisdiction.

**ISO** means an International Standards Organisation standard.

**Kwinana Junction** has the meaning given in the pipeline description document that forms Appendix 2 to the Access Arrangement (as approved for the period 2011 – 2015).

**Law:**

- (a) means any statute, subsidiary legislation, ordinance, code, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order; and
- (b) includes:

- (i) the terms and conditions of any licence, permit, consent, certificate, authority, approval or assurance or bond or similar requirements issued under any of the things referred to in paragraph (a); and
- (ii) all applicable standards and obligations under the common law and Equity; but
- (c) excludes:
  - (i) any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this Contract); and
  - (ii) any requirements of the Regulator (except for requirements which apply by force of law to prevail over any inconsistent clause of this Contract).

**Load Characteristics** means the relationships between Gas flow and time.

**LPG** means the sum of propane and butane components of Gas.

**Maintain** includes, where necessary, renew or replace.

**Maintenance Charge** has the meaning given in clause 6.11.

**Major Works** means any enhancement, expansion, connection, pigging or substantial work that the Operator needs to undertake on the DBNGP and that:

- (a) cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and
- (b) by its nature or magnitude would require a Reasonable and Prudent Person to wholly or partially reduce Gas Transmission Capacity.

**Metering Equipment** means all equipment used to measure either or both the physical quantity or quality of Gas entering the DBNGP at an Inlet Point or exiting the DBNGP at an Outlet Point and all ancillary equipment required to compute Derived Variables and to produce printed reports at the Inlet Station or Outlet Station and to test and Maintain the reliability and calibration accuracy of that equipment (including any metering facilities or equipment that are or could be used for proving, testing and calibration of the equipment).

**Metering Information** has the meaning given in clause 15.5(d).

**MHQ** for an Outlet Point on a particular Gas Day in respect of a shipper, means (subject to clause 17.7(c)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Outlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper.

**MSC** means metric standard conditions, being a pressure of 101.325 kPa and a temperature of 15°C.

**Multi-shipper Agreement** means an agreement under clause 6.3(d).

**Multi-shipper Inlet Point** means an Inlet Point at which more than one shipper Delivers Gas to the Operator.

**Multi-shipper Outlet Point** means an Outlet Point at which more than one shipper Receives Gas from the Operator.

**National Gas Access (Western Australia) Law** means the provisions applying because of section 7 of the *National Gas Access (WA) Act 2009* (WA).

**Networks** means ATCO Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd and before that AlintaGas Networks Pty Ltd).

**New Inlet Point** means an Inlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**New Outlet Point** means an Outlet Point on the DBNGP, whether existing or planned, to which the Shipper proposes to relocate Contracted Capacity.

**Nominated Day** means a Gas Day in respect of which an Advance Nomination or Initial Nomination is made.

**Nominated Inlet Point** means an Inlet Point specified in an Initial Nomination as one at which the Shipper proposes to Deliver Gas to the Operator during the Nominated Day.

**Nominated Outlet Point** means an Outlet Point specified in an Initial Nomination as one at which the Shipper proposes to Receive Gas from the Operator during the Nominated Day.

**Nominations** means Initial Nominations or Advance Nominations, and where other contracts for Capacity are being referred to, includes the material equivalent of Initial Nominations or Advance Nominations (as the case may be) under those other contracts.

**Nominations Plan** means the process for allocating Nominations set out in clause 8.8 which is based upon the priorities set out in the Curtailment Plan.

**Notice** includes a Tax Invoice, statement, demand, consent, request, application, notification and any other written communication, and includes such a notice communicated by means of facsimile or (if the Parties so agree) by the CRS.

**Notional Gate Point** has the meaning given in clause 6.10.

**Operate** includes to Maintain, test, or repair.

**Operating Specification** means the Gas quality specification specified in Item 1 of Schedule 3, and includes each component of the specification.

**Operationally Feasible** means operationally feasible in the Operator's opinion (acting as a Reasonable and Prudent Person) in the circumstances prevailing at the relevant time including:

- (a) the configuration and status of the DBNGP at the relevant time;
- (b) the individual and collective Reserved Capacities and Load Characteristics of all shippers;
- (c) Gas Transmission Capacity generally; and
- (d) the Operator's relevant entitlements and obligations under any contract or written Law.

**Operator** means DBNGP (WA) Transmission Pty Ltd ABN 69 081 609 190 and includes its successors and permitted assigns.

**Operator Default Notice** has the meaning given in clause 22.6.

**Operator Entity** means the Operator, all of the Operator's Related Bodies Corporate and all entities Controlled by any of the foregoing.

**Operator Owned Point** means an Outlet Point described in clauses 6.13(a)(ii)(A) or 6.13(a)(ii)(B).

**Option** has the meaning given in clause 4.3.

**Original Capacity has** the meaning given in clause 4.3.

**Other Charges** has the meaning given in clause 20.4.

**Other Reserved Service** means a Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, P1 Service, B1 Service, a Firm Service and Capacity under a Spot Transaction).

**Other shipper** means any shipper other than:

- (a) Alcoa as a shipper under the Alcoa Exempt Contract (but not otherwise); and
- (b) the Shipper.

**Outlet Metering Equipment** means Metering Equipment which the Operator is required by clause 15.2(a) to supply, install, Operate and Maintain at an Outlet Station at the Shipper's expense.

**Outlet Point** means a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Receipt by it of Gas from the Operator and, where the context requires, means a flange, joint or other point referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

**Outlet Point Operating Specifications** means the Operating Specifications specified in Item 1 of Schedule 3.

**Outlet Station** means either the Metering Equipment site associated with an Outlet Point, and includes any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services.

**Out-of-Specification Gas** means Gas which does not comply with one or more of the temperature or pressure specifications in this Contract or with one or more components of the Operating Specification, or where relevant with clause 7.2 or 7.3 (as the case may be).

**Overrun Charge** has the meaning given in clause 11.1(a).

**Overrun Gas** means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including B1 Services and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

**Overrun Rate** has the meaning given in clause 11.1(b).

**P1 Service** has the meaning given in clause 3.4(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**Part Haul** means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

**Party** means the Operator or the Shipper or, where the context requires, the Pipeline Trustee or the DBNGP Trustee (as the case may be) and, if the Shipper comprises more than one person, includes each such person.

**Period** means in respect of the Shipper's Capacity, a Season or a Gas Month as the case may be for which the Shipper's Capacity is quantified.

**Period of Supply** means in respect of particular Contracted Capacity the time period between:

- (a) the relevant Capacity Start Date; and
- (b) the relevant Capacity End Date.

**Physical Gate Point** means a flange, joint or other point marked in the description of the DBNGP system in the Access Arrangement Information as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point.

**Pipeline Trust** has the meaning given in clause 25.5(b).

**Pipeline Trustee** means DBNGP (WA) Nominees Pty Ltd ABN 78 081 609 289.

**Pipeline Zone 1** means the area of the DBNGP immediately downstream of the Dampier Inlet Point and upstream of 1 kilometre downstream of the CS2 Station Downstream Isolating Valve (MLV30).

**Pipeline Zone 2** means the area of the DBNGP immediately downstream of 1 kilometre downstream of CS2 Station Downstream Isolating Valve and immediately upstream of 1 kilometre downstream of the CS3 Station Downstream Isolating Valve (MLV42).

**Pipeline Zone 10** means the area of the DBNGP which is downstream of:

- (a) the upstream flange of Kwinana Junction valve V4; and
- (b) the upstream flange of Kwinana Junction valve HV401A.

**Pipeline Zone 10B** means the area of the DBNGP on mainline South, being downstream of the outlet flange of compressor station 10.

**Planned Maintenance** means maintenance of the DBNGP which is scheduled in advance and of which the Shipper is given reasonable, and in any event not less than 3 Gas Days, written notice.

**Point Specific Curtailment** means a Curtailment as it affects or applies to a particular Inlet Point or Outlet Point.

**Possession** includes custody, control, and an immediate right to possession, custody, or control.

**Prescribed Interest Rate** means the Bank Bill Rate plus an annual interest rate of 3 percent per annum.

**Prescribed Limits of Uncertainty** means the limits of metering uncertainty prescribed by clause 15.3.

**Previous Verification** means the Verification at which the Primary Metering Equipment was last found to be Accurate.

**Primary Metering Equipment** means the Inlet Metering Equipment or the Outlet Metering Equipment, as the case may be.

**Producer** means a producer or supplier of Gas with whom the Shipper has entered into a Gas supply contract or contracts under which Gas is or will be Delivered at an Inlet Point.

**Reasonable and Prudent Person** means a person acting in good faith with the intention of performing his or her contractual obligations and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable Laws engaged in the same type of undertaking under the same or similar circumstances and conditions.

**Receive** means to accept or receive Gas into or from the DBNPG (as the case requires) and includes Gas deemed by this Contract to be received at an Inlet Point or Outlet Point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

**Reference Tariff Variation Mechanism** means the mechanism for varying the B1 Tariff as set out in section 11 of the Access Arrangement.

**Regulator** means *local Regulator* as this term is defined in section 11 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA), being the ERA.

**Related Body Corporate** has the meaning given in the Corporations Act as at the Execution Date.

**Related Entity** has the meaning given to that expression in the Corporations Act as at the Execution Date.

**Relative Density** is expressed at MSC and means the molar mass of a Gas in g/mol divided by 28.9641 g/mol (being the molar mass of dry air as defined in ISO 6976) and corrected for the effect of deviation from ideal Gas behaviour upon both air and Gas.

**Relevant Company** means the direct and indirect shareholders of the Operator, service providers to the Operator (including the System Operator) and all Related Bodies Corporate of those entities.

**Relevant Construction Costs** means the Relevant Outlet Station Construction Costs (as the case may require).

**Relevant Contracts** has the meaning given in clause 7.13.

**REMCo** means the company established to administer and operate the approved retail market scheme for the retail gas market in Western Australia and includes any company, person or authority from time to time undertaking that role, being Retail

Energy Market Company Limited ACN 103 318 556 of Level 40, 140 William Street, Melbourne, Victoria 3000.

**Remote Data** is defined in clause 15.4(d).

**Renomination** has the meaning given in clause 8.11.

**Replacement Contract** means the contract which is deemed to arise between the Operator and a Replacement Shipper by clause 27.7 following the Transfer of Tradeable Capacity to the Replacement Shipper.

**Replacement Shipper** has the meaning given in clause 27.3.

**Request for Approval** has the meaning given in clause 27.4(a).

**Requested Relocation** has the meaning given in clause 14.1.

**Reserved Capacity** means, subject to any changes from time to time made pursuant to the Curtailment Plan:

- (a) the Distribution Networks IPQ, Alcoa's Priority Quantity, Alcoa's Exempt Delivery Entitlement;
- (b) Capacity referred to in any contract for a Type of Capacity Service as "Contracted Capacity" where such "Contracted Capacity" may, at the relevant time, be nominated for delivery to the relevant Inlet Point or Outlet Point (if any) pursuant to that Capacity Service (regardless of the level of interruptibility of the service at an Inlet Point or an Outlet Point (as the case may be)).

**Resumption** means a resumption by the Shipper of all or part of Traded Capacity in accordance with the Transfer Terms.

**Resumption Notice** means a notice issued by the Shipper that the Shipper intends to Resume all or part of Traded Capacity.

**Retail Market Rules** means the retail market rules that govern the retail gas market in Western Australia.

**Rules** means the National Gas Rules referred to in section 294 of the National Gas Access (Western Australia) Law.

**Season** means either Summer or Winter.

**Share of the Distribution Networks' IPQ** means a shipper's pro-rata share of the Distribution Networks' IPQ, based on its Nominations into the Distribution Networks, unless the Distribution Networks Shippers all agree to a different allocation policy and advise the Operator thereof.

**Shipper** means any person who, from time to time, has a contract with the Operator for access to Gas Transmission Capacity, and includes the Shipper.

**Shipper** means the party so described where the parties to this Contract are named on its first page.

**Shipper Default Notice** has the meaning given in clause 22.2.

**SI Units** means units of *Le Système International d'Unités* established by the *Conférence Générale des Poids et Mesures* set out in AS1000-1979.

**Spot Capacity** means any Gas Transmission Capacity on a Gas Day (being the Gas Transmission Capacity available after all Nominations for Reserved Capacity for that Gas Day has been scheduled by the Operator for that Gas Day), which Gas Transmission Capacity, is, according to the Operator (acting in good faith) available for purchase.

**Spot Transaction** means a transaction for the sale and purchase of Spot Capacity between the Operator and a shipper.

**Standard Shipper Contract** means the contract of that nature required to be made available on the Operator's website.

**State** means the State of Western Australia.

**Storage Service** means a service to store Gas on the DBNGP which is provided on terms and conditions as published on the Operator's website from time to time.

**Sub-network** means that part of a Distribution Network which operates at a nominal pressure in excess of 300 kPa, which for the purposes of gas flow is not directly connected with any other part of the Distribution Network which operates at a nominal pressure in excess of 300 kPa.

**Summer** means the period from 08:00 hours on 1 November of a year to 08:00 hours on 1 May of the following year.

**Surcharges** means the charges referred to in clauses 20.4(a)(i) to 20.4(a)(iv) inclusive.

**System Curtailment** means a Curtailment which affects more than one Inlet Point or Outlet Point.

**System Operator** has the meaning given in clause 2.5(a).

**System Use Gas** means Gas used by the Operator for the following purposes:

- (a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:
  - (i) compressor fuel;
  - (ii) gas engine alternator fuel;
  - (iii) heater fuel; and
  - (iv) increases to linepack, other than:
    - A. when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
    - B. repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
- (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.

**T1 Capacity** has the meaning given in clause 3.2(b).

**T1 Service** has the meaning given in clause 3.3(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax, capital gains tax, fines or penalties).

**Tax Change** means:

- (a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
- (b) any Carbon Cost is incurred in relation to the DBNGP by the Operator or any of its Related Bodies Corporate;
- (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or
- (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date.

**Tax Change Notice** has the meaning given to it in clause 20.7(c).

**Tax Invoice** has the meaning given to it in the GST Law.

**Technical Matter** has the meaning given to it in clause 24.7.

**Technically Practicable** means technically feasible and practicable consistent with the safe and reliable operation of the DBNGP, in the view of a Reasonable and Prudent Person.

**Terminated Capacity** has the meaning given in clause 22.11(c).

**TJ/d** means terajoules per Gas Day.

**Total Contracted Capacity** means in respect of a particular shipper in respect of one or more particular Capacity Services (as the case may be) at a particular time:

- (a) in relation to Inlet Points, the sum of the shipper's Contracted Capacity for all Inlet Points; and
- (b) in relation to Outlet Points, the sum of the shipper's Contracted Capacity for all Outlet Points.

**Total Current Physical Capacity** means the total physical Gas throughput Capacity at the relevant time (having regard to all associated facilities) of an Inlet Point or an Outlet Point and operating within its technical design parameters, as the case may be, in the Operator's opinion as a Reasonable and Prudent Person.

**Total Inlet Quantity** means the total quantity (across all Inlet Points) of Gas Delivered to the Operator by the Shipper on a Gas Day across all contracts (including Spot Transactions).

**Total Outlet Quantity** means the total quantity (across all Outlet Points) of Gas Received by the Shipper from the Operator on a Gas Day across all contracts (including Spot Transactions).

**Total Physical Capacity** means the Total Current Physical Capacity as at the Execution Date.

**Tp Service** is an Other Reserved Service.

**Tradeable Capacity** has the meaning given in clause 27.4(a).

**Traded Capacity** is any Tradeable Capacity which has been Transferred to a Replacement Shipper following the approval or deemed approval of the Transfer Terms of that Tradeable Capacity.

**Transfer** includes transfer, assign to or otherwise grant an interest in or entitlement to Tradeable Capacity.

**Transfer Terms** means the terms and conditions, set out in a Request for Approval, on which a shipper is prepared to Transfer Tradeable Capacity to a Replacement Shipper.

**Transmission Outlet Point** means an Outlet Point which is not a Notional Gate Point.

**Type of Capacity Service** has the meaning given in clause 8.8(b).

**Unavailable Overrun Charge** means the charge payable under clause 11.6 and clause 17.8(e).

**Unavailable Overrun Rate** means the rate specified in row 4 of Schedule 2.

**Unavailability Notice** has the meaning given in clause 11.2(a).

**Verification** means the process of testing all Metering Equipment and all components of Metering Equipment to establish its calibration accuracy.

**WestNet** means WestNet Infrastructure Group Ltd (ABN 40 087 857 001) (formerly Alinta 2000 Limited).

**Winter** means the period from 08:00 hours on 1 May in a year to 08:00 hours on 1 November of the same year.

**WLPG Plant** means the LPG extraction plant fronting Leath and Mason Roads, Kwinana, which is operated by Wesfarmers LPG Pty Ltd.

**Wobbe Index** means the number obtained by the formula:

$$\text{Wobbe Index} = \frac{\text{Higher Heating Value}}{\text{Relative Density}}$$

**Working Day** means any Monday, Tuesday, Wednesday, Thursday or Friday which is not gazetted as a public holiday in the Perth metropolitan area.

## General provisions (clause 2)

### 2. General

#### 2.1 Construction generally

In the construction of this Contract, unless the context requires otherwise:

- (a) a reference to a clause or Schedule is a reference to a clause or Schedule of this Contract;
- (b) words indicating the singular number include the plural number and vice versa;
- (c) words of one gender include the corresponding words of all other genders;

- (d) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (e) a reference to any statutory Law extends to and includes any regulations under that Law and any amendment of, modification of, or substitution for, that Law;
- (f) a reference to any contract or agreement is a reference to that contract or agreement as amended, varied, novated or substituted from time to time;
- (g) references to dollars or \$ are references to Australian dollars;
- (h) a reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in Perth, Western Australia, even if the obligation must be performed elsewhere;
- (i) all time is expressed in a 24-hour format, with each day (but not a Gas Day) commencing at 00:00 hours and ending at 24:00 hours;
- (j) unless specified otherwise, reference to a quantity of Gas is a reference to that quantity of Gas measured in GJ;
- (k) all units of measurement used in this Contract are SI Units as they are applied as Australian legal units of measurement under the *National Measurement Act 1960* (Cth);
- (l) unless the contrary intention appears, the interpretation provisions of the *Interpretation Act 1984* (WA) apply to this Contract;
- (m) any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (n) any specific reference to or listing of items following the words **including, for example or such as** is without limitation and does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (o) **under** includes **by, by virtue of, pursuant to and in accordance with**;
- (p) a reference to rights, entitlements, obligations or terms “materially equivalent” or the “same” (in comparison to rights, entitlements, obligations or terms in this Contract or in comparison to other rights, entitlements, obligations or terms (as the case may be)) or any similar expressions is deemed to mean rights, entitlements, obligations or terms that are, in the opinion of a Reasonable and Prudent Person, materially equivalent to the relevant rights, entitlements, obligations or terms in this Contract or those other rights, entitlements, obligations or terms (as the case may be).

## 2.2 Headings

Headings are inserted for convenience and do not affect the interpretation of this Contract.

## 2.3 Rounding to a certain number

Any number calculated under this Contract which exceeds six decimal places must be rounded to six decimal places. For the purposes of such rounding, if the digit at the seventh decimal place is:

- (a) between zero and four (inclusive), the number must be rounded down to the nearest sixth decimal place; and
- (b) between five and nine (inclusive), the number must be rounded up to the nearest sixth decimal place.

#### 2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including B1 Service, Other Reserved Service, Contracted Capacity, and Total Contracted Capacity) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

#### 2.5 System Operator

- (a) The Operator's rights and powers under this Contract may be delegated to a contractor (**System Operator**) who is entitled to exercise, on behalf of the Operator, all such rights and powers conferred on the Operator.
- (b) The Operator may from time to time give notice in writing to the Shipper as to the details of the System Operator.
- (c) Any act, matter or thing done by the System Operator in respect of this Contract or in the performance of obligations related to this Contract in either its own name or in the name of the Operator is deemed to have been done by the Operator and the Operator agrees to ratify and confirm whatsoever the System Operator does or causes to be done by virtue of, or purportedly by virtue of, the powers contained in this Contract.
- (d) Without limiting clause 2.5(c), any communication or notice given, or document signed, by the System Operator in respect of this Contract is deemed to have been given or signed by the Operator and will bind the Operator. Similarly, any communication, notice or document given to the System Operator in respect of this Contract is deemed to have been given to the Operator and will bind the Operator.
- (e) The Operator must procure that the System Operator complies with the requirements of the Ring Fencing Arrangements of Part 2 of Chapter 4 of the *National Gas Access (Western Australia) Law* as if it were a 'Service Provider' for the purposes of that section.

#### 2.6 Access Regime and Regulator's requirements as Laws

To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract.

### **Capacity service (clause 3)**

#### 3. Capacity Service

##### 3.1 Operator to provide B1 Service to Shipper

During the Period of Supply, the Operator will provide the B1 Service to the Shipper and the Shipper agrees to accept the B1 Service from the Operator on the terms and conditions of this Contract.

##### 3.2 Capacity Service

- (a) The B1 Service is the Full Haul Gas transportation service provided under this contract which gives the Shipper a right, subject to the terms and conditions of this Contract, to access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9):
  - (i) can only be Curtailed in the circumstances specified in clause 17.2;
  - (ii) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, or a B1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
  - (iii) is treated the same in the Nominations Plan as all other shipper with a T1 Service, a P1 Service or a B1 Service, or a B1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.
- (b) The Operator acknowledges and agrees:
  - (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
  - (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP is 98% for each Period of a Gas Year;
  - (iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator, acting as a Reasonable and Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and
  - (iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:
    - (A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and
    - (B) Alcoa's Exempt Capacity,
 does not materially exceed the amount of T1 Capacity in the DBNGP.
- (c) Shipper acknowledges and agrees that, subject to clause 14, the T1 Service is a Full Haul Service and cannot be:
  - (i) Back Haul; or
  - (ii) Part Haul.
- (d) In this clause 3.2 probability of supply means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.
- (e) For the avoidance of doubt, Alcoa's Exempt Capacity is provided by Operator out of Tranche 1 Capacity in the DBNGP.

### 3.3 Contracted Capacity

The Shipper's **Contracted Capacity** for each Gas Day within a Period under this Contract:

- (a) at an Inlet Point specified in the Access Request Form - is the amount for B1 Service set out in the Access Request Form for that Period; and
- (b) at an Outlet Point specified in the Access Request Form - is the amount for B1 Service set out in the Access Request Form for that Period.

#### 3.4 Operator must deliver Gas up to Contracted Capacity

During the Period of Supply, subject to this Contract (including clauses 5 and 17), the Operator must deliver on each Gas Day (aggregated across all Outlet Points) the quantity of Gas required by the Shipper up to the Shipper's Total Contracted Capacity.

### ***Duration of the contract (clause 4)***

#### 4. Duration of the Contract

##### 4.1 Capacity Start Date

- (a) The Capacity Start Date is 08:00 hours on the date specified in the Access Request Form as the Requested Reference Service Start Date.
- (b) Requests from the Shipper for any amendment to the Capacity Start Date will be considered by the Operator with terms and conditions for any such amendment to be agreed between the parties giving regard to the Operator's circumstances at the time of the request.

##### 4.2 Term

- (a) Subject to the terms and conditions of this Contract the Capacity End Date is 08:00 hours on the date specified in the Access Request Form. (b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates as the Requested Reference Service End Date.

##### 4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6 and 4.7, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (*Original Capacity*) each for a period of 1 year (*Option*).

##### 4.4 Conditions to be satisfied before exercising an Option

Shipper may only validly give notice exercising an Option if Shipper:

- (a) is not in default (within the meaning of clause 22.1) under this Contract in a way which is material in the context of this Contract as a whole at the time Shipper gives notice; and
- (b) complies with the requirements of clause 4.5 of this Contract.

##### 4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

#### 4.6 First Option Period

If Shipper gives a notice in accordance with clause 4.5 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year and:

- (a) the Capacity End Date for the Original Capacity (as defined in clause 4.1) is amended to 08:00 hours on that date; and
- (b) this clause 4.6 (relating to the exercise of the Option) will have no effect after 08:00 hours on the date originally specified in the Access Request Form as the Capacity End Date.

#### 4.7 Second Option Period

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clause 4.5 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year and:

- (a) the Capacity End Date for the Original Capacity (as amended by the previous operation of clause 4.6(a)) is amended to 08:00 hours on that date; and
- (b) clauses 4.3, 4.4, 4.5 and this clause 4.7 (all relating to the exercise of the Option) will have no effect after 8:00 hours on the date that is one year after the date that was originally specified in the Access Request Form as the Capacity End Date.

### ***Receiving and Delivering Gas (clause 5)***

#### 5. Receiving and Delivering Gas

##### 5.1 Shipper may Deliver and Receive Gas

Subject to any other provision of this Contract, the Shipper, on each Gas Day during the Period of Supply:

- (a) may Deliver to the Operator at the Inlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Inlet Points on the DBNGP, and
- (b) may Receive from the Operator at the Outlet Points a quantity of Gas up to its Contracted Capacity aggregated across all Outlet Points on the DBNGP.

##### 5.2 Operator must Receive and Deliver Gas

Subject to any other provision of this Contract, the Operator, on each Gas Day during the Period of Supply:

- (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
- (b) must Deliver to the Shipper at Nominated Outlet Points the quantities of Gas required by the Shipper up to the Shipper's Contracted Capacity aggregated across all Outlet Points.

##### 5.3 Operator may refuse to Receive Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior

notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Receive Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limits); and
  - (iv) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Receive that Gas;
- (d) to the extent that Receipt by the Operator of that Gas would cause the DBNPG to exceed its maximum allowable operating pressure;
- (e) subject to determination by the Operator as a Reasonable and Prudent Person, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;
- (f) to the extent that the Shipper has not entered into any agreement in relation to that Inlet Point required by clause 6.13; and
- (g) to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

#### 5.4 Notification of refusal to Receive Gas

Without affecting the Operator's rights under clause 5.3, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Receive Gas;
- (b) if it does not give the Shipper advance notice under clause 5.4(a) of a refusal to Receive Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) as soon as practicable, notify the Shipper (in reasonable detail) of the reasons for a refusal to Receive Gas.

#### 5.5 Refusal to Receive Gas is a Curtailment in limited circumstances

To the extent that a refusal to Receive such Gas under clauses 5.3(c) and 5.3(d) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Receive Gas, a refusal to Receive Gas under clauses 5.3(c) and 5.3(d):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded.

#### 5.6 No liability for refusal to Receive Gas

Subject to clause 23.2 and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Receive Gas under clause 5.3.

#### 5.7 Operator may refuse to Deliver Gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may refuse to Deliver Gas to the Shipper at an Outlet Point in all or any of the following cases:

- (a) to the extent that the Operator is entitled to refuse to Deliver Gas under all or any of:
  - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
  - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
  - (iii) clause 9.7(b) (Remedies for breach of imbalance limit);
  - (iv) clause 10.3(a)(iii) (Consequences of exceeding Hourly Peaking Limit);
  - (v) clause 10.5(c) (Remedies for breach of Peaking Limits);
  - (vi) clause 11.5 (Operator may refuse to Deliver Overrun Gas); and
  - (vii) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;
- (c) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (d) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point; and
- (e) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13.

#### 5.8 Notification of refusal to Deliver Gas

When the Operator refuses to Deliver Gas to the Shipper under clause 5.76, the Operator must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to Deliver Gas;

- (b) if it does not give the Shipper advance notice under clause 5.8~~7~~(a) of a refusal to Deliver Gas, notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) notify the Shipper of the reasons for a refusal to Deliver Gas in sufficient detail to explain the refusal.

#### 5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances

To the extent that a refusal to Deliver such Gas under clause 5.7(c) would not have occurred if Operator had taken the steps which would be expected of a Reasonable and Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Deliver Gas, a refusal to Deliver Gas under clause 5.7(c):

- (a) is a Curtailment for the purposes of this Contract; and
- (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded.

#### 5.10 No liability for refusal to Deliver Gas

Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7.

#### 5.11 No change to Contracted Capacity

- (a) Unless deemed a Curtailment under clause 5.9 and subject to the requirement to refund the Capacity Reservation Charge under clause 17.4, a refusal to Deliver Gas under clause 5.7 does not affect the calculation of the Charges payable by the Shipper under clause 20, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form.
- (b) Unless deemed a Curtailment under clause 5.9, when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) for a particular shipper, no reduction is to be made for any capacity not made available as a result of any refusal to Deliver Gas, either generally or in respect of any specific Capacity Service, Inlet Point or Outlet Point, under any of the shippers' contracts for Capacity Service pursuant to that clause which is the material equivalent of clause 5.7.

#### 5.12 System Use Gas

The Operator must supply all system use gas which is reasonably necessary to supply services to the Shipper under this Contract.

#### 5.13 Additional Rights to Refuse to Receive or Deliver Gas

- (a) In addition to any other rights and remedies that may be available to it under this Contract or under any Law, if:
  - (i) the Governor or any other person, regulatory authority or body declares a state of emergency under the *Fuel, Energy and Power Resources Act 1972* (WA) or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of

- the declaration, will affect or is likely to affect the operation of the DBNGP; or
- (ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the *Energy Coordination Act 1994* (WA) or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
  - (iii) the Minister or any other person, regulatory authority or body declares a state of emergency under the *Emergency Management Act 2005* (WA) or any successor, supplementary or similar Law and the Minister or any other person, regulatory authority or body makes regulations or exercises any power under that act which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP, (any and all of these being a **Declaration**), then the Operator may, with prior notice to the Shipper wherever practicable, refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point (or both) to the extent that the Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.
- (b) To the extent that the exercise of rights and remedies under clause 5.13(a) would not have occurred had the Operator taken the steps expected of a Reasonable and Prudent Person to prevent the relevant event occurring, or failing such prevention, to minimise the magnitude and duration of the need to refuse to Receive or Deliver Gas, the exercise of rights and remedies under clause 5.13(a):
- (i) is a Curtailment for the purposes of this Contract; and
  - (ii) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded.
- (c) If the Operator exercises any rights under clause 5.13 (a), it must:
- (i) promptly give notice to the Shipper of the occurrence giving rise to the right of the Operator to exercise such rights, and the steps that the Operator intends to take under clause 5.13 (a); and
  - (ii) resume full performance of its obligations under this Contract as soon as reasonably practicable.

#### 5.14 Shipper's gas installations

- (a) The terms "inspector", "gas installation" and "Type B gas appliance" used in this clause 5.14 have the meanings given in the *Gas Standards Act 1972* (WA) or other relevant Law.
- (b) The Shipper must, at its cost:
  - (i) in accordance with the *Gas Standards Act 1972* (WA) appoint an inspector to inspect:

- (A) any gas installation installed by the Shipper after the Execution Date, prior to the commencement of any Delivery of Gas by the Operator; or
- (B) any gas installation that has been altered by the Shipper after the Execution Date by the installation of a Type B gas appliance, prior to any Delivery of Gas by the Operator;
- (ii) provide evidence of the completion of an inspection under clause 5.14(b)(i) to the Operator, including confirmation that the gas installation is compliant with the *Gas Standards Act 1972 (WA)*; and
- (iii) ensure that once installed its gas installations comply at all times with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972 (WA)* and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 (WA)*.
- (c) If, on an inspection under clause 5.14(b)(i), the inspector makes an order under section 18(2)(a) of the *Energy Coordination Act 1994 (WA)* or issues a notice under the *Gas Standards Act 1972 (WA)*, the Shipper must provide a copy of such order or notice to the Operator within 10 days of the completion of the inspection.
- (d) If any gas installation is installed by the Shipper after the Execution Date, the Operator is not obliged to commence Delivery of Gas until the gas installation is inspected in accordance with clause 5.14(b)(i) and evidence confirming compliance with the *Gas Standards Act 1972 (WA)* is provided to the Operator in accordance with clause 5.14(b)(ii).

## **Inlet and outlet points (clause 6)**

### 6. Inlet Points and Outlet Points

#### 6.1 Inlet Points and Outlet Points

- (a) The Inlet Points for this Contract are set out in the Access Request Form.
- (b) The Outlet Points for this Contract are set out in the Access Request Form.

#### 6.2 Multi-shipper Agreement

The Shipper is taken to be a party to a current Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if at the Capacity Start Date there is an agreement, arrangement or understanding, whether or not in writing, between all shippers which use that Inlet Point or Outlet Point (which agreement, arrangement or understanding may include other parties which are not shippers, such as a Producer or REMCo), under which the Operator is notified of how the Gas Delivered to or Received from that Inlet Point or Outlet Point is allocated between those shippers, for as long as that agreement, arrangement or understanding continues in force.

#### 6.3 Multi-shipper Inlet Point and Multi-shipper Outlet Point

- (a) For the purposes of this clause 6.3, the Gas streams delivered to a Multishipper Inlet Point by or on behalf of the Shipper and all other shippers delivering Gas at that Inlet Point are taken to be commingled at a point immediately upstream of that Inlet Point.
- (b) For any purpose under this Contract, the Shipper's proportional share of the Blended Gas at a Multi-shipper Inlet Point must be determined immediately

upstream of the Inlet Point after all Gas streams are taken to have been commingled, and the Shipper's proportional share of the commingled outlet stream at a Multi-shipper Outlet Point must be determined immediately downstream of the Outlet Point.

- (c) Subject to any contrary provisions in a Multi-shipper Agreement, the Shipper's nominations, obligations and liabilities under this Contract in respect of any quantity, quality, temperature or pressure of Gas at a Multishipper Inlet Point must be determined solely in respect of the Shipper's proportional share of the Blended Gas determined under clause 6.4, and not by reference to any quantity, quality, temperature or pressure of any Gas delivered by or on behalf of the Shipper into the Blended Gas.
- (d) All shippers using an Inlet Point or an Outlet Point (as the case may be) may enter into (with or without other parties which are not shippers, such as a Producer or REMCo) a written agreement (**Multi-shipper Agreement**) with the Operator dealing with, amongst other things, the way in which Gas Delivered by them to an Inlet Point or Received by them from an Outlet Point must be allocated between them.
- (e) The Operator must promptly enter into a Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if all of the following apply to the Multi-shipper Agreement:
  - (i) if any one of A, B or C apply:
    - (A) the agreement contains a formula or mechanism for allocating Gas deliveries to the Inlet Point or Outlet Point (as the case may be) for each Gas Hour between the shippers in a manner which enables the Operator to determine the allocation by applying the formula or mechanism once it knows the total quantity of Gas delivered at that Inlet Point or Outlet Point (as the case may be) during the relevant Gas Hour;
    - (B) if the agreement relates to an Inlet Point and it provides that Gas deliveries at the Inlet Point are allocated between the shippers for each Gas Hour by a notice to the Operator from the Producer that delivers Gas into the Inlet Point on behalf of all shippers using that Inlet Point; or
    - (C) if the agreement relates to an Outlet Point and it provides that Gas deliveries at that Outlet Point are allocated between the shippers for each Gas Hour by a notice provided to the Operator from one of the shippers at that Outlet Point or from a third party nominated by one of the shippers at that Outlet Point;
  - (ii) the agreement allocates deliveries to the Inlet Point or Outlet Point (as the case may be) between the shippers for each Gas Hour;
  - (iii) the agreement is between all shippers who use the Inlet Point or Outlet Point (as the case may be) and the Operator;
  - (iv) the agreement provides that, as between each shipper and the Operator, for the purposes of each shipper's Gas transportation contract the Operator may rely upon the allocation of Gas delivered by the shippers at an Inlet Point, or received by the shippers at an Outlet Point, determined in accordance with the agreement, as being the quantity of Gas delivered by each of those shippers at the Inlet Point

and the quantity of Gas received by each of those shippers at the Outlet Point;

- (v) the agreement provides that the Operator may, in order to give effect to a Curtailment of the Capacity of one or more of the shippers using the Outlet Point, physically reduce the Capacity of the Outlet Point by an amount up to the Contracted Capacity (or the equivalent under that shipper's contract) at that Outlet Point for the shipper to be Curtailed;
  - (vi) the Operator is reasonably satisfied with the metering arrangements for any meters being used for the purpose of allocating Gas deliveries at the Inlet Point or Outlet Point (as the case may be);
  - (vii) the agreement provides that the Operator is not liable to shippers where it acts in accordance with the provisions of the agreement; and
  - (viii) the agreement does not impose any other obligations or liabilities upon the Operator (other than in relation to the provision of Metering Information) and does not directly or indirectly vary or amend this Contract or any other contract between a shipper and the Operator other than as specifically contemplated above.
- (f) A Multi-shipper Agreement (including a deemed Multi-shipper Agreement under the Retail Market Rules) in relation to a Notional Gate Point, may provide that:
- (i) whilst the Retail Market Rules are in force, Gas deliveries at that point are allocated by REMCo, on behalf of all shippers using that Notional Gate Point, by:
    - (A) REMCo providing the Operator with an algorithm for doing so which can be applied by the Operator; or
    - (B) REMCo providing the Operator a notice by electronic means within a reasonable period after each Gas Hour and after the end of each Gas Day.
  - (g) Any Dispute relating to clause 6.3(e) is a Dispute on a Technical Matter and may be referred by any Party to an Independent Expert under clause 24.

#### 6.4 Allocation of Gas at Inlet Points

- (a) On any Gas Day when the Shipper is the only shipper Delivering Gas to the Operator at an Inlet Point, the Shipper is deemed to have Delivered all Gas Received by the Operator at the Inlet Point for that Gas Day and clauses 6.4(b) and 6.4(c) do not apply.
- (b) If the Shipper and any other shipper Delivers Gas to the Operator at an Inlet Point on a Gas Day then, unless the Operator duly receives written confirmation under clause 6.4(c) from or on behalf of the Shipper and every other shipper that so Delivers Gas of some other allocation of those Gas Deliveries:
  - (i) if there is a relevant Multi-shipper Agreement, the Shipper's proportional share of Gas Received by the Operator at the Inlet Point on that Gas Day will be as determined pursuant to that Multishipper Agreement; or
  - (ii) if there is no relevant Multi-shipper Agreement, the Operator (acting as a Reasonable And Prudent Person) must determine the Shipper's

proportionate share of Gas Received by the Operator at that Inlet Point on that Gas Day which determination may be by (inter alia) reference to Daily Nominations at the Inlet Point for that Gas Day across all Capacity Services and Spot Transactions across all relevant shippers. The Shipper is deemed to have Delivered the proportionate share so determined of the Gas Received by the Operator at that Inlet Point on that Gas Day at a constant rate over that Gas Day.

- (c) If, by no later than 11:30 hours on the next Gas Day, the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper that Delivers Gas to that Inlet Point on a Gas Day of the quantity of Gas supplied by those shippers at that Inlet Point on that Gas Day, then whether or not there is a relevant Multi-shipper Agreement, and in the absence of evidence to the contrary, that confirmation is deemed to show the quantity of Gas Delivered by the Shipper and each such other shipper to the Operator at that Inlet Point on that Gas Day and may be relied upon by the Operator accordingly.
- (d) Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:
  - (i) first, Gas for any available B1 Service which includes Gas for any available Aggregated B1 Service;
  - (ii) second, Gas for any available Capacity Services (other than B1 Service) in the order set out in clause 8.8(a);
  - (iii) third, Gas for any available Capacity under any Spot Transaction; and
  - (iv) fourth, other gas.

#### 6.5 Allocation of Gas at Outlet Points

- (a) On any Gas Day when Shipper is the only person taking Delivery of Gas from Operator at an Outlet Point, Shipper shall be deemed to have taken Delivery of all Gas Delivered by Operator at the Outlet Point for that Gas Day and clauses 6.5(b) and 6.5(c) shall not apply.
- (b) If Shipper and any other shipper take Delivery of Gas from Operator at the Outlet Point on a Gas Day then, if there is a Multi-shipper Agreement in relation to the Outlet Point, Shipper's proportional share of Gas at the Outlet Point must be determined under the Multi-shipper Agreement.
- (c) If there is no Multi-shipper Agreement in relation to an Outlet Point or if Shipper fails to otherwise reach agreement with other shippers at the Outlet Point in respect of the allocation of Gas Receipts or fails to provide Operator with a copy of a Multi-shipper Agreement referred to in clause 6.5(b) prior to the commencement of the relevant Gas Day, then Shipper's proportional share of Gas at the Outlet Point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Outlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper will be deemed to have Received that proportionate share so determined of the Gas Delivered to that Outlet Point on that Gas Day.
- (d) Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by

the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:

- (i) first, Gas for any available B1 Service (which shall include any available Aggregated B1 Service);
- (ii) second, Gas for any available Capacity Services (other than B1 Service) in the order set out in clause 8.8(a);
- (iii) third, Gas for any available Capacity under any Spot Transaction; and
- (iv) fourth, other gas.

#### 6.6 Design and installation of Inlet Stations

- (a) The Shipper must, at its own expense, design and install or procure the design and installation of all those parts of any required Inlet Station that are upstream of the Inlet Point.
- (b) If and whenever the Shipper and other shippers Deliver Gas to the Operator at an Inlet Point on the DBNPG, the Shipper and those other shippers must, at their joint expense allocated on such basis as they may agree, collectively design and install or procure the design and installation of all those parts of the Associated Inlet Station that are upstream of the Inlet Point.
- (c) The Shipper or, where applicable, the Shipper and other shippers must ensure that all those parts of any required Inlet Station that are upstream of the Inlet Point meet the requirements set out in clauses 6.9(a) to 6.9(f).

#### 6.7 Design and installation of Inlet Point Connection Facilities

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Inlet Point Connection Facilities. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Inlet Point Connection Facilities Works Agreement) by which the Shipper must agree either:
  - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Inlet Point Connection Facilities), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Inlet Point Connection Facilities Construction Costs); or
  - (ii) to include the Relevant Inlet Point Connection Facilities Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Inlet Point.
- (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Inlet Point Connection Facilities Works Agreement, but otherwise an Inlet Point Connection Facilities Works Agreement may be on such terms as the Operator and the Shipper agree.
- (c) The Operator must ensure that Inlet Point Connection Facilities meet the requirements set out in clauses 6.9(a) to 6.9(f).

- (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Inlet Point Connection Facilities to which the Operator has no rights of access for the purpose of maintaining and operating those Inlet Point Connection Facilities.

#### 6.8 Design and installation of Outlet Stations

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Outlet Station. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Outlet Station Works Agreement) by which the Shipper must agree either:
  - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Outlet Station), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Outlet Station Construction Costs); or
  - (ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station.
- (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Outlet Station Works Agreement, but otherwise an Outlet Station Works Agreement may be on such terms as the Operator and the Shipper agree.
- (c) The Operator must ensure that an Outlet Station meets the requirements set out in clauses 6.9(a) to 6.9(f).
- (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Outlet Station to which the Operator has no rights of access for the purpose of maintaining and operating that Outlet Station.

#### 6.9 Requirements relating to Inlet Stations and Outlet Stations

- (a) (i) The site for an Inlet Station or Outlet Station must:
  - (A) be within a security fenced enclosure;
  - (B) provide suitable vehicular access and an alternative means of personnel access;
  - (C) provide adequate space for the installation of all equipment; and
  - (D) have a concrete, sealed, or gravel surface to enable access in all weather conditions.
- (ii) Telemetry, power supply and other sensitive equipment at an Inlet Station or Outlet Station must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.

- (b) (i) Every Inlet Station or Outlet Station must provide a means, to a standard acceptable to a Reasonable and Prudent Person, of automatically:
    - (A) preventing the reverse flow of Gas through the Inlet Station or Outlet Station; and
    - (B) stopping or restricting Gas flow in the event of any excessive pressure upstream of, or any failure, leak or rupture within or downstream of, the Inlet Station or Outlet Station.
  - (ii) The Operator, whenever it is permitted by any written Law or a contract to stop or reduce Gas flow (and whether or not there has been a failure, leak or rupture), may utilise for that purpose any mechanism installed under clause 6.9(b)(i).
  - (iii) The Operator may at any time, for, or in anticipation of, the purposes of clause 6.9(b)(i), make any necessary connections, modifications or additions to any mechanism installed under clause 6.9(b)(i) to enable it to be utilised for the purposes of clause 6.9(b)(ii).
  - (iv) The Operator must not charge the Shipper for any mechanism installed under clause 6.9(b)(i) or 6.9(b)(iii).
- (c) (i) Every Inlet Station must include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
  - (ii) An Outlet Station must, whenever the Operator as a Reasonable and Prudent Person determines it to be necessary, include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
  - (iii) The Operator may make a determination under clause 6.9(c)(ii) at any time, including after an Outlet Station is commissioned.
  - (iv) For the purposes of clause 15.4, neither filters nor separators may be regarded as Metering Equipment.
- (d) All facilities upstream of an Inlet Point or downstream from an Outlet Point must be electrically isolated from the DBNGP by an isolating joint or flange located either:
    - (i) at the Inlet Point or Outlet Point; or
    - (ii) sufficiently close to the Inlet Point or Outlet Point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 6.9(d)(i), which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.
  - (e) All facilities at an Inlet Station or Outlet Station must be connected to an effective earthing system of a type acceptable to a Reasonable and Prudent Person.
  - (f) Any new equipment installed at an Inlet Station or Outlet Station must be compatible with existing equipment and systems.
  - (g) (i) The quantity of Gas passing through a Notional Gate Point in any period of time is taken to be the sum of the quantities metered as

passing through all associated Physical Gate Points in that period of time.

- (ii) Nothing in clause 6.9(g)(i) prevails over the deeming in clause 6.5 of the quantity of Gas taken by the Shipper or any other shippers at a Notional Gate Point.

#### 6.10 Notional Gate Point

- (a) There is a notional gate point for each Sub-network, at which all Outlet Point Contracted Capacity in respect of that Sub-network is taken to be located (Notional Gate Point).
- (b) All Curtailments of Capacity utilised to Deliver Gas into the Sub-network are taken to occur at the Notional Gate Point.
- (c) The Operator may, in its reasonable discretion in accordance with good industry practice, manage whether, at what times, to what extent and in what manner Gas deemed delivered at a Notional Gate Point is physically transported into the Associated Sub-network.

#### 6.11 Maintenance Charge for Inlet Stations and Outlet Stations

- (a) For the purposes of this clause 6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who use the Inlet station or Outlet station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:
  - (i) maintaining;
  - (ii) operating;
  - (iii) refurbishing;
  - (iv) upgrading;
  - (v) replacing; and
  - (i) decommissioning,

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

- (b) The Operator may only include costs associated with refurbishing or upgrading an Inlet Station or Outlet Station in accordance with clause 6.11(a) if:
  - (i) the Shipper requests the relevant refurbishment or upgrade; or
  - (ii) the Operator determines, acting reasonably, that the refurbishment or upgrade is required in order to meet a statutory or contractual obligation.

- (c) At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.
- (d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that:
  - (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause 6.11(d)(ii); and
  - (ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper does not have Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month.
- (e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a Outlet Station that is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point for the time being bears to the sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point for the time being.
- (f) Whenever a new Outlet Station is installed, or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who receive Gas from the Operator at the Notional Gate Point or Outlet Station, including shippers with grants of Capacity at the Notional Gate Point or Outlet Station made before the date of installation or enhancement.
- (g) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point or an Outlet Station, the Operator may have regard to the likely impact of clause 6.11(f).

#### 6.12 Provisions relating both to Relevant Construction Costs and Maintenance Charge

- (a) Nothing in clauses 6.6, 6.8 or 6.11 affects or derogates from charges payable under any other agreement between the Operator and the Shipper with respect to the installation, operation and maintenance of Inlet Stations and Outlet Stations and any upgrades, modifications and expansions to Inlet Points or Outlet Points.
- (b) The Operator is not entitled to impose any charges under clauses 6.6, 6.8 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995. Where such incremental costs are incurred, the

Operator is entitled to impose charges on the Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause 6.11(d).

#### 6.13 Contribution Agreement

- (a) The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point, to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date if:
  - (i) the Inlet Point or Outlet Point is Associated with an Existing Station;
  - (ii) in the case of an Outlet Point, it is:
    - (A) owned by the Operator or an Operator Entity; or
    - (B) leased by the Operator or an Operator Entity under an equipment lease, and the Shipper has entered into a Contribution Agreement in respect of that Outlet Point; or
  - (iii) the Inlet Point or Outlet Point is not of a type referred to in clauses 6.13(a)(i) or 6.13(a)(ii)(A) or 6.13(a)(ii)(B) and the Shipper has reached an agreement, arrangement or understanding with the owner of the Inlet Point or Outlet Point, whether or not in writing, to use that Inlet Point or Outlet Point.

For the purposes of clause 6.13(a)(ii), an Operator Entity excludes any Related Bodies Corporate of Alcoa or Alinta Limited.

- (b) (i) a Contribution Agreement in respect of an Outlet Point is an agreement between the Operator and the Shipper by which the Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point, determined in accordance with clause 6.11;
  - (ii) the Shipper's proportion of the Maintenance Charge is determined under clause 6.11(d), or is otherwise agreed in the Contribution Agreement; and
  - (iii) the Shipper agrees that another shipper (New Shipper) may Receive Gas from the relevant Outlet Point, if:
    - (A) the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause 6.11(d); and
    - (B) the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper under clause 6.13(b)(iii)(A) so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.
- (c) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, a Contribution Agreement.
- (d) Nothing in this clause 6.13 requires the Shipper to enter into an agreement with any person other than the Operator.

#### 6.14 Shipper Specific Facility Agreement

The Operator must not grant to any shipper (New Shipper) access to or use of (or enter into any agreement or arrangement to do so) any Inlet Point, Outlet Point, Associated Inlet Station or Associated Outlet Station, or related equipment (Facility) which is or has been the subject of an agreement or arrangement under which the Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility (Facility Agreement) without ensuring that:

- (a) subject to clause 6.14(b), the New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.13(b)(iii); and
- (b) the Operator agrees to rebate to the Shipper the contributions it receives from the New Shipper under clause 6.14(a) in a manner consistent with clause 6.13(b)(iii).

#### 6.15 Total Physical Capacity

- (a) The Operator must not reduce or allow the reduction of the Total Physical Capacity of an Inlet Point or an Outlet Point, or a New Inlet Point or a New Outlet Point or any Inlet Point or Outlet Point to which or from which the Shipper is regularly Receiving Gas.
- (b) Subject to the terms of any Multi-shipper Agreement, and subject to the rights of other shippers with a contracted Capacity Service at an Inlet Point or Outlet Point, the Shipper may use all the Total Current Physical Capacity of an Inlet Point or Outlet Point.

#### 6.16 Certain installations taken to comply

Despite any other provisions of this Contract:

- (a) each Existing Station;
- (b) all facilities, ancillary equipment and services at each Existing Station; and
- (c) the metering arrangements entered into with the State Energy Commission of Western Australia prior to 1 January 1995 in respect of each Existing Station, are taken to comply in all respects with the provisions of this Contract, including clauses 6.6 to 6.10.

### ***Operating Specifications (clause 7)***

#### 7. Operating Specifications

##### 7.1 Gas must comply with Gas specifications

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must comply with the Gas specifications set out in Item 1 of Schedule 3.

##### 7.2 Gas to be free from certain substances

Gas Delivered by the Shipper to the Operator at an Inlet Point or Delivered to the Shipper by the Operator at an Outlet Point must be free, by normal commercial standards (as reasonably determined by the Operator), from dust and other solid or liquid matters, waxes, gums and gum forming constituents, aromatic hydrocarbons, hydrogen, mercury and any other substance or thing which might cause injury to or interfere with the proper operation of any equipment through which it flows.

### 7.3 Gas to be free from objectionable odours

Gas Delivered by the Shipper to the Operator at an Inlet Point must be free, by normal commercial standards, from objectionable odours.

### 7.4 Gas temperature and pressure

- (a) The minimum and maximum temperatures and the minimum and maximum pressures at which the Shipper may Deliver Gas to the Operator at the Inlet Points, and the Operator may Deliver Gas to the Shipper at the Outlet Points, are those set out in Item 2 of Schedule 3.
- (b) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Item 2 of Schedule 3.
- (c) If at any time:
  - (i) the minimum and the maximum temperature and the minimum and maximum pressure of an Inlet Point or an Outlet Point are not set out in Item 2 of Schedule 3; and
  - (ii) the Shipper Delivers Gas to the Operator at that Inlet Point or the Shipper Receives Gas from the Operator at that Outlet Point,
 then the Shipper is entitled to Deliver Gas at that Inlet Point or obliged to Receive Gas at that Outlet Point under this Contract,
  - (iii) if the Operator is then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator is Receiving Gas from or Delivering Gas to those other shippers; or
  - (iv) if the Operator is not then Receiving Gas from or Delivering Gas to other shippers at that Inlet Point or Outlet Point, at the temperature and pressure at which the Operator was last entitled to Deliver Gas or obliged to Receive Gas at that Inlet Point or Outlet Point under the terms of a contract with any other shipper.

### 7.5 Notice of Out-of-Specification Gas

If either Party becomes aware that any Out-of-Specification Gas is to enter or has entered the DBNGP at an Inlet Point or is to leave or has left the DBNGP at an Outlet Point, it must as soon as reasonably practicable notify the other Party in accordance with clause 29.1(a).

### 7.6 Operator and Shipper may refuse to Receive Out-of-Specification Gas

- (a) Subject to any agreement under clauses 7.7 and 7.9, the Operator may at any time without penalty refuse to Receive from the Shipper at an Inlet Point, and the Shipper may at any time without penalty refuse to Receive from the Operator at an Outlet Point, any Out-of-Specification Gas.
- (b) The Shipper is entitled to a refund of Capacity Reservation Charges for any Capacity it is unable to use on a Gas Day as a result of the Shipper refusing any Out-of-Specification Gas under clause 7.6(a) to the extent that the Operator caused the Gas in the DBNGP to be Out-of-Specification Gas.

### 7.7 Operator may Receive Out-of-Specification Gas

The Operator may, at its own risk, agree to Receive Out-of-Specification Gas from the Shipper at an Inlet Point on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.

#### 7.8 Shipper's Liability for Out-of-Specification Gas

If any Out-of-Specification Gas Delivered by or on behalf of the Shipper enters the DBNGP without the Operator's agreement under clause 7.7:

- (a) the Shipper is liable to the Operator for any loss or damage arising in respect of the Out-of-Specification Gas; and
- (b) Without limitation on any of its other rights under any Law, the Operator is, to the extent necessary to allow it to deal with that entry of Out-of-Specification Gas:
  - (i) entitled to vent the Out-of-Specification Gas, and the Shipper is deemed not to have Delivered a quantity of Gas at the Inlet Point equivalent to the quantity of all Gas necessarily vented by the Operator; and
  - (ii) relieved of any obligation to Deliver Gas to the Shipper by an amount no greater than the quantity of Gas vented by the Operator under clause 7.8(b)(i) on the basis that the Shipper is deemed not to have Delivered that quantity of Gas at the Inlet Point.
- (c) The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Shipper's liability under clause 7.8(a).

#### 7.9 Shipper may Receive Out-of-Specification Gas

- (a) The Shipper may at its own risk, agree to Receive Out-of-Specification Gas from the Operator at an Outlet Point, on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.
- (b) If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9(a), then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas by delivering Out-of-Specification Gas to the Inlet Point, the Operator is liable to the Shipper for Direct Damage arising in respect of the Out-of-Specification Gas.

#### 7.10 Change of Law

- (a) If:
  - (i) at any time during the term of this Contract there is a change in any Law which requires the Operator to Receive Gas with an operating specification for one or more components outside the Operating Specifications applying to the component or those components of the Operating Specifications (as may be amended from time to time pursuant to this clause 7.10) (Permissible Specifications);
  - (ii) there is no shipper with an Inconsistent Existing Contractual Specification; and
  - (iii) the Operator actually Receives Gas outside the Operating Specifications but within the Permissible Specifications to such an extent that it is unable to comply with the Operating Specifications for

an Outlet Point set out in Schedule 3, then the Operator must notify the Shipper that:

- (iv) the Inlet Point Operating Specifications (and Item 1 of Schedule 3) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Inlet Point Operating Specification, for the operating specification of that component of the Inlet Point Operating Specification; and
  - (v) the Outlet Point Operating Specifications (and Item 1 of Schedule 3) is amended so as to broaden the specification for each component which has been amended in respect of the Inlet Point Operating Specification, by the same amount as the Inlet Point Operating Specification has been broadened by the operation of this clause 7.10.
- (b) In this clause 7.10 Inconsistent Existing Contractual Specification means:
- (i) in relation to an Inlet Point, if the amendments to the Inlet Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Producer Contract; or
  - (ii) in relation to an Outlet Point, if the amendments to the Outlet Point Operating Specifications were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Gas Supply Contract.

#### 7.11 Amendment Notice

The notice under clause 7.10 must:

- (a) contain details of the change in Law;
- (b) specify the amended operating specification for each component of the Inlet Point Operating Specification;
- (c) specify the amended operating specification for each component of the Outlet Point Operating Specification; and
- (d) specify the amendments to Item 1 of Schedule 3 which are made to give effect to the amended operating specifications for each component of the Inlet Point Operating Specification and the Outlet Point Operating Specification.

#### 7.12 Odorisation

The Operator will Deliver Gas to the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004 odorised to the specification set out in the Gas Standards Regulations 1983 (WA).

#### 7.13 Weighted average gas flows

- (a) If on a Gas Day the Individual Gas Delivered by the Shipper to an Inlet Point that is a Multi-shipper Inlet Point is included in Blended Gas that meets the Blended Specifications then, despite clause 7.6, the Operator must Receive the Individual Gas from the Shipper even if the Individual Gas is Out-of-Specification Gas.
- (b) For the purpose of this clause 7.13:

- (i) Blended Gas means all Gas Delivered to an Inlet Point under Relevant Contracts as a commingled stream and which is taken for the purposes of clause 6.3 to have been commingled at a point immediately upstream of that Inlet Point;
- (ii) Blended Specifications means the notional operating specifications applying to the Blended Gas determined as a weighted average of the operating specifications for the relevant Inlet Point applying under all Relevant Contracts calculated by weighting:
  - (A) the value of each component comprising the Operating Specifications for the Inlet Point under each Relevant Contract; by
  - (B) the scheduled Nominations at the Inlet Point for the Gas Day across all Capacity Services under each Relevant Contract;
- (iii) Individual Gas means Gas Delivered into a Blended Gas Stream immediately prior to it becoming Blended Gas; and
- (iv) Relevant Contracts means the contracts for each shipper who is delivering Gas to the Inlet Point on that day.

## **Nominations (clause 8)**

### 8. Nominations

#### 8.1 Shipper may delegate to a Producer or an Appointed Agent

To the extent that this Contract prescribes certain things to be done by the Shipper which relate to Gas being Received by the Operator at an Inlet Point, the Shipper may by agreement with a Producer or an Appointed Agent, appoint the Producer or the Appointed Agent (as the case may be) to do those things, but nothing in any such agreement relieves the Shipper of its obligations to the Operator under this Contract.

#### 8.2 Requests for advance information

- (a) To assist in its planning and forecasting, the Operator may from time to time, acting as a Reasonable and Prudent Person, request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) in good faith of the Shipper's likely Nominations which information will be governed by the provisions of clause 28.
- (b) The Shipper must in good faith make reasonable endeavours to comply with any request made by the Operator under clause 8.2(a).
- (c) Except as provided in clause 8.2(d) below, the Shipper may, without penalty, make Nominations which differ materially from any estimates provided by it under clause 8.2(a).
- (d) Nothing in clause 8.2(c) limits any action against the Shipper if the Shipper fraudulently or negligently provides materially false information to the Operator under clause 8.2(a).

#### 8.3 Shipper's Daily Nominations do not affect Contracted Capacities

The scheduling of a Daily Nomination under this clause 8 does not affect or otherwise change the Shipper's Contracted Capacity.

**8.4 Nominations and Renominations must be in good faith**

- (a) If the Shipper makes an Advance Nomination, an Initial Nomination, or a Renomination, it must do so in good faith, and must nominate for an amount of the Capacity Service which is the Shipper's best estimate as a Reasonable and Prudent Person of the amount of the Capacity Service it proposes to utilise.
- (b) The Operator and the Shipper acknowledge that the purpose of the Shipper making an Advance Nomination, an Initial Nomination or a Renomination is to:
  - (i) assist the Operator schedule compressor use on the DBNGP; and
  - (ii) provide a basis for the Operator to manage any Point Specific Curtailments.

**8.5 Operator to make available bulletins of available Capacity**

- (a) The Operator must, on regular occasions during each Gas Day (sufficient to assist the Shipper in making its Initial Nomination, and any Renomination), make available on the CRS a bulletin specifying:
  - (i) for at least that Gas Day and the following Gas Day, the amount of Capacity available or anticipated to be available for Nomination or Renomination;
  - (ii) subject to obtaining the relevant shipper's consent, details of any Tradeable Capacity to be made available under clause 27.5; and
  - (iii) disclosures required by Law.
- (b) No obligation to schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's B1 Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

**8.6 Shipper's Initial Nomination**

- (a) The Shipper must, by notice to the Operator given no later than 14:00 hours on any Gas Day, nominate for the following Gas Day the quantity of Gas that the Shipper requires to Deliver to the Operator at each Nominated Inlet Point, and the quantity of Gas that the Shipper requires to Receive from the Operator at each Nominated Outlet Point in the B1 Service (Initial Nomination).
- (b) In addition to the information required by clause 8.6(a), the Shipper's Initial Nomination must:
  - (i) set out:
    - (A) the sum of those Nominations across all Inlet Points; and
    - (B) the sum of those Nominations across all Outlet Points,

which sums must be equal, except where the Shipper seeks to reduce any Accumulated Imbalance in accordance with clause 9.

- (ii) for each Nominated Inlet Point, identify the Producer or Producers which is or are to supply Gas to the Shipper for Delivery to the Operator and, if there is more than one, the quantity to be provided by each.

#### 8.7 Default provision for Daily Nomination

If the Shipper does not make an Initial Nomination complying with clause 8.6 or an Advance Nomination complying with clause 8.16 for a Gas Day for Capacity at an Inlet Point or at an Outlet Point, then the Shipper's Daily Nomination for that Gas Day for the Inlet Point or the Outlet Point (as the case may be) is taken as equal to the Shipper's Daily Nomination for the previous Gas Day at that Inlet Point or Outlet Point (as the case may be).

#### 8.8 Nominations priority

- (a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services (from superior to inferior) is, so far as is relevant to the Inlet Point or Outlet Point, set out in the column of Schedule 6 headed "Point Specific Curtailment" as supplemented by this clause 8 and clause 17.9.
- (b) Each category of Capacity Service described in a row of the Curtailment Plan (as relevant to the particular circumstance) refers separately to a **Type of Capacity Service** such that, for example, Alcoa's Priority Quantity is a **Type of Capacity Service**.

#### 8.9 Scheduling of Daily Nominations

- (a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9, for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for B1 Capacity for each Nominated Inlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for B1 Service at that Inlet Point; and
  - (ii) subject to clauses 8.9(c) and 8.10, may not be less than the Shipper's Initial Nomination for B1 Service at that Inlet Point.
- (c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for B1 Service across all Inlet Points exceed the Shipper's Total Contracted B1 Capacity across all Inlet Points.
- (d) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for B1 Service may exceed the Shipper's Total Contracted B1 Capacity across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.

- (e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for B1 Capacity at each Nominated Outlet Point:
  - (i) must not exceed the Shipper's Initial Nomination for B1 Service at that Outlet Point; and
  - (ii) subject to clauses 8.9(f) and 8.10, may not be less than the Shipper's Initial Nomination for B1 Service at that Outlet Point.
- (f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for B1 Service across all Outlet Points exceed the Shipper's Total Contracted B1 Capacity across all Outlet Points.
- (g) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for B1 Service may exceed the Shipper's Total Contracted B1 Capacity across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

#### 8.10 Scheduling where there is insufficient available Capacity

- (a) In all cases, subject to it being Operationally Feasible, and unless this Contract provides otherwise (for example without limitation in clauses 8.9(b)(i), 8.9(b)(ii), 8.9(e)(i) and 8.9(e)(ii)), if for any Gas Day more than one shipper has made Nominations under different Types of Capacity Service or under the same Type of Capacity Service for delivery or receipt of Gas at an Inlet Point or an Outlet Point and the Operator determines that it is not Operationally Feasible to meet all those Nominations, the Operator must Curtail the shippers' Contracted Capacities and the available Capacity (if any, as determined by the Operator, acting as a Reasonable and Prudent Person) must be scheduled in respect of Capacity Services relating to those Nominations for that Inlet Point or Outlet Point (as the case may be) in accordance with the provisions of clause 17.9.
- (b) Subject to clause 17.9, if the Operator schedules a Capacity Service for B1 Service to the Shipper which is less than the Shipper's Initial Nomination for B1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference between the Shipper's Contracted B1 Capacity and the Capacity Service scheduled by the Operator for B1 Service for that Gas Day.

#### 8.11 Shipper may give Renomination notice

The Shipper may once in respect of each Renomination time (as set out in clause 8.12) for a Gas Day request a variation of its Daily Nomination for the Gas Day (Renomination) for one or more Inlet Points or for one or more Outlet Points, by giving notice to the Operator specifying the amount and duration (which may be any duration up to and including the balance of the Gas Day in respect of which the Renomination is made) of the requested variation.

#### 8.12 Times for Renomination and scheduling of revised Daily Nominations

- (a) Subject to clause 8.12(c), the Renomination times for each Gas Day are 07:00 hours (at which time Renominations may be given for the Gas Day just

about to begin, not the Gas Day just about to end), and 12:00 hours and 20:00 hours in the Gas Day.

- (b) Subject to clause 8.12(c), if under clause 8.14 the Operator is required to schedule the Capacity Service in respect of a revised Daily Nomination in response to the Shipper's Renomination received prior to a Renomination time, the Operator must use reasonable endeavours to effect that scheduling within 1 hour after the Renomination time.
- (c) The Operator may, acting as a Reasonable and Prudent Person, from time to time by notice to the Shipper (which same notice must be given to all shippers) supplement or vary any one or more of the times prescribed in clause 8.12(a) or the period prescribed in clause 8.12(b).
- (d) A notice under clause 8.12(c) may be expressed to continue indefinitely or for a specified time, and may revoke, substitute or amend a previous notice.

#### 8.13 Renominations reducing Daily Nomination

If a Renomination seeks to reduce the Shipper's Daily Nomination, the Operator must, by notice to the Shipper, schedule the relevant Capacity Service in respect of the Shipper's Daily Nomination in accordance with the Renomination.

#### 8.14 Renominations increasing Daily Nomination

- (a) The Operator may only refuse to schedule the increased Capacity Service required in respect of the Shipper's Daily Nomination in response to a Renomination:
  - (i) if accommodating that increase is not Technically Practicable; or
  - (ii) to the extent that, after applying clauses 8.14(d) and 8.14(e) there is insufficient unscheduled Capacity to satisfy the Renomination for that Inlet Point or Outlet Point.
- (b) Subject to clause 8.14(a), if the Shipper's Renomination seeks to increase its Daily Nomination, the Operator must within the period prescribed in clause 8.12(b) (as varied, if applicable, by notice under clause 8.12(c)) by notice to the Shipper schedule the increased Capacity Service required in respect of revised Daily Nominations.
- (c) A notice under clause 8.14(b) must specify the period in respect of which the revised Daily Nominations are to apply.
- (d) Clause 8.9 applies (with appropriate modifications) to the Operator's scheduling of the increased Capacity Service required in respect of revised Daily Nominations under clause 8.14(b).
- (e) Without otherwise limiting the Operator's discretion in relation to Curtailment, the Operator must, to the extent practicable and Operationally Feasible in the circumstances, Curtail any Capacity in a Type of Capacity Service (the first Type of Capacity Service), whenever it is necessary to do so in order to satisfy any shipper's Renomination for Reserved Capacity in relation to a Type of Capacity Service which has priority over the first Type of Capacity Service according to the order of priority set out in the column of the Curtailment Plan headed "Point Specific Curtailment".

#### 8.15 Default provision for Renomination process:

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by the Operator not providing information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then the Shipper's Daily Nominations are to remain unchanged from the previous Gas Day's nomination (but if the Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.12(b) it must do so).

#### 8.16 Aggregated B1 Service

Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for B1 Service which is, according to clause 8.16, deemed to be Aggregated B1 Service, shall be deemed to be a Nomination for a separate Type of Capacity Service which service ranks equally in priority with all other Aggregated B1 Service. For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated B1 Service shall be excluded from the B1 Service.

#### 8.17 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

Subject to this clause 8, Shipper is entitled to nominate that Gas be Delivered under Shipper's B1 Service:

- (a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for B1 Services; and
  - (b) in excess of Shipper's Contracted Capacity for B1 Services at an Inlet Point or Outlet Point,
- (being Aggregated B1 Service).

#### 8.18 Shipper's Advance Nomination

- (a) The Shipper may nominate in advance for each Gas Day in any week or any month by giving notice complying with the requirements of clause 8.6 (with appropriate changes) for each of those Gas Days (**Advance Nomination**).
- (b) The Advance Nomination must be given:
  - (i) no later than 17:00 hours on the Wednesday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) at least 6 Working Days before the start of the nominated month (in the case of a Nomination a month in advance).
- (c) The Operator must, in response to an Advance Nomination, schedule a Daily Nomination for each nominated day determined in accordance with the provisions of clauses 8.9, and 8.8:
  - (i) no later than Friday in the week before the nominated week (in the case of a Nomination a week in advance); or
  - (ii) within 5 Working days of receipt of the Advance Nomination (in the case of a Nomination a month in advance).
- (d) The Shipper may submit an Initial Nomination for a Gas Day in respect of which it has made an Advance Nomination and been scheduled a Daily Nomination, in which case:

- (i) the Initial Nomination is not a Renomination; and
- (ii) the Shipper's Advance Nomination for the Gas Day is of no effect.

## **Imbalances (clause 9)**

### 9. Imbalances

#### 9.1 Operator to maintain balance

The Operator may do all things expected of a Reasonable and Prudent Person to maintain a balance between total Gas inputs to, and total Gas outputs from, the DBNGP, including (subject to the provisions of this clause and this Contract) restricting the quantity of Gas it Delivers to the Shipper at an Outlet Point, and restricting the quantity of Gas it Receives from the Shipper at an Inlet Point in accordance with this Contract.

#### 9.2 Shipper to maintain balance

On each Gas Day, the Shipper must endeavour to maintain an Accumulated Imbalance of zero, including restricting the quantity of Gas it Delivers to the Operator at an Inlet Point, and restricting the quantity of Gas it Receives from the Operator at an Outlet Point.

#### 9.3 Shipper's Accumulated Imbalance

At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus the Shipper's Daily Imbalance on the Gas Day. The Accumulated Imbalance at the Capacity Start Date is zero.

#### 9.4 Notice of the Shipper's imbalances

Before 13:30 hours on each Gas Day, except the Contract Commencement Date, the Operator must provide to the Shipper notice (Accumulated Imbalance Notice) of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day, and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate.

#### 9.5 Accumulated Imbalance Limit

(a) The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including B1 Service and any Capacity under Spot Transactions) for that Gas Day.

(b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished then, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition:

- (i) will have a material adverse impact on the integrity or operation of the DBNGP; or

- (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for B1 Capacity, B1 Capacity, P1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,

then the Operator (acting as a Reasonable And Prudent Person) may, subject to clause 9.5(f):

- (iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or (ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and/or
  - (iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.
- (c) If the Operator issues a notice under this clause 9.5 and the Shipper's Accumulated Imbalance is:
- (i) positive, the Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or
  - (ii) negative, the Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit.
- (d) If, after the Operator issues a notice under clause 9.5(b)(iii):
- (i) subject to clause 9.5(d)(ii), the absolute value of the Shipper's Accumulated Imbalance is reducing each Gas Day, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and
  - (ii) where the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii).
- (e) If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).
- (f) The Operator may not:
- (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent

- reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
- (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).
- (g) The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit in accordance with clause 20 in respect of each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).
- (h) No Excess Imbalance Charge under clause 9.5(e)(g) is payable in respect of that part (if any) of the imbalance that is attributable to:
- (i) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
  - (ii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
  - (iii) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(h)(i) or 9.5(h)(ii),

#### 9.6 Balancing in particular circumstances

- (a) If the Parties anticipate a failure of the Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit, in order to enable the Shipper to deposit additional Gas in the DBNGP in advance of that failure.
- (b) The Parties may, during a period in which the Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow the Shipper to exceed the Accumulated Imbalance Limit, whether or not the Shipper has deposited additional Gas under clause 9.6(a) in anticipation of the failure of the Shipper's Gas supply.
- (c) Subject to clause 9.6(d), an agreement under clauses 9.6(a) or 9.6(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate. The agreement must be in writing (which may be contained in an email) and must be in place before the Shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.
- (d) The Operator may require an agreement under clause 9.6(b) to contain any reasonable provisions it sees fit, including any or all of the following provisions:
  - (i) that the Operator may from time to time during the duration of that agreement, by notice to the Shipper, specify a limit for the Shipper's Accumulated Imbalance, beyond which limit the Operator may refuse

to Receive Gas from the Shipper at an Inlet Point or Deliver Gas to the Shipper at an Outlet Point, or both; and

- (ii) that upon resumption of the Shipper's Gas supply, the Operator may require the Shipper to restore the absolute value of its Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.
- (e) Nothing in this clause compels a Party to enter into an agreement under clauses 9.6(a) or 9.6(b).

#### 9.7 Remedies for breach of imbalance limits

Except as provided in clause 9.9, the Operator may not exercise any rights or remedies against the Shipper for exceeding the Accumulated Imbalance Limit, other than:

- (a) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
- (b) to refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
- (c) any combination of the rights and remedies in clauses, 9.7(a) and 9.7(b).

The Parties agree that, because the rights and remedies set out in this clause 9.7 apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.7, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

#### 9.8 Trading in imbalances

- (a) The Shipper may exchange all or part of its Accumulated Imbalances with another shipper on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts the Shipper has with the Operator for Capacity Services, in accordance with this clause 9.8.
- (b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator by 12:00 hours on the next Working Day following receipt from the Operator of the Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.
- (c) On receipt of a notice under clause 9.8(b), the Operator must calculate adjustments in the Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.

#### 9.9 Cashing out imbalances at end of each Gas Month

- (a) The balancing process prescribed in this clause 9.9 is to be undertaken at the Capacity End Date.

- (b) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a positive number then, the Operator is to pay a fair market price to the Shipper for that Gas.
- (c) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a negative number, the Shipper is to pay a fair market price to the Operator for that Gas.

#### 9.10 Charges do not affect Daily Delivery

Nothing in this clause 9 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

### **Peaking (clause 10)**

#### 10. Peaking

##### 10.1 Hourly Peaking Limits

The Hourly Peaking Limits are:

- (a) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points on the DBNGP;
- (b) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10; and
- (c) 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10B, (each of the limits in (a), (b) and (c) being an Hourly Peaking Limit).

##### 10.2 Shipper to stay within Hourly Peaking Limit

On each Gas Day, the Shipper must do all things expected of a Reasonable and Prudent Person to ensure that:

- (a) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points on the DBNGP does not exceed the relevant Hourly Peaking Limit described in clause 10.1(a);
- (b) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10 does not exceed the relevant Hourly Peaking Limit described in clause 10.1(b); and
- (c) the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points in Pipeline Zone 10B does not exceed the relevant Hourly Peaking Limit described in clause 10.1(c).

##### 10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time the Shipper exceeds an Hourly Peaking Limit the Operator (acting as a Reasonable and Prudent Person), considers that a continuation of that condition:
  - (i) will have a material adverse impact on the integrity or operation of the DBNGP; or

- (ii) will adversely impact, or is likely to adversely impact, on any other Capacity, or any Other Reserved Service,

the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:

- (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or (ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or procure compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and
- (iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Quantity is within the Hourly Peaking Limit.

- (b) If the Operator issues a notice to the Shipper under clause 10.3(a)(iii) and the Hourly Peaking Limit being exceeded relates to Outlet Points:

- (i) on the DBNGP generally, the Operator must issue a similar notice to all shippers;
- (ii) in Pipeline Zone 10, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10; or
- (iii) in Pipeline Zone 10B, the Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10B,

which are exceeding their Hourly Peaking Limit or the equivalent under their relevant contracts.

- (c) If, after Operator issues a notice under clause 10.3(a)(iii):

- (i) subject to clause 10.3(b), Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and
- (ii) Shipper's Hourly Quantity calculated across the relevant outlet points is not within the Hourly Peaking Limit by the end of the following Gas Hour, Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).

- (d) If the Shipper does not comply and is not deemed pursuant to clause 10.3(c) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that the Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, the Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:

- (i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause 10.5(e)); or
- (ii) in excess of the Hourly Peaking Limit up to the Outer Hourly Peaking Limit (if a notice has been issued pursuant to clause 10.5(e)), in accordance with clause 20.

- (e) If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which the Shipper is no longer exceeding any of the Hourly Peaking Limits (after which the Shipper is not liable to pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii)).
- (f) If the Shipper exceeds more than one Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.3(d) is calculated using only the amount of the largest excess.
- (g) No Hourly Peaking Charge is payable in respect of any Gas Hour in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.
- (h) The Operator may not:
  - (i) issue a notice pursuant to clause 10.3(a)(iii) or refuse to Deliver Gas pursuant to clause 10.3(a)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Hourly Peaking Limit; or
  - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Deliver Gas pursuant to clause 10.3(a)(iv) without having issued a notice in accordance with clause 10.3(a)(iii).

#### 10.4 Charges do not affect Daily Delivery

Nothing in this clause 10 entitles the Shipper to Receive in any Gas Day a total quantity of Gas (across all Outlet Points) which exceeds the sum (across all Outlet Points) of the Shipper's Total Contracted Capacity.

#### 10.5 Outer Hourly Peaking Limit

- (a) The Shipper's Outer Hourly Peaking Limits are:
  - (i) 140% of the aggregate MHQ calculated across all outlet points on the DBNPG;
  - (ii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10; and
  - (iii) 140% of the aggregate MHQ calculated across all outlet points in Pipeline Zone 10B,

(each of the limits in (i), (ii) and (iii) being an ***Outer Hourly Peaking Limit***).
- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.5(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.

- (c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.5(b) is calculated using only the amount of the largest excess.
- (d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.5(b) in respect of a Gas Hour, then the Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.5(b).
- (e) If at any time the Shipper's take of Gas is such that the Operator, acting as a Reasonable And Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.5(e) is only valid for the purposes of clause 10.5(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

#### 10.6 Remedies for breach of peaking limits

The Operator must not exercise any rights or remedies against the Shipper for exceeding an Hourly Peaking Limit, other than:

- (a) for breach of clause 10.3(a)(iii) limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 10.3(a)(iii) is reduced by any Hourly Peaking Charge or Hourly Peaking Charges paid by the Shipper in respect of that failure;
- (b) to recover the Hourly Peaking Charge or Hourly Peaking Charges where permissible by and in accordance with this clause 10;
- (c) to refuse to Deliver Gas to the Shipper at an Outlet Point (in accordance with clause 10.3(a)(iv)); or
- (d) any combination of clauses 10.6(a), 10.6(b) and 10.6(c).

The Parties agree that, because the rights and remedies set out in this clause 10.6 apply across all of the Shipper's Capacity Services, when in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 10.6, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

## **Overrun (clause 11)**

### 11. Overrun

#### 11.1 Overrun Charge

- (a) In respect of each GJ of Overrun Gas Received by the Shipper on a Gas Day, the Shipper must pay an Overrun Charge calculated by applying the Overrun Rate to the total Overrun Gas Received by the Shipper on that Gas Day in accordance with clause 20.
- (b) The Overrun Rate is the greater of:
  - (i) 115% of the B1 Tariff; and

- (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,

**(Overrun Rate).**

- (c) All Overrun Gas Delivered on a Gas Day must be included in the calculation of the Shipper's Hourly Quantities, Total Inlet Quantity and Total Outlet Quantity for that Gas Day.

## 11.2 Unavailability Notice

- (a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for B1 Capacity, any Other Reserved Service or allocated Spot Capacity. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.
- (b) The Operator must use reasonable endeavours to give the Shipper and all other shippers advance notice (which may be by written notice or otherwise) which is reasonable in the circumstances of any unavailability or limited availability of Overrun Gas.
- (c) Any Curtailment Notice issued under clause 17 for any period is taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:
  - (i) is a Point Specific Curtailment;
  - (ii) does not affect Gas Transmission Capacity generally; and
  - (iii) does not affect the Inlet Point or Outlet Point at which the Overrun Gas is being Received by the Shipper.

## 11.3 Content of an Unavailability Notice

An Unavailability Notice:

- (a) may apply to the Gas Day on which the Unavailability Notice is issued even though, in order to comply with such an Unavailability Notice, the Shipper must cease taking Delivery of Overrun Gas upon receipt of the notice in accordance with clause 11.4;
- (b) must identify the Gas Day or Gas Days to which the notice applies;
- (c) may be expressed to continue indefinitely or for a specified period;
- (d) may revoke, substitute or amend a previous Unavailability Notice; and
- (e) must state the quantity of Overrun Gas which is available to the Shipper.

## 11.4 Compliance with Unavailability Notice

- (a) The Shipper must use its best endeavours to comply immediately, and must:

- (i) as soon as practicable and in any event no later than one hour after receipt of the notice to comply, or procure compliance, with an Unavailability Notice, by ensuring that the total of its Overrun Gas for each Gas Day to which the Unavailability Notice applies does not exceed the quantity of Overrun Gas (if any) indicated by the Unavailability Notice to be available to the Shipper; and
- (ii) as soon as practicable after receipt of the notice to comply, provide notice to the Operator advising of the measures being taken to ensure compliance with 11.4(a)(i).

#### 11.5 Operator may refuse to Deliver Overrun Gas

In addition to any other rights the Operator has to refuse to Deliver Gas under clause 5.7, the Operator may refuse to Deliver Overrun Gas to the Shipper at an Outlet Point if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4.

#### 11.6 Unavailable Overrun Charge

In addition to any charge payable under clause 11.1, if the Shipper does not comply, or procure compliance, with an Unavailability Notice in accordance with clause 11.4, the Shipper must pay, in accordance with clause 20, an Unavailable Overrun Charge at the Unavailable Overrun Rate for each GJ of Gas taken by the Shipper in excess of the quantity of Overrun Gas specified in the Unavailability Notice as being available to the Shipper.

#### 11.7 Saving and damages

- (a) Nothing in this clause 11 limits, affects or prejudices the Operator's right to refuse to Receive Gas under clause 5.3 or to refuse to Deliver Gas under clause 5.7.
- (b) The Shipper's liability to the Operator for any Direct Damage suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with an Unavailability Notice is reduced by any Unavailable Overrun Charge paid by the Shipper under clause 11.6 in respect of that failure.
- (c) The Shipper is not liable to pay the Overrun Charge under clause 11.1 and the Unavailable Overrun Charge under clause 11.6 in respect of the same quantity of Overrun Gas.
- (d) The Shipper is not liable to pay the Unavailable Overrun Charge with respect to any Gas Day in which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect but only to the extent that the information is incorrect, but is liable to pay the Overrun Charge in respect to the relevant quantity of Overrun Gas as if an Unavailability Notice had not been issued.
- (e) The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.

## ***Additional Rights and Obligations of Operator (clause 12)***

### 12. Additional Rights and Obligations of Operator

#### 12.1 Commingling of Gas

The Operator will have the right to commingle the Gas Delivered by the Shipper at an Inlet Point with other Gas in the DBNGP during transportation and is entitled to Deliver different molecules to the Shipper at the Outlet Points from those received at the Inlet Points.

#### 12.2 Processing

Subject to its obligations under this Contract, the Operator may (but is not obliged to) compress, cool, heat, clean and apply other processes to Gas during transportation acting as a Reasonable and Prudent Person consistent with its operation of the DBNGP.

#### 12.3 Operation of Pipeline System

- (a) In operating, maintaining or expanding the DBNGP, the Operator must:
  - (i) comply with all its obligations under this Contract; and
  - (ii) use Good Gas Industry Practice.
- (b) Except as provided in clause 12.3(a), the Operator may decide the manner in which it will operate the DBNGP.
- (c) In acting under this Contract, the Shipper must use Good Gas Industry Practice.

#### 12.4 Delivery of Gas

The Operator may (but only if the Operator chooses to do so) satisfy its obligation to enable gas to be Delivered to the Shipper by using any means other than the DBNGP, provided that the Operator otherwise meets its obligations under this Contract.

## ***Control, Possession and Title to Gas (clause 13)***

### 13. Control, Possession and Title to Gas

#### 13.1 Warranty of Title

- (a) The Shipper warrants that, at the time it Delivers Gas to the Operator at an Inlet Point, the Shipper has good title to the Gas free and clear of all liens, encumbrances and claims of any nature inconsistent with the Operator's operation of the DBNGP.
- (b) Subject to clause 13.1(a) being true and correct at all times, the Operator warrants that at the time it Delivers Gas to the Shipper at an Outlet Point, the Operator has good title to the Gas free and clear of all liens, encumbrances and claims of any nature whatsoever.

#### 13.2 Control, Possession, Responsibility and Title of Shipper

The Shipper warrants to the Operator at each relevant time that the Shipper:

- (a) is in Possession of the Gas immediately prior to its Delivery to the Operator at an Inlet Point and immediately after its Delivery to the Shipper at an Outlet Point; and
- (b) has legal responsibility and liability for Gas while it is within the Possession of the Shipper.

### 13.3 Title, Custody, Control and Responsibility of Operator

- (a) The Operator must:
  - (i) take title to, and is taken to be in Possession of, Gas from the Receipt of Gas from the Shipper at an Inlet Point until Delivery of Gas to the Shipper at an Outlet Point; and
  - (ii) have legal responsibility and liability for Gas while it is within the Operator's Possession.
- (b) (i) The Operator must Deliver good title to Gas Delivered to the Shipper at an Outlet Point; and
  - (ii) the Shipper must take title to Gas immediately after its Delivery to the Shipper at an Outlet Point,

free and clear of all liens, encumbrances and claims of any nature whatsoever.

### 13.4 Entitlements to Receive Gas

- (a) Subject to clause 13.4(c), upon the transfer from the Shipper to the Operator of title to and possession of a quantity (in terajoules) of Gas Delivered at an Inlet Point, the Shipper becomes entitled to:
  - (i) Receive Gas from the Operator at an Outlet Point other than a Notional Gate Point; or
  - (ii) subject to clause 13.5(b), Receive Gas from the Operator at an Outlet Point that is a Notional Gate Point.
- (b) The quantity of Gas that the Shipper becomes entitled to Receive in aggregate under clause 13.4(a) is a quantity equivalent (in terajoules) to the quantity of Gas Delivered at the Inlet Point.
- (c) Clauses 13.4(a) and 13.4(b) do not affect a provision of this Contract entitling the Operator to Curtail wholly or partially or interrupt the Shipper's use of Capacity or to refuse wholly or partially to Deliver Gas to the Shipper and do not affect the obligations of the Shipper to Deliver Gas and Receive Gas in such a manner as complies with this Contract, including so as to ensure the Shipper remains within the limits prescribed by this Contract in clauses 9 and 10.

### 13.5 Title at Outlet Points

- (a) Unless the Delivery is at an Outlet Point that is a Notional Gate Point, the Delivery of the Gas by the Operator to the Shipper at an Outlet Point is a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Outlet Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.
- (b) If the Delivery is at an Outlet Point that is a Notional Gate Point, then:

- (i) the Delivery of the Gas by the Operator is followed immediately by a Delivery of the Gas from the Shipper back to the Operator at the Outlet Point (for transport to a Physical Gate Point associated with the Notional Gate Point) and no transfer of title to and possession of the Gas is involved;
- (ii) the Operator may in its discretion as a Reasonable and Prudent Person manage the times, extent and manner that Gas deemed to be delivered at a Notional Gate Point is physically transported into the Associated sub-network; and
- (iii) subject to any Law or any other agreement to which both the Operator and the Shipper are parties, the Delivery of Gas by the Operator at a Physical Gate Point is, by force of this clause 13.5, a transfer of title to and possession of the Gas from the Operator to the Shipper, effective at the Physical Gate Point and at the time of Delivery, and free and clear of all encumbrances, liens and claims of any nature.

## **Relocation (clause 14)**

### 14. Relocation

#### 14.1 Request for relocation of Contracted Capacity

The Shipper may, by notice in writing to the Operator, request a relocation of all or any part of its Contracted Capacity from an Existing Inlet Point to a New Inlet Point or from an Existing Outlet Point to a New Outlet Point (Requested Relocation).

#### 14.2 Assessment of Requested Relocation

- (a) The Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable and Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to, among other things, the order, relative to its receipt of equivalent notices received from other shippers, in which the Shipper's Requested Relocation was received, (but for the avoidance of doubt the Parties intend this priority to apply only to the extent that requested relocations compete or conflict with each other for utilisation of capacity).
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:
  - (i) the Requested Relocation would cause the sum (after the relocation) of all shippers':
    - (A) quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including B1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNPG at which the New Inlet Point is located; or
    - (B) quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including B1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNPG at which the New Outlet Point is located;

- (ii) in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible; or
  - (iii) the Requested Relocation is such that the Inlet Point would be downstream of the Outlet Point and it would change the normal direction of Gas flow in the DBNGP.
- (c) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:
- (i) the Requested Relocation would result in the New Inlet Point being downstream of the Existing Inlet Point;
  - (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services (including B1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements; and
  - (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.
- (d) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:
- (i) the Requested Relocation would result in the New Outlet Point being upstream of the Existing Outlet Point;
  - (ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements;
  - (iii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services (including B1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located; and
  - (iv) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

#### 14.3 Operator to notify Shipper

As soon as practicable after completing its assessment under clause 14.2(a), the Operator must give notice in writing to the Shipper advising either that the Requested Relocation is:

- (a) not an Authorised Relocation; or
- (b) an Authorised Relocation.

#### 14.4 Requested Relocation is an Authorised Relocation

If the Operator gives notice that the Requested Relocation is an Authorised Relocation under clause 14.3(b):

- (a) the Operator and the Shipper must negotiate in good faith regarding the cost to the Shipper (which in no case may be less than the Operator's out-of-pocket costs and must include a reasonable charge for the Operator's management time) in respect of any new facilities (including the New Inlet Point or New Outlet Point) which the Shipper will be wholly or partially utilising.
- (b) If such agreement is not reached, the matter must be regarded as a Dispute to be resolved as a Technical Matter and will be dealt with in accordance with clause 24.
- (c) the Shipper must pay the charges specified in clause 14.7 in accordance with clause 20.

#### 14.5 Requested Relocation is not an Authorised Relocation

If the Operator gives notice that the Requested Relocation is not an Authorised Relocation under clause 14.3(a), the Operator and the Shipper (acting reasonably) may agree (on any fair and reasonable terms and conditions, including terms and conditions as to price) the operational restrictions which will apply to the use by the Shipper of the New Inlet Point or New Outlet Point which will enable the Parties to implement the Requested Relocation of Contracted Capacity.

#### 14.6 Relocated Contracted Capacity to be on same terms and conditions

Subject to clauses 14.7 and 14.8 and unless the Parties agree in writing to the contrary, any Contracted Capacity relocated under this clause 14 must be on the same terms and conditions as the Contracted Capacity at the Existing Inlet Point or the Existing Outlet Point (as the case may be).

#### 14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.
- (b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.
- (c) If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated:
  - (i) remains on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and

(ii) is treated under this Contract as though it was Full Haul Capacity.

#### 14.8 Pressures at New Inlet Point and New Outlet Point

The Operator may in its discretion as a Reasonable and Prudent Person specify the range of pressures within which the Shipper may Deliver Gas to the Operator at a New Inlet Point, and within which the Operator may Deliver Gas to the Shipper at a New Outlet Point but in no case may the specified range of pressures be substantially different from the DBNPG operating pressure range at that point.

#### 14.9 Contract amended to reflect relocation

If the Parties reach agreement under clause 14.4 or 14.5, the Requested Relocation and the terms and conditions so agreed must be given effect to by an amendment of the Access Request Form in accordance with clause 38.

### **Metering (clause 15)**

#### 15. Metering

##### 15.1 Shipper's responsibility

The Shipper must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense, supply, install, Operate and Maintain Inlet Metering Equipment at each Inlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) ensure that at all times all data required by the Operator from Inlet Metering Equipment is electronically accessible by the Operator.

##### 15.2 Operator's responsibility

The Operator must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense supply, install, Operate and Maintain Outlet Metering Equipment at each Outlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) calculate and record:
  - (i) the quantity of Gas Delivered to the Operator by the Shipper; and
  - (ii) the quantity of Gas Delivered to the Shipper by the Operator.

##### 15.3 Metering uncertainty

- (a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:
  - (i) measurement to within a maximum uncertainty of:
    - (A) plus or minus 0.75% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of 5 TJ/d or greater; and

- (B) plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and
- (ii) measurement to within a maximum uncertainty of plus or minus one quarter of one percent of Higher Heating Value at a minimum of the 95% confidence level.
- (b) Subject to clauses 15.3(a), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.
- (c) In this clause 15, **95% confidence level** has the meaning given to that expression by ISO 5168.

#### 15.4 Primary Metering Equipment

- (a) Primary Metering Equipment must:
  - (i) continuously compute and record:
    - (A) (in the case of Inlet Metering Equipment) the quantity and quality of Gas Delivered by the Shipper to the Operator under this Contract; and
    - (B) (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by the Operator to the Shipper under this Contract; and
    - (C) any information reasonably required by the Operator from time to time to assist the Operator to comply with any Law.
  - (ii) be of a standard of manufacture acceptable to the Operator acting as a Reasonable and Prudent Person;
  - (iii) comply with AS 2885 and any Australian or international standards required from time to time by the Operator;
  - (iv) subject to clauses 15.4(b) and 15.4(c), encompass newest proven technology;
  - (v) be able in all streams to withstand Gas flows of up to 120% of the design flow;
  - (vi) provide data signals in the form of galvanically isolated 4-20 milliamp current loops or potential free contacts, as appropriate, or in such other form as the Parties as Reasonable and Prudent Persons may agree; and
  - (vii) include facilities to enable electronic data collection by the Operator's Electronic Data Collection System.
- (b) Primary Metering Equipment with a design maximum flow rate of 5 TJ/d or more must include:
  - (i) alternative Metering Equipment capable of measuring Gas quantity and (for Inlet Metering Equipment) Gas quality;
  - (ii) a means for detecting a fault in Duty Equipment which is likely to materially affect the accuracy of any measurements produced by the

- Duty Equipment, and a means in the event of such a fault for automatically switching metering from the faulty Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i); and
- (iii) a means for manually switching metering from Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i).
- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
- (i) delivery and metering temperature;
  - (ii) delivery and metering pressure;
  - (iii) instantaneous energy flow rate in TJ/d;
  - (iv) instantaneous mass flow rate in Tonnes per day
  - (v) totalised energy flow in GJ;
  - (vi) totalised mass flow in Tonnes;
  - (vii) Relative Density;
  - (viii) Higher Heating Value in megajoules per cubic metre and megajoules per kilogram;
  - (ix) Wobbe Index;
  - (x) nitrogen content in mole percent;
  - (xi) carbon dioxide content in mole percent;
  - (xii) hydrocarbon content in mole percent for each of the fractions;
  - (xiii) sulphur content in milligrams per Cubic Metre;
  - (xiv) oxygen content in mole percent;
  - (xv) moisture level in milligrams per Cubic Metre;
  - (xvi) instantaneous hydrocarbon dew point in degrees Celsius; and
  - (xvii) all primary measurements and Derived Variables used in any computation required by clauses 15.4(c)(i) to 15.4(c)(xvi).
- (d) Unless the Operator and the Shipper as Reasonable and Prudent Persons agree to the contrary, Outlet Metering Equipment may utilise Gas quality data from equipment which is not located at the Outlet Station in question (**the Remote Data**), in which case:
- (i) the Operator may as a Reasonable and Prudent Person adopt procedures relating to that utilisation, including relating to the use of preset Gas quality values when the Remote Data is unavailable for any reason; and

- (ii) clauses 15.9 and 15.12 apply, with appropriate modifications, to any procedures adopted under clause 15.4(d)(i).
- (e) Outlet Metering Equipment must provide digital signals Associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables Associated with Gas quantity:
  - (i) delivery temperature;
  - (ii) delivery pressure;
  - (iii) instantaneous energy flow rate in terajoules per day derived using the Higher Heating Value;
  - (iv) totalised energy flow in GJ;
  - (v) all primary measures and Derived Variables used in any computation required by clauses 15.4(e)(i) to 15.4(e)(iv); and
  - (vi) Higher Heating Value in megajoules per cubic metre.
- (f) The Inlet Metering Equipment, and any building erected for such equipment, is the property of the Shipper (or its nominee), and the Outlet Metering Equipment, and any building erected for such equipment, is (subject to clause 15.4(g)) the property of the Operator.
- (g) To the extent that:
  - (i) the Shipper has paid for the Outlet Metering Equipment and any building erected for such equipment;
  - (ii) the Outlet Metering Equipment is detachable from the DBNGP without any damage to or effect on the DBNGP;
  - (iii) no third party has any interest in or title to the Outlet Metering Equipment or the building; and
  - (iv) no third party (including any other shipper) is deriving any benefit from the Outlet Metering Equipment,

the Outlet Metering Equipment and any building erected for such equipment is, at the end of this Contract, to become the property of the Shipper, and may be detached and removed at the expense and risk of the Shipper.

## 15.5 Provision of information to Shipper

- (a) The Operator must, on request by and at the expense and risk of the Shipper, make available to the Shipper access to:
  - (i) the galvanically isolated analogue or digital data signals in a form agreed by the Parties from any Outlet Metering Equipment at the Outlet Station Associated with the Outlet Point at which the Shipper has Contracted Capacity; and
  - (ii) any other form of metering data requested by the Shipper from time to time and consented to by the Operator acting reasonably and taking into account, inter alia, the commercial sensitivity of the data, whether the data relates solely to the Shipper, any requirements of confidentiality, any Law, and provided that such disclosure does not

materially or directly detrimentally affect other shippers in the context of their dealings with the Operator, but only insofar as that data relates solely to the Shipper.

- (b) The Operator takes no responsibility for the accuracy of any data obtained by the Shipper under clause 15.5(d)(i) and is not liable for any Direct Damage or Indirect Damage suffered by the Shipper as a result of any reliance placed by the Shipper on any data obtained by the Shipper under clause 15.5(d)(i).
  - (c) In complying with clause 15.5(a), the Operator must allow the Shipper access to unverified delivery data signals insofar as is relevant to the information referred to in clause 15.5(a).
  - (d) The Operator must make available to the Shipper via the CRS or a similar communications system:
    - (i) within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by the Shipper at each Outlet Point during that Gas Hour;
    - (ii) within 3 hours after the end of each Gas Day, the unverified quantities of Gas in that Gas Day Delivered by the Shipper to each Inlet Point and Delivered by the Operator to the Shipper at each Outlet Point excluding all Physical Gate Points; and
    - (iii) within three Working Days after the end of the Gas Month, the verified quantities of Gas Delivered by the Shipper at each Inlet Point and each Outlet Point for each Gas Day during the previous Gas Month,
- collectively ***Metering Information***.
- (e) The Operator must make available to the Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:
    - (i) Received by the Shipper in a Gas Day at each Physical Gate Point; and
    - (ii) Received by the Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.
  - (f) The Operator must make available to the Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:
    - (i) Received by the Shipper in that Gas Day at each Physical Gate Point; and
    - (ii) Received by the Shipper aggregated across all outlet points including all Physical Gate Points.
  - (g) Clauses 15.5(e) and (f) only apply for as long as the Shipper is a Distribution Networks Shipper.

## 15.6 Changes to requirements for Metering Equipment

The Operator may by notice in writing require the Shipper to modify, or to allow and arrange for the Operator to modify, existing Metering Equipment to comply with

requirements or standards specified by the Operator after that equipment was installed, and if the modification is necessary to comply with safety Laws of general application, or to comply with the standard required by an amendment to this Contract implementing such Laws, the modification must be made at the Shipper's expense, and otherwise the modification must be made at the Operator's expense.

#### 15.7 Approval of Inlet Metering Equipment

(a) The Shipper must obtain, or must procure that a third party obtains:

- (i) prior to commencing the construction, installation or modification of any Inlet Metering Equipment or any component thereof; and also
- (ii) prior to the commissioning of any newly constructed, installed or modified Inlet Metering Equipment or any component thereof, the Operator's written approval (which may not be unreasonably withheld) of, or of any amendment to, the design, location and construction of, and the proposed Operating and Maintenance procedures in relation to, that equipment or component.
- (b) For the purposes of clause 15.7(a), the Shipper must give to the Operator not less than one month's notice of the anticipated date of commencement of the relevant construction, installation or modification.
- (c) The Operator must, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to the Shipper of the Operator's approval of or refusal to approve the Inlet Metering Equipment.
- (d) Without limiting the generality of clause 37, the Shipper must, for the purposes of clause 15.7(a), prior to and during the construction, installation, modification or commissioning of any Inlet Metering Equipment or any component thereof, afford all reasonable rights of entry and inspection (including all relevant data, drawings and components) to the Operator and its agents at the Operator's expense and risk.

#### 15.8 Check Metering Equipment

- (a) The Shipper may at its own expense at an Outlet Station, and the Operator may at its own expense at an Inlet Station, supply, install, Maintain and Operate Check Metering Equipment for the purpose of monitoring the accuracy of the Primary Metering Equipment.
- (b) Check Metering Equipment (and any associated pressure or quantity control regulators or other equipment) must be located downstream of, and must not interfere with the operation of, the Primary Metering Equipment.
- (c) Check Metering Equipment at the Outlet Station is the Shipper's property, and Check Metering Equipment at the Inlet Station is the Operator's property.
- (d) The expenses of any Verification of the accuracy of Check Metering Equipment must be borne by the Party owning that equipment.
- (e) Subject to clause 15.14(d)(i), data from Check Metering Equipment may not be used for billing purposes.

#### 15.9 Preservation of accuracy

- (a) All Primary Metering Equipment must be installed in a manner which permits an Accurate measurement of the quantity and, for Inlet Metering Equipment,

the quality of Gas Delivered, and a ready Verification of the Accuracy of measurement.

- (b) Each Party must, in the installation, Maintenance and Operation of any Metering Equipment, exercise the care of a Reasonable and Prudent Person to prevent any inaccuracy in the measurement of the quantity of Gas Delivered under this Contract.

#### 15.10 Presumptions of accuracy

- (a) Subject to clause 15.13, a measurement of the quantity or quality of Gas from any Primary Metering Equipment is presumed to be correct.
- (b) If any 2 consecutive Verifications show any Metering Equipment to be operating within the Prescribed Limits of Uncertainty, the Metering Equipment is presumed to have been operating within the Prescribed Limits of Uncertainty throughout the intervening period.
- (c) The presumptions in clauses 15.10(a) and 15.10(b) apply until the contrary is shown.
- (d) If either or both of the presumptions in clauses 15.10(a) and 15.10(b) is, or are, shown to be incorrect in respect of any period or periods, clauses 15.13 and 15.14 apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

#### 15.11 Verification of Primary Metering Equipment

- (a) The Operator:
  - (i) must, at least once each month (or other period agreed between the parties) during the duration of this Contract; and
  - (ii) may, at such greater frequency or on any occasion that either Party may request,
 verify the accuracy of any Primary Metering Equipment in accordance with a procedure described in clause 15.11(b).
- (b) The Verification procedure consists of:
  - (i) a comparison between simultaneous independent measurements of Gas flows;
  - (ii) the physical substitution of the Primary Metering Equipment to be Verified with similar Metering Equipment having a demonstrated accuracy within the Prescribed Limits of Uncertainty; or
  - (iii) any Metering Equipment testing procedure complying with applicable Australian or International standards that the Parties agree in writing to use.
- (c) Each Party may have representatives present at the time of any Verification of the Accuracy of any Primary Metering Equipment (unless the number of persons present must be restricted for safety or logistical reasons, in which case the Parties are to agree on which representatives must be present), and the Operator must give the Shipper sufficient notice of an intended Verification to enable the Shipper's representative to be present.

- (d) The results of any Verification are binding on both Parties unless within 7 Working Days after Verification either Party gives notice to the other Party that it disputes the conduct of the Verification, in which case:
  - (i) the provisions of clause 24 apply; and
  - (ii) any reference in this clause 15.11 to accuracy figures produced by Verification means the accuracy figures finally determined for that Verification under a dispute resolution process adopted in accordance with clause 24.
- (e) Subject to clause 15.11(f), the Shipper must bear the expense of any Verification under clause 15.11(a), provided that the Operator must bear the cost of attendance of the Operator's representatives.
- (f) If a Verification requested by the Operator under clause 15.11(a)(ii) reveals that the accuracy of the Primary Metering Equipment is within the Prescribed Limits of Uncertainty, the Operator must bear the expense of the Verification and must also pay to the Shipper the Shipper's reasonable expenses of that Verification, in accordance with clause 20.

#### 15.12 Adjustment or replacement of defective equipment

- (a) Subject to clause 15.12(b), if at any time any component of Primary Metering Equipment is found to be defective or otherwise out of service or operating outside the Prescribed Limits of Uncertainty, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, forthwith either:
  - (i) adjust it to measure within the Prescribed Limits of Uncertainty; or
  - (ii) if such adjustment is not possible, replace it with a serviceable component.
- (b) If at any time Primary Metering Equipment with a design maximum flow rate of less than 5 TJ/d is found to be operating outside the Prescribed Limits of Uncertainty for any reason, the Operator must (if the Primary Metering Equipment is at an Outlet Station) and the Shipper must (if the Primary Metering Equipment is at an Inlet Station), in either case at the Shipper's expense, cause the Primary Metering Equipment to Operate within the Prescribed Limits of Uncertainty within 48 hours.

#### 15.13 Inaccurate equipment

- (a) If any Verification reveals that any Primary Metering Equipment is operating outside the Prescribed Limits of Uncertainty but is measuring the quantity of Gas with an inaccuracy of less than or equal to:
  - (i) plus or minus 1.5% for Metering Equipment with a design flow of 5 TJ/d or greater; and
  - (ii) plus or minus 3% for Metering Equipment with a design flow of less than 5 TJ/d,

then the measurements from that Primary Metering Equipment are taken to be correct.
- (b) If any Verification reveals that any Primary Metering Equipment is measuring the quantity of Gas with an inaccuracy of greater than the relevant limit

prescribed by clause 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) or agreed under clause 15.3(b), then (unless the Parties agree otherwise) all measurements affected or potentially affected by that inaccuracy must be determined in accordance with clause 15.14.

- (c) If the Parties have agreed under clause 15.3(b) to limits of uncertainty for a component or components of Primary Metering Equipment, then the Parties may agree to limits which are to apply in substitution for the limits prescribed in clauses 15.13(a)(i); 15.13(a)(i) or 15.13(a)(ii) for that Primary Metering Equipment, and clause 15.13(a) has effect accordingly.

#### 15.14 Correction of measurements

- (a) All measurements made prior to the Previous Verification are taken to be correct.
- (b) The period between the Previous Verification and the Current Verification must be divided into an earlier period and a later period, being:
  - (i) if the time at which the Primary Metering Equipment became Inaccurate can be established, respectively the period before and the period after that time; or
  - (ii) if the time at which the Primary Metering Equipment became Inaccurate cannot be established, 2 equal periods.
- (c) The measurements produced by the Primary Metering Equipment for the earlier period must be taken to be correct.
- (d) The measurements for the later period must be estimated:
  - (i) if Check Metering Equipment is installed and is established to the reasonable satisfaction of both Parties to have been operating during the later period within the Prescribed Limits of Uncertainty, by using the measurements recorded by that Check Metering Equipment;
  - (ii) if clause 15.14(d)(i) does not apply and if the percentage of error in the measurements is ascertainable to the reasonable satisfaction of both Parties by calibration test or mathematical calculation, by calculating a correction for that percentage error; or
  - (iii) in any other circumstance, by reference to measurements made under similar conditions when the Primary Metering Equipment was registering accurately.
- (e) Following the correction of any measurements in accordance with this clause 15.14, the Parties will determine the relevant overpayment or underpayment that has resulted under this Contract from the measurement error and the appropriate Party must make an adjusting payment to the other in accordance with clause 21.6.

#### 15.15 Metering records

- (a) Any record produced by Primary Metering Equipment:
  - (i) in paper form must be retained for 2 years after the date of production; and
  - (ii) in electronic form must be retained for 5 years after the date of production,

by and at the expense of the Party owning the equipment which produces the record.

- (b) The records and other information produced by, and any calculations and other information derived from, any Primary Metering Equipment or Check Metering Equipment remain the property of the Party owning that equipment.
- (c) Each Party must use reasonable endeavours to, within 20 Working Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by its Primary Metering Equipment which solely relate to the other Party, for inspection and verification by that other Party and the other Party may make and return any copies of those records and other information and must return the originals within 10 Working Days of their receipt.

#### 15.16 Unused Outlet Points

- (a) If:
  - (i) the Shipper has no Contracted Capacity at an Outlet Point; and
  - (ii) such point has not been used, or is, in the Operator's opinion (acting reasonably and after consulting with the Shipper), unlikely to be used, to Deliver Gas to the Shipper for a period, in aggregate, greater than 12 continuous months,

then the Operator may, at the cost of the Operator, decommission, remove and deal with or dispose of as it sees fit (including selling for its own benefit) any part or the whole of that Outlet Point and any Associated Outlet Station. Upon the commencement of such decommissioning, such Outlet Point, subject to clause 15.16(b), ceases to be an Outlet Point for the purpose of this Contract.

- (b) If requested by the Shipper, the Shipper and the Operator will discuss in good faith deferring the decommissioning of the Outlet Point and any Associated Outlet Station on the basis that the Shipper will pay ongoing maintenance charges incurred by the Operator in maintaining the Outlet Point and any Associated Outlet Station.
- (c) If subsequent to the commencement of such decommissioning, the Shipper wishes to use such point as an Outlet Point under this Contract, the Shipper must give at least 10 months written notice to the Operator and must fully indemnify the Operator for all costs, losses, liabilities and expenses incurred by the Operator in respect of such recommissioning of the point as an Outlet Point for the purposes of this Contract and in respect of recommissioning any Associated Outlet Station.
- (d) An Outlet Point recommissioned in accordance with clause 15.16(c) is subject to Charges in accordance with clause 6.11.

#### *Un-used clause (clause 16)*

##### 16. Not Used

#### *Curtailment (clause 17)*

##### 17. Curtailment

###### 17.1 Operator's obligations and Curtailment principles

- (a) The Operator must use its best endeavours to minimise the magnitude and expected duration of any Curtailment of the B1 Service.
- (b) A Curtailment may affect one or more Inlet Points or Outlet Points on the DBNGP. Unless the Curtailment affects only one Inlet Point or Outlet Point, it is a System Curtailment.
- (c) Curtailment occurs in two stages, although in some instances the Operator will not need to move to the second stage:
  - (i) **Stage 1:** the Operator identifies that a Curtailment is necessary and, acting as a Reasonable and Prudent Person, determines how much Capacity needs to be Curtailed. In most circumstances this will be a System Curtailment.
  - (ii) **Stage 2:** If it is necessary (at the same time or subsequently) for the Operator to resolve incompatible demands by shippers for the use of a single Inlet Point or Outlet Point, the Operator undertakes a Point Specific Curtailment at each such point.
- (d) In a Curtailment, whether System Curtailment or in any Point Specific Curtailments, Contracted Capacity at a particular point (**incumbent capacity**) has priority for the use of that point above capacity relocated from another point for that Gas Day, unless the incumbent capacity has been fully curtailed by virtue of the application of the Curtailment Plan in a System Curtailment which affects a Curtailment Area greater than a Point Specific Curtailment.

## 17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

- (a) if there is an event of Force Majeure where the Operator is the Affected Party;
- (b) whenever it needs to undertake any Major Works; and
- (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;
- (d) for any Planned Maintenance; and
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

## 17.3 Curtailment without liability

- (a) Subject to clause 17.3(b), the Operator is liable to the Shipper only for Direct Damage caused by or arising out of a Curtailment or interruption of the Shipper's B1 Service. For the avoidance of doubt, the giving of a Curtailment Notice constitutes a Curtailment and the provision by the Operator of Capacity equal to the Shipper's reduced Contracted Capacity under clause 17.7(e) during the currency of the Curtailment Notice which gave effect to that reduced Contracted Capacity is a Curtailment for the purposes of this clause 17.3(a).

- (b) The Operator has no liability to the Shipper whatsoever for a Curtailment under clause 17.2 in any of the following circumstances:
  - (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the B1 Service during the Gas Year does not cause the B1 Permissible Curtailment Limit to be exceeded;
  - (ii) where the Curtailment is in accordance with any of clauses 17.2(a), (b) or (c); or
  - (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

- (c) The B1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
  - (i) a Curtailment in circumstances set out in clause 17.2(a) or 17.2(b);
  - (ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and
  - (iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied, is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded.

#### 17.4 Refund of Capacity Reservation Charge

To the extent that the Shipper's B1 Service is Curtailed for any reason other than:

- (a) an event of Force Majeure where the Shipper is the Affected Party; or
- (b) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment,

the Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.

#### 17.5 Operator's rights to refuse to Receive or Deliver Gas

Subject to clauses 5.5 and 5.9, where the Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (the Operator may refuse to Receive Gas);
  - (b) clause 5.7 (the Operator may refuse to Deliver Gas),
- such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(b).

#### 17.6 Curtailment Notice

- (a) The Operator must give the Shipper a notice (Curtailment Notice) setting out the matters referred to in clause 17.7(a) and the expected duration of an impending Curtailment and otherwise complying with this clause 17.
- (b)
  - (i) Where the reason for the Curtailment is Major Works, the Operator must give the Shipper:
    - (A) an initial notice (Initial Notice) at least 60 days in advance of the starting time of the Curtailment; and
    - (B) a Curtailment Notice no later than one Gas Day before the Gas Day on which the Curtailment commences.
  - (ii) In any case other than one described in clause 17.6(b)(i):
    - (A) subject to clause 17.6(b)(ii)(B), the Operator must use its reasonable endeavours to give the Shipper a Curtailment Notice a reasonable period in advance of the starting time of the curtailment but in any event at least one hour in advance of the starting time of the Curtailment; and
    - (B) where as a result of Force Majeure or by reason of an emergency it is not reasonably possible to give a Curtailment Notice at least one hour in advance of the starting time of the Curtailment, the Operator must give the Shipper a Curtailment Notice as soon as it is practicable to do so, whether that is before or after the starting time of the Curtailment.
- (c) The Operator must send a copy of the Curtailment Notice in accordance with clause 29.1(a) (Notices) and must also endeavour to telephone the Shipper to advise that the Curtailment Notice has been or will be provided.
- (d) The Operator is not required to inform all affected Producers and downstream entities that relate to the Shipper of the notification of the Curtailment or the Curtailment Notice.
- (e) The Operator must, on a reasonable request by the Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to explain the issue of a Curtailment Notice.

#### 17.7 Content of a Curtailment Notice and Initial Notice

- (a) A Curtailment Notice must specify the following details:
  - (i) the reasons for the Curtailment;
  - (ii) the starting time of the Curtailment (which must not be any time before the Gas Day on which the Curtailment Notice is given), including the Gas Day or Gas Days to which the Curtailment Notice applies; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.
- (b) An Initial Notice must specify the Operator's estimate of:
  - (i) the reasons for the Curtailment;
  - (ii) the starting time of the Curtailment; and
  - (iii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.

- (c) A Curtailment Notice:
  - (i) takes effect from the time specified in the Curtailment Notice;
  - (ii) may apply to the Gas Day on which the Curtailment Notice is issued even if, in order to comply with a Curtailment Notice, the Shipper must use best endeavours to, and to procure persons to whom the Shipper supplies Gas to, cease taking delivery of any Gas upon receipt of the Curtailment Notice in accordance with clause 17.8(a);
  - (iii) may be expressed to continue indefinitely or for a specified time;
  - (iv) may revoke, substitute or amend a previous Curtailment Notice;
  - (v) must not require the Shipper to reduce its Receipt of Gas for the Gas Day as a whole to a level less than the Shipper has already actually Received for the Gas Day before the Curtailment Notice takes effect (that is, the Curtailment Notice must not be impossible to comply with); and
  - (vi) does not retrospectively affect the Shipper's compliance with Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes the Shipper's compliance with those limits for an hour must be determined having regard to the Shipper's Contracted Capacity at the commencement of the hour).
- (d) The Operator may at any time, whether or not it has specified in a Curtailment Notice an end time for a Curtailment, give notice to the Shipper (in accordance with clause 29) wholly or partly terminating a Curtailment either immediately or from any time in the future.
- (e) A Curtailment Notice constitutes a variation of this Contract while the Curtailment Notice is in force reducing the Shipper's Contracted Capacity to the extent, and in accordance with the apportionment (if any), specified in the notice, except for the purposes of calculating the Charges payable by the Shipper under clause 20 and for ascertaining whether the Shipper has been Curtailed under this clause 17, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form. Further, in respect of a particular shipper when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) the amount must not include any capacity Curtailed under clause 17.8 either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point, and the material equivalent to such clause in any of the shipper's contracts for Capacity Service.
- (f) If a Curtailment Notice takes effect before the Shipper's next Nomination or Renomination under clause 8, the Shipper's Daily Nominations are taken to be reduced (if a reduction is required) to the same amount of Capacity Service as the Shipper is to have available under the Curtailment Notice given in respect of the Shipper's Contracted Capacity.
- (g) The Shipper may not:
  - (i) Nominate or Renominate under clause 8 for Contracted Capacity; or
  - (ii) Deliver Gas to or Receive Gas from the Operator,

in excess of whichever is the lower of:

  - (iii) its reduced Contracted Capacity because of clause 17.7(f); or

- (iv) the quantity specified in a Curtailment Notice as the maximum quantity which the Operator will Receive from, or Deliver to, the Shipper.

#### 17.8 Compliance with Curtailment Notice

- (a) Where the Curtailment is a Point Specific Curtailment, the Shipper must use its best endeavours to comply immediately, and must as soon as practicable and in any event no later than one hour after receipt of the notice comply, or procure compliance, with the requirements of a Curtailment Notice by:
  - (i) not Delivering any Gas at the Inlet Points; or
  - (ii) not Receiving any Gas delivered to the Shipper at the Outlet Points, in excess of the quantity specified for that Inlet Point or Outlet Point, as the case may be, in the Curtailment Notice.
- (b) Where the Curtailment is not a Point Specific Curtailment, the Shipper must comply, or procure compliance, with the requirements of the Curtailment Notice in accordance with its terms.
- (c) If the Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a), the Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from the Shipper at an Inlet Point or refusing to Deliver Gas to the Shipper at an Outlet Point.
- (d) If the Operator refuses to Receive or Deliver Gas under clause 17.8(c) in order to give effect to the requirements set out in a Curtailment Notice and the Operator incidentally refuses to Receive or Deliver Gas in excess of the requirements of the Curtailment Notice (Excess Curtailment), to the extent that such Excess Curtailment occurred despite the Operator acting as a Reasonable and Prudent Person in attempting to avoid or minimise (as the case may be) such Excess Curtailment is not to be regarded as a Curtailment under this Contract.
- (e) If the Curtailment is a Point Specific Curtailment and the Shipper Delivers Gas to the Operator at an Inlet Point or Receives Gas from the Operator at an Outlet Point in excess of the quantity specified in the Curtailment Notice for that Inlet Point or Outlet Point (as the case may be), then the Shipper must pay the Operator an Unavailable Overrun Charge under clause 11 at the Unavailable Overrun Rate in respect of each GJ of Gas which the Shipper's actual receipts or deliveries (or both) vary from those specified in the Curtailment Notice.
- (f) Other than when due to Force Majeure or by reason of an emergency it is unable to do so, the Operator must give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c).
- (g) The Shipper is not liable to pay the Unavailable Overrun Charge under clause 17.8(e) in respect of a Gas Day in respect of which the Operator:
  - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
  - (ii) provides the Shipper with information under clause 15.5(d)(i) which is materially inaccurate.

#### 17.9 Priority of Curtailment

- (a) Any Curtailment of the Shipper's Total Contracted Capacity must be conducted in accordance with the Curtailment Plan. In applying the Curtailment Plan in a Point Specific Curtailment or System Curtailment, a Type of Capacity Service will only be Curtailed once all Types of Capacity Services listed below it in that column in the Curtailment Plan have been reduced to zero.
- (b) The general principle in clause 17.9(a) is subject to the following:
  - (i) Any Laws regulating the priority of Capacity Services (which for the purposes of this clause include capacity under a Spot Transaction) on the DBNGP.
  - (ii) Where the Curtailment is a Point Specific Curtailment, the Curtailment Plan will be subject to any Multi-shipper Agreement relating to that Inlet Point or Outlet Point.
  - (iii) Any Point Specific Curtailment of the Aggregated B1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded to the extent that the Shipper is entitled to give a Renomination Notice in respect of either of the following:
    - (A) (subject to clause 17.9(b)(iii)(B)) one or more inlet points or outlet points (as the case may be) where the Shipper has unutilised Contracted Capacity for the B1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the B1 Service at that or those inlet points or outlet points (as the case may be);
    - (B) one or more inlet points or outlet points (which may be points referred to in clause 17.9(b)(iii)(A) above) where the Shipper can otherwise utilise Capacity.
  - (iv) If and to the extent that, because of the default, negligence, breach of contractual term, or other conduct of a shipper (in this clause 17.9(b)(iv) the **defaulting shipper**):
    - (A) a reduction in Gas Transmission Capacity is caused that makes necessary any Curtailment of the use of Gas Transmission Capacity by any shipper; or
    - (B) the Operator is entitled to refuse to Receive Gas from or Deliver Gas to any shipper (or, if applicable, to Curtail the use of Gas Transmission Capacity by any shipper),
 

the Operator must, to the extent that it is entitled to do so, wholly refuse to Receive Gas from or Deliver Gas to the defaulting shipper and must reduce the defaulting shipper's use of Gas Transmission Capacity of any kind (but only to the extent necessary to correct the default of the shipper) before it reduces any shippers' (other than the defaulting shipper's) use of Gas Transmission Capacity of any kind, and the Operator is not liable to the defaulting shipper for any Direct Damage or Indirect Damage (whatsoever) arising from that Curtailment or refusal.
  - (v) To the extent that:

- (A) the use of Gas Transmission Capacity by a particular shipper would, but for this clause 17.9(b)(v), be included in an apportionment of a Curtailment; and
- (B) in the view of the Operator (acting fairly and reasonably) the inclusion of that Gas Transmission Capacity would because of the location of the particular shipper's Inlet Point or Inlet Points or Outlet Point or Outlet Points in relation to the circumstances which gave rise to the need to Curtail be unlikely to wholly or partially reduce the need to Curtail any other shipper's use of Gas Transmission Capacity,

the Operator may exclude that Gas Transmission Capacity from the apportionment of Curtailments (despite what would otherwise be the Operator's obligation to include that Gas in the apportionment).

- (vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the Shipper's:
  - (A) Aggregated B1 Service which derives from Contracted Capacity for B1 Services at the Outlet Points located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:
    - (1) not be included in the Aggregated B1 Service; and
    - (2) be included in the B1 Service,  
available to the Shipper in the Curtailment Area; and
  - (B) Aggregated B1 Service which derives from Contracted Capacity for B1 Services at any Outlet Point located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:
    - (1) be included in the Aggregated B1 Service;
    - (2) not be included in the B1 Service,  
available to the Shipper in the Curtailment Area.
- (vii) Despite any provision of the Curtailment Plan or any contract, the Delivery of Gas to the Shipper is at all times subject to the Operator's absolute right to utilise part of the DBNPG's capability to transport Gas which is required by the Operator for operational purposes in relation to the DBNPG.
- (viii) The Operator must enforce any rights it may have under the Alcoa Exempt Contract in relation to allocating to, and Delivering to, Alcoa no more than Alcoa's Exempt Delivery Entitlement during a Curtailment, including taking the full benefit of any force majeure provisions of the Alcoa Exempt Contract when and to the extent that it is entitled to do so.
- (ix) Nothing in this clause 17 limits or affects the Operator's right to refuse to Receive or Deliver Gas under clauses 5.3 or 5.7.

- (x) This clause 17 is subject to any contrary agreement reached between Shipper and other shippers as to the manner of treating Curtailments between them.
- (c) (i) Subject to clause 17.9(c)(ii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

$$\text{Available Capacity} \times \frac{A}{B}$$

where:

**Available Capacity** = the total amount of relevant capacity which the Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

**A** = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of B1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that B1 Service on that Gas Day); and

**B** = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of B1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that B1 Service on that Gas Day)

- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service (other than a Tp Service or a Tx Service), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.
- (iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.

#### 17.10 Apportionment of Shipper's Curtailments

- (a) Subject to clause 17.10(b), if the Shipper has:
  - (i) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one Inlet Point, the Operator must apportion any refusals to Deliver Gas across those Inlet Points in the manner required by the Shipper;

- (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to Receive Gas across those Outlet Points; or
  - (iii) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points.
- (b) The Operator is not required to make the apportionment referred to in clause 17.10(a) if:
- (i) acting as a Reasonable and Prudent Person, the Operator considers it is not Technically Practicable to do so;
  - (ii) acting as a Reasonable and Prudent Person, the Operator considers the circumstances do not reasonably allow the Operator to consult with Shipper as to the apportionment or wait for the Shipper's response following such consultation; or
  - (iii) the Operator has requested the Shipper notify the Operator of its apportionment, and the Shipper has not done so by the end of the relevant Gas Day,
- in which case the Operator may apportion the refusal across the relevant inlet points or outlet points (as the case may be) in the manner it considers appropriate.
- (c) The Shipper may at any time and from time to time propose to the Operator an apportionment mechanism which will operate as a standing requirement as to how the Operator must apportion any:
- (i) refusals to Receive Gas across Inlet Points;
  - (ii) refusals to Deliver Gas across Outlet Points; or
  - (iii) Curtailments across Inlet Points and Outlet Points.
- (d) The Operator and the Shipper must, in good faith, attempt to agree any apportionment mechanism for the purposes of this clause 17.10. If the Operator and the Shipper have not agreed an apportionment mechanism for the purposes of this clause 17.10 within 1 month from the date of the Shipper's proposal, either Party may refer this Dispute to an Independent Expert under clause 24 for determination as a Technical Matter.
- (e) If the Operator and the Shipper have agreed an apportionment mechanism or an apportionment mechanism has been determined by an Independent Expert for the purposes of this clause 17.10, then the Operator must apportion any:
- (i) refusals to Receive Gas;
  - (ii) refusals to Deliver Gas; or
  - (iii) Curtailments, in accordance with that mechanism.
- (f) If no apportionment mechanism has been proposed by the Shipper or agreed or determined under clause 17.10(d), and it becomes necessary to effect an apportionment of the kind referred to in clause 17.10(c), the apportionment may be effected by the Operator acting as a Reasonable and Prudent Person

and must in that case be notified by the Operator to the Shipper as soon as practicable after the end of the relevant Gas Day.

## **Maintenance and Major Works (clause 18)**

### 18. Maintenance and Major Works

- (a) By 31 March of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 July (**Maintenance Year**) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) Within 30 days of receiving the schedule referred to in clause 18(a), the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works for the DBNGP for the Maintenance Year (**Annual DBNGP Maintenance Schedule**), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.
- (c) The Operator must issue a copy of the Annual DBNGP Maintenance Schedule to all shippers who provided the Operator with a schedule pursuant to clause 18(a).
- (d) At the Shipper's request, the Operator must provide the Shipper with its estimate of the Curtailment to Capacity available to the Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.
- (e) The Operator to the extent practical will notify the Shipper of changes to its schedule of Major Works and Planned Maintenance issued to shippers under clause 18(c).
- (f) The Operator must, as a Reasonable and Prudent Person, endeavour to:
  - (i) comply with the Annual DBNGP Maintenance Schedule; and
  - (ii) give the Shipper as much advance notice as is reasonably practicable (in the form of regular outage schedules or otherwise) of any material departure from the Annual DBNGP Maintenance Schedule that is likely to affect the Shipper. However, the Operator will not be bound by any notification it provides pursuant to this clause 18(f)(ii).
- (g) If the Shipper is affected by any planned Curtailment arising out of any Planned Maintenance, or any Major Works, the Operator must use its reasonable endeavours to:
  - (i) consult with the Shipper concerning the scheduling and duration of;
  - (ii) accommodate the needs of the Shipper in scheduling; and
  - (iii) minimise the duration and impact of,
 the Curtailment.

- (h) Despite clause 18(b), but subject to clauses 17.6(b)(i)(A) 18(f) and 18(g), the Operator may determine the timing and extent of any Curtailment necessitated by Major Works in its discretion.

## **Force Majeure (clause 19)**

### 19. Force Majeure

- (a) A Party (the Affected Party) is excused from performance of, and is not liable for any failure in carrying out any of its obligations under this Contract, to the extent that it is prevented from doing so by Force Majeure.
- (b) Subject to clause 19(f), an obligation to pay money is not excused by Force Majeure.
- (c) Without prejudice to the Shipper's entitlement to a refund under clause 17.4 in circumstances where a Curtailment is other than as a result of an event of Force Majeure where the Shipper is the Affected Party, the Shipper is not relieved of its obligation to pay the Capacity Reservation Charge by the occurrence of an event of Force Majeure in respect of it however caused.
- (d) If a Party claims the benefit of Force Majeure, it must:
  - (i) promptly give notice to the other Party of the occurrence and circumstances in which the claim arises;
  - (ii) use its best endeavours to remedy the consequences without delay; and
  - (iii) resume full performance of its obligations under this Contract as soon as reasonably practicable.
- (e) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the Party claiming the benefit of this clause and the Party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
- (f) The Shipper is relieved from paying the Surcharges to the extent that it was unable to prevent such Surcharges accruing due to some event of Force Majeure affecting it.
- (g) For the avoidance of doubt, the Parties acknowledge that lack of finances, lack of funds or access to funds, or inability to borrow funds are not in any circumstances an event of Force Majeure under this Contract.

## **Charges (clause 20)**

### 20. Charges

#### 20.1 Obligation to pay Charges

The Shipper must pay the Charges and any other amounts payable under this Contract to the Operator in the manner and at the times set out in this Contract, including the charges set out in clauses 20.2, 20.3 and 20.4 (inclusive). The Charges must be invoiced and paid in accordance with clause 21.

#### 20.2 Capacity Reservation Charge

- (a) The Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by calculating the sum of Contracted Capacity for B1 Services at each Outlet Point multiplied by the B1 Capacity Reservation Tariff.
- (b) Subject to clause 17.4, the Capacity Reservation Charge is payable for each Gas Day during the Period of Supply regardless of whether the Shipper provides Gas at any Inlet Point and regardless of whether the Shipper takes Gas at any Outlet Point.

#### 20.3 Commodity Charge

The Commodity Charge will be calculated for each Gas Day during the Period of Supply by calculating the multiple of the B1 Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for B1 Services at all Outlet Points by the Operator on that Gas Day.

#### 20.4 Other Charges

- (a) The following charges apply to this Contract:
  - (i) Excess Imbalance Charge (clause 9.5(g));
  - (ii) Hourly Peaking Charge (clauses 10.3(d));
  - (iii) Overrun Charge (clause 11.1(a));
  - (iv) Unavailable Overrun Charge (clauses 11.6 and 17.8(e)); and
  - (v) any charges or other sums payable under clauses 6.6, 9.9(c), 14.7 and 15.11 or elsewhere in this Contract,

(together ***Other Charges***).
- (b) The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by the Operator or is otherwise a penalty or constitutes penal damages.
- (c) To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers.

#### 20.5 Adjustment to B1 Tariff

- (a) The Parties acknowledge that:
  - (i) as at the commencement of this Contract, the B1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism;
  - (ii) any adjustment of the B1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.

#### 20.6 Goods and Services Tax

- (a) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST.
- (b) If a supply under this Contract is subject to GST then the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount must be reduced by any part of that loss, cost expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) The additional amount payable under clause 20.6(b) is payable at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it is payable within 10 days of a Tax Invoice being issued by the Party making the supply.
- (e) Where in relation to this Contract a Party makes a taxable supply, that Party must provide a Tax Invoice in respect of that supply at or before the time the payment to which the supply relates is payable.
- (f) If a Party becomes aware of an adjustment event, that party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the Supplier has satisfied itself that the adjustment event has occurred.
- (g) If an amount is paid by a Party under the Contract as an additional amount under clause 20.6(b) and the amount of GST is not payable or the amount of GST is less than or greater than the additional amount paid, the payer must pay the difference to the supplier or shall be entitled to recover the amount paid from the supplier by serving notice on the supplier (as the case may require).
- (h) For the purposes of this clause:
  - (i) **GST** means GST as that term is defined in the GST Law; and
  - (ii) the terms GST group, member, recipient, representative member, supply, consideration, input tax credit, taxable supply, adjustment, adjustment event and adjustment note have the same meaning as in the GST Law.

## 20.7 Tax Changes Variation

- (a) The Operator has established the B1 Tariff for the B1 Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Access Arrangement applicable during the Term being included in the Operator's forecast operating expenditure (**Included Taxes and Carbon Costs**)
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Term, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNPG whether incurred by the Operator

directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:

- (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services (Rule 91 Criteria) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator must vary the B1 Tariff to deal with the financial impact of the Tax Change; and
  - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, the Operator may vary the B1 Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the B1 Tariff under clause 20.7(a), the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
- (i) in the case of a Tax Change where the changed amount of the relevant included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Access Arrangement applicable during the Term, is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;
  - (ii) outlines the amount of the relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure in the Access Arrangement applicable during the Term;
  - (iii) provides evidence of the amount of the Tax Change;
  - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;
  - (v) specifies the scope of the financial impact of the Tax Change;
  - (vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
- (d) The Operator must not vary the B1 Tariff under clause 11.3(b)(ii) unless:
- (i) the Operator provides a Tax Change Notice to the Regulator; and
  - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the B1 Tariff commences to have effect is 15 Business Days.

- (g) If the Tax Change Notice results in a reduction in the B1 Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a B1 Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the B1 Tariff commenced to have effect; and
  - (ii) the Charges that the Shipper would have paid for that period if the variation to the B1 Tariff had taken effect on the Date of the Tax Change.

## ***Invoicing and Payment (clause 21)***

### 21. Invoicing and Payment

#### 21.1 Monthly payment of Capacity Reservation Charge

- (a) The Operator must, no later than 20 days before the start of each month, provide the Shipper a Tax Invoice in respect of the Capacity Reservation Charges payable by the Shipper for that Gas Month under this Contract. The Tax Invoice must separately show the Capacity Reservation Charges for each Capacity Service.
- (b) The Shipper must, no later than 3 days before the start of each month, pay to the Operator in advance all Capacity Reservation Charges payable by it for that Gas Month as specified in the Tax Invoice referred to in clause 21.1(a).

#### 21.2 Monthly invoicing

The Operator must, within 5 Working Days after the end of each month, provide the Shipper a Tax Invoice or Tax Invoices for that Gas Month showing:

- (a) the quantity of Gas Delivered by the Shipper at each Inlet Point and the quantity of Gas Delivered by the Operator at each Outlet Point on each Gas Day in the month for each Capacity Service;
- (b) the Commodity Charges for the month for each Capacity Service;
- (c) all Other Charges payable for the month for each Capacity Service;
- (d) any other amounts which under this Contract are payable in arrears or refundable for the month;
- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous months and the interest payable thereon;
- (f) in the case of the Tax Invoice for the final Gas Month in a Gas Year, any funds payable to the Shipper for that Gas Year by reason of any Curtailment of the Shipper's B1 Service; and
- (g) such other information as may be agreed between the Parties.

#### 21.3 Payment within 10 Working Days

Subject to clause 21.1(b), the Shipper must, within 10 Working Days of receipt of a Tax Invoice, pay to the Operator in the manner shown on the Tax Invoice all amounts shown on the Tax Invoice as payable under this Contract.

#### 21.4 Default in payment

- (a) If the Shipper fails by the relevant due date to make full payment of any:
  - (i) Capacity Reservation Charge;
  - (ii) Commodity Charge;
  - (iii) Other Charges; or
  - (iv) any other amount or amounts payable by it under this Contract and shown on a Tax Invoice,

then, without prejudice to the Operator's other rights and remedies under this Contract or in equity, the Shipper must (unless the Operator in its absolute discretion waives this requirement) pay interest on the unpaid amount (after as well as before judgment), calculated and compounded daily at the Prescribed Interest Rate from the due date until payment.

- (b) The Prescribed Interest Rate calculated for a day from which interest is payable on an amount referred in clause 21.4(a) or clause 21.5 applies until payment of that amount, and is not to be recalculated despite any change in the Bank Bill Rate during that period.
- (c) This clause 21.4 applies with appropriate changes to a default by the Operator in paying or allowing any credit, rebate or other sum under this Contract.

#### 21.5 Disputed Tax Invoices

- (a) If the Shipper disputes that any amount or amounts set out in a Tax Invoice is due or payable, then the Shipper must pay the undisputed portion (if any) of the amount shown on the Tax Invoice in accordance with clause 21.3, and must, within 10 Working Days of the date of the Tax Invoice, give notice in writing to the Operator that it disputes the amount or amounts and full details of the dispute.
- (b) Any amount withheld by the Shipper under this clause but subsequently found to have been payable is, without prejudice to the Operator's other rights, to attract interest calculated daily at the Prescribed Interest Rate from 10 Working Days after the date of the Tax Invoice until payment. The Shipper must pay any interest payable under this clause 21.5 at the same time as it pays the amount withheld.

#### 21.6 Correction of payment errors

- (a) If a Party detects any underpayment or overpayment by a Party of any amount and clauses 20.6(f) and 21.5 do not apply, then the detecting Party must within a reasonable time give notice to the other Party of the underpayment or overpayment. An adjusting payment must be made by the appropriate Party within 10 Working Days of that notice together with interest on the amount of the payment calculated and compounded daily at the Prescribed Interest Rate from the date of underpayment or overpayment until payment.
- (b) Subject to clauses 21.4 and 21.5, in circumstances where there has been an underpayment or overpayment to which clause 21.6(a) applies and the underpayment or overpayment did not result from a failure of the Party which is obliged to pay interest under clause 21.6(a) to perform its obligation under

this Contract, the Prescribed Interest Rate for the purposes of clause 21.6(a) is the Bank Bill Rate plus an annual interest rate of 1 percent.

## **Default and Termination (clause 22)**

### 22. Default and Termination

#### 22.1 Default by Shipper

The Shipper is in default under this Contract only if:

- (a) the Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract. For the avoidance of doubt, withholding of a disputed amount in accordance with clause 21.5 is not considered a default;
- (b) the Shipper defaults in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in this Contract and such default is material in the context of the Contract as a whole;
- (c) without the Operator's prior consent, the Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking, so far as that undertaking relates to the use of Gas Delivered under this Contract;
- (d) the Shipper suffers an Insolvency Event;
- (e) there is any adverse change in the business or financial condition of the Shipper or any event occurs which could, in the reasonable opinion of the Operator, in any way jeopardise the ability of the Shipper to meet its obligations to the Operator under this Contract; or
- (f) the Shipper is found to be materially in breach of any warranty given to the Operator in this Contract, or if any statement or representation made by any means or in any document by the Shipper to the Operator, is found to be false or misleading in any material particular, and the Shipper fails to remedy that event within the relevant period determined in accordance with clause 22.3(b) following the giving of a Shipper Default Notice by the Operator.

#### 22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing to the Shipper specifying the nature of the default and requiring the Shipper to rectify the default (**Shipper Default Notice**).

#### 22.3 When Operator may exercise remedy

- (a) Subject to clause 22.3(b), the Operator may exercise a remedy under clause 22.4 at any time during which the Shipper remains in default under this Contract.
- (b) The Shipper is not in default under this Contract and the Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):
  - (i) in respect of an event described in clauses 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days

have elapsed after the Shipper receives that Shipper Default Notice; and

- (ii) in respect of an event described in clauses 22.1(b), 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after the Shipper receives that Shipper Default Notice, and the event has not been remedied within the relevant period specified in (i) or (ii) above.
- (c) A default of the kind referred to in clause 22.1(d) is deemed to be remedied when the relevant Insolvency Event is no longer continuing.

#### 22.4 Remedies for Shipper's default

Subject to clause 22.3, if the Shipper is in default under this Contract, then the Operator may in its sole discretion:

- (a) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point until such time as:
  - (i) all amounts the failure to pay which constitutes the event described in clause 22.1(a), plus interest on those amounts at the Prescribed Interest Rate, have been paid in full; and
  - (ii) all other events described in clause 22.1 have been remedied, ceased or removed; or
- (b) by notice in writing to the Shipper terminate this Contract which termination takes effect immediately upon receipt of such notice.

#### 22.5 Default by Operator

The Operator is in default under this Contract only if:

- (a) the Operator repudiates, disclaims or defaults in the performance of, any obligation under this Contract and such repudiation, disclaimer or default is material in the context of the Contract as a whole; or
- (b) an Insolvency Event occurs in respect of the Operator, and the Operator fails to remedy that event within the relevant period determined in accordance with clause 22.7 following the giving of an Operator Default Notice by the Shipper.

#### 22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing to the Operator specifying the nature of the default and requiring the Operator to rectify the default (Operator Default Notice).

#### 22.7 When Shipper may exercise remedy

- (a) Subject to clause 22.7(b), the Shipper may exercise a remedy under clause 22.8 at any time during which the Operator remains in default under this Contract.
- (b) The Operator is not in default under this Contract and the Shipper may not terminate this Contract under clause 22.8 for a default under this Contract:
  - (i) in respect of an event described in clause 22.5(a), unless it has given an Operator Default Notice, and until 20 Working Days have elapsed after the Operator receives that Operator Default Notice; and

- (ii) in respect of an event described in clause 22.5(b), unless it has given an Operator Default Notice, and until 5 Working Days have elapsed after the Operator receives that Operator Default Notice, and the event has not been remedied within the relevant period specified in clause 22.7(b)(i) or 22.7(b)(ii).
- (c) A default of the kind referred to in clause 22.5(b) is deemed to be remedied when the relevant Insolvency Event is no longer continuing. A default of the kind referred to in clause 22.5(a) that relates to the repudiation or disclaimer of a contract, agreement or deed is deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.

## 22.8 Remedies for Operator's default

Subject in all cases to clauses 22.7 and 22.9, if the Operator is in default under this Contract and:

- (a) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(b), then the Shipper may in its sole discretion by notice in writing to the Operator terminate this Contract, which termination takes effect at the start of the Gas Day immediately following the Operator's receipt of the notice of termination; or
- (b) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(a), then the Shipper may, in its sole discretion, terminate this Contract by notice in writing to the Operator, which termination takes effect on the date the Shipper specifies in the notice of termination but the date must not be a date exceeding 3 years after the Operator receives the notice of termination.

## 22.9 [Deleted]

## 22.10 Saving of other remedies

Except where expressly excluded or limited by this Contract, the right to terminate this Contract under this clause 22 is in addition to and is not in substitution for any other rights and remedies available to a Party, whether under this Contract or under any Law.

## 22.11 Effect of termination

- (a) Termination of this Contract by the Operator under clause 22.4(b) or the Shipper under clauses 22.8:
  - (i) does not prejudice the rights or remedies accrued to either Party at the date of termination or any of the provisions of clauses 17.2 or 17.3, clauses 23.1 to 23.7 (inclusive), and clause 29; and
  - (ii) subject to clause 22.11(b), relieves each Party of all further obligations under this Contract to the other Party.
- (b) Termination of this Contract by the Operator under clause 22.4(b) does not relieve the Shipper of its obligations under this Contract to (subject to clause 22.11(c)) pay the Capacity Reservation Charges for the balance of the Period of Supply (but for the termination of this Contract) and to pay all amounts outstanding (and then due and payable) at the time of termination, and termination of this Contract by the Shipper under clause 22.8 does not relieve

the Operator of its obligations to pay all amounts outstanding (and then due and payable) at the time of termination.

- (c) The Shipper is relieved of its obligation under clause 22.11(b) to continue to pay an amount if and to the extent that the Operator subsequently enters into a contract for Capacity Services, and receives payment from the Shipper or any other shipper for, some or all of the Contracted Capacity (Terminated Capacity) made spare by the termination of this Contract.
- (d) For the purposes of clause 22.11(c), Terminated Capacity in any Capacity Service must be assumed to be the last Capacity available to be committed under a contract for Gas Transmission Capacity, and any amounts received by the Operator under such contract must be assumed to be applied last to any Terminated Capacity committed under that contract.

## ***Liability (clause 23)***

### 23. Liability

#### 23.1 Liability limited to Direct Damage

Subject to the terms and conditions of this Contract, a Party who:

- (a) is negligent; or
- (b) defaults in respect of its obligations to the other Party under this Contract, is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and must indemnify the other Party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage caused by or arising out of the negligence or default.

#### 23.2 Liability for fraud

A Party who is fraudulent in respect of its obligations to the other Party under this Contract is liable to the other Party for, and must indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of the fraud, and the exclusion of Indirect Damage in clause 23.3 does not apply.

#### 23.3 No liability for Indirect Damage

- (a) Subject to clause 23.3(c), neither Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.
- (b) Subject to clause 23.3(c), the Operator hereby releases the Shipper from, and agrees to indemnify the Shipper against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Operator and the Shipper hereby releases the Operator from, and agrees to indemnify the Operator against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Shipper.
- (c) Where this Contract states that "the exclusion of Indirect Damage in clause 23.3(a) does not apply", or words to the same effect, in relation to a matter, then:
  - (i) the exclusion of Indirect Damage in clause 23.3(a) and the release and indemnity in clause 23.3(b) do not apply in relation to that matter; and

- (ii) the Parties' respective liability in relation to the matter must be determined by Law and, to avoid doubt, the definition of "Indirect Damage" in this Contract must be disregarded for the purposes of that determination.

#### 23.4 No liability arising out of any approval by Operator

Without limiting the generality of clause 23.3, the Operator is not, except as provided in clauses 23.1 and 23.2, in any circumstances to be liable to the Shipper for any Direct Damage or Indirect Damage arising out of any approval by the Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the DBNGP.

#### 23.5 Saving of contractual payments

Nothing in this clause 23 limits the liability of either Party to make all payments due under this Contract.

#### 23.6 Shipper responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Shipper alone is liable for any:

- (i) injury to or death of any person employed by the Shipper or by any person (except the Operator) contracting with the Shipper; and
- (ii) loss of or damage to any property of the Shipper or of any person (except the Operator) contracting with or employed by the Shipper,

however caused, except to the extent this liability was contributed to by an act or omission of the Operator or any person (except the Shipper) contracting with the Operator, or the Operator's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP, or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Shipper must indemnify the Operator and any person (except the Shipper) contracting with the Operator, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.6(a).

#### 23.7 Operator responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Operator alone is liable for any:

- (i) injury to or death of any person employed by the Operator or by any person (except the Shipper) contracting with the Operator; and
- (ii) loss of or damage to any property of the Operator or of any person (except the Shipper) contracting with or employed by the Operator,

however caused, except to the extent this liability was contributed to by an act or omission of the Shipper or any person (except the Operator) contracting

with the Shipper, or the Shipper's directors, servants and agents, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNPG or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Operator must indemnify the Shipper and any person (except the Operator) contracting with the Shipper, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.7(a).

#### 23.8 Each limitation separate

Each limitation or exclusion created by this clause 23 and each protection given to the Operator or the Shipper or to their respective directors, servants, consultants, independent contractors and agents by this clause 23 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 23 is held inapplicable in any circumstances.

### ***Dispute Resolution and Independent Experts (clause 24)***

#### 24. Dispute Resolution and Independent Experts

##### 24.1 Method of Resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause.

##### 24.2 Acknowledgment

The Parties acknowledge that while Disputes may arise from time to time, their common intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

##### 24.3 Service of Notice

If a Dispute arises at any time which is between the Parties, then either Party may give the other Party a notice in writing which is dated, signed, and must specify the precise nature of the Dispute (***Dispute Notice***).

##### 24.4 Meeting

Within 5 Working Days of service of a Dispute Notice, the Parties must meet and use all their reasonable efforts to resolve the Dispute (by negotiation or otherwise).

##### 24.5 Senior Officers

If the Dispute is not resolved within 10 Working Days after the meeting between the Parties under clause 24.4, the Parties must immediately refer the Dispute to their respective senior executive officers who must meet within 5 Working Days and use all reasonable efforts to resolve the Dispute.

##### 24.6 Failure to Resolve Dispute

If the Parties are unable to resolve the Dispute in accordance with clause 24.5, and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 24.7), then either Party may require that the Dispute be determined by an independent expert (***Independent Expert***) under clauses 24.8, 24.9 and 24.10 and if the Dispute is not a Technical Matter or a Financial Matter then either Party may commence proceedings in a court of competent jurisdiction in Western Australia.

#### 24.7 Technical and Financial Matters

In this clause 24:

- (a) a ***Technical Matter*** means a matter involving issues relating to the receipt, transportation and delivery of Gas under this Contract which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which the Operator has issued an Unavailability Notice); and
- (b) a ***Financial Matter*** means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

#### 24.8 Appointment of Independent Expert

- (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
- (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then, in relation to a Technical or Financial Matter, either Party may refer the matter to the Australian Commercial Disputes Centre and request that a suitably qualified person be nominated by the Australian Commercial Disputes Centre, in accordance with the Rules of Expert Determination of the Australian Commercial Disputes Centre as amended from time to time, to act as Independent Expert to determine the Dispute.
- (c) If the Australian Commercial Disputes Centre ceases to exist or otherwise ceases to provide the relevant expert nomination service, then the Institute of Arbitration and Mediation Australia is to substitute for the Australian Commercial Disputes Centre as the nominating body and nomination is to occur in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators Australia as amended from time to time.

#### 24.9 Expert not an Arbitrator

The Independent Expert appointed under clause 24.8:

- (a) will act as an expert and not as an arbitrator;
- (b) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) will not be a current or former employee or representative of, or a person who provides consultancy services on a regular basis to, a Party or to a Related Body Corporate of a Party; and
- (d) must disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which conflict with his or her position.

#### 24.10 Representation, Evidence, Confidentiality, Powers and Costs

- (a) Each Party may be legally represented at any hearing before the Independent Expert.
- (b) Each Party will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute.
- (c) Each Party will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (d) The Independent Expert will not be bound by the rules of evidence and, subject to abiding by the rules of natural justice, the Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent Expert must determine the procedures to be followed in resolving the Dispute (including whether or not any hearing will take place) and the Parties must co-operate promptly with those procedures, but the Independent Expert must in any event:
  - (i) provide the Parties with a fair opportunity to make written submissions;
  - (ii) provide written reasons for the Independent Expert's determination; and
  - (iii) prior to handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity to lodge written submissions concerning the proposed determination which the Independent Expert must consider before settling and handing down the Independent Expert's determination.
- (f)
  - (i) Subject to clause 24.10(f)(ii), all information, material and evidence obtained or made available in the course of or for the purpose of the determination will be kept confidential by the Independent Expert and all the Parties.
  - (ii) Clause 24.10(f)(i) does not apply if:
    - (A) all the Parties otherwise agree; or
    - (B) the disclosure is authorised by Law or the disclosure is required by or under a written Law of the State or the Commonwealth.
  - (iii) If either Party becomes legally compelled to disclose information, material or evidence obtained in the course of or for the purpose of the determination, that person must immediately provide the other Party with written notice so that the other Party may seek appropriate relief and may only disclose information, material or evidence which is legally required to be disclosed.
  - (iv) This clause does not make confidential, information, material or evidence which is in the public domain at the time it is obtained in the course of or for the purpose of the determination.
  - (v) The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause and both Parties are

entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

- (g) Subject to any time prescribed anywhere else in this Contract, the Independent Expert will make a determination on the Dispute within a reasonable period of his or her appointment.
- (h) The determination of the Independent Expert:
  - (i) will be final and binding upon the Parties so far as the Law allows, except where a Party has been denied natural justice; and
  - (ii) will determine what, if any, adjustments may be necessary between the Parties.
- (i) The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:
  - (i) unless the Parties otherwise agree before the reference of the Dispute, the remuneration of the Independent Expert will be finally determined by the President for the time being of the appropriate body referred to in clause 24.8(b) who will have the power to fix the remuneration of the Independent Expert at the conclusion of the determination or, if requested by the Independent Expert, to determine a fair rate at which the Independent Expert will be remunerated at any time during the conduct of the determination process; and
  - (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of:
    - (A) the determination; and
    - (B) each Party's own costs (including out of pocket costs) incurred in the preparation and presentation of any submissions or evidence to the Independent Expert,

and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.

#### 24.11 Urgent Relief Condition Precedent to litigation

- (a) A Party must not commence any proceedings before any court in respect of a Dispute which a Party requires to be determined by an Independent Expert under clause 24.6 unless the Dispute has first been referred to an Independent Expert and the Independent Expert does not determine the Dispute within 6 months of the date of the dispute being referred to the Independent Expert.
- (b) Nothing in this clause 24.11 will preclude either Party from seeking any urgent interlocutory, injunctive or declaratory relief, or from commencing proceedings before any court to prevent its claim from being statute barred under the *Limitation Act 1935 (WA)* or any other relevant statute of limitation.

### **Assignment (clause 25)**

#### 25. Assignment

## 25.1 No assignment except under this clause

Subject to this clause 25 and to clause 27, neither Party may assign any right, interest or obligation under this Contract.

## 25.2 Charges

- (a) A Party may, without the consent of the other Party (but subject to all other necessary consents and approvals), charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the charge enters into a tripartite deed with the other Party substantially in the form of Schedule 7. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.
- (b) The granting of a charge under this clause 25.2 does not constitute the assignment of a right, interest or obligation referred to in this clause 25.

## 25.3 Assignment

- (a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:
  - (i) such assignment does not release the assignor from liability;
  - and
  - (ii) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.
- (b) Subject to clauses 25.3(c), 25.3(d) and 25.4, either Party may, with the prior written consent of the other Party, which must not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.
- (c) Without limitation, the Operator may withhold its consent to an assignment by the Shipper if the Operator reasonably considers that the proposed assignee is not in a position to meet the Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to the Operator, acting reasonably.
- (d) Without limitation, the Shipper may withhold its consent to an assignment of the Operator's obligations under this Contract if the proposed assignee does not have:
  - (i) the contractual, statutory or ownership rights to access the DBNPG for the purposes of performing all of the Operator's obligations under this Contract; or
  - (ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNPG and to perform all of Operator's obligations under this Contract.

## 25.4 Assignment: deed of assumption

- (a) A Party (in this clause 25.4 the **Assignor**) must not assign all or part of its rights and interests under this Contract (other than by way of a Bare Transfer under clause 27.1) without requiring the assignee to enter into a deed of assumption to the reasonable satisfaction of the other Party under which the assignee assumes all, or the relevant portion, of the Assignor's obligations under this Contract.
- (b) Upon the fulfilment of the relevant conditions specified in clause 25.3 and the entry into of a deed of assumption contemplated by this clause 25.4, the Assignor is released from all future liability and obligations under this Contract to the extent that the assignee agrees to perform them under the deed of assumption, but this release does not apply to an assignment to a Related Body Corporate under clause 25.3(a) effected without the written consent of the other Party.

## 25.5 Pipeline Trustee's Acknowledgments and Undertakings

- (a) In this clause 25.5, **dispose** means, in relation to the DBNPG, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the DBNPG (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee:
  - (i) acquiring any equitable interest in the DBNPG, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the DBNPG; or
  - (ii) otherwise acquiring legal or equitable rights against the DBNPG which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the DBNPG itself.
- (b) The Pipeline Trustee, in its capacity as trustee of the DBNPG Pipeline Trust (**Pipeline Trust**), undertakes to the Shipper that the Pipeline Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Operator under:
  - (i) this Contract; and
  - (ii) any other contract with the Shipper entered into by, or undertaking given in favour of the Shipper by, the Operator which requires the use or application of any asset owned by the Pipeline Trust, including the DBNPG, in order to be able to perform the contract or comply with the undertaking, except to the extent that such obligations are observed, performed or discharged by the Operator.
- (c) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to the Shipper that if for any reason the DBNPG Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNPG (whether imposed on the Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by the Operator had the DBNPG Operating Agreement not been terminated.
- (d) The Shipper acknowledges and agrees that:
  - (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.5(b) and 25.5(c) (**Relevant Agreements**) to the same extent that the Operator would

have had to comply with those obligations under the Relevant Agreements;

(ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement and expressed to be for the benefit of the Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25.5(b) and 25.5(c); and

(iii) nothing in clauses 25.5(b) and 25.5(c) gives the Shipper any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that the Shipper would have been entitled to against the Operator for that failure.

(e) The Pipeline Trustee represents and warrants that it is the legal owner of the DBNPG and owns the DBNPG in its capacity as trustee of the DBNPG Pipeline Trust.

(f) Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, the Pipeline Trustee shall not dispose of the whole or any part of its right, title or interest in the DBNPG without requiring the donee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:

(i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be released to the extent that the Pipeline Trustee's obligations are assumed); and

(ii) acknowledges that its obligations under such assumption of obligations extend to Operator's obligations under the Relevant Agreements,

consistent with this clause 25.5.

(g) Subject to clause 25.5(h), if the donee is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the donee, execute the deed of assumption in terms of clause 25.5(f).

(h) If the donee is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.5(g) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the donee. Nothing in clause 25.5(g) or this clause 25.5(h) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

## 25.6 Utilising other shippers' Daily Nominations

Neither clause 25.1 nor clause 27.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

## **General Right of Relinquishment (clause 26)**

### 26. General Right of Relinquishment

## 26.1 Shipper may make Relinquishment Offer

- (a) In addition to its rights under this Contract to relinquish Contracted Capacity in certain circumstances, Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to Operator (***Relinquishment Offer***).
- (b) The Relinquishment Offer must specify the amount of Contracted Capacity under this Contract to be relinquished (***Relinquishable Capacity***) at an Inlet Point, and at an Outlet Point.
- (c) The Relinquishment Offer may specify how a Relinquishment Acceptance is to apportion any Relinquished Capacity between Shipper's Contracted Capacities for each Period.
- (d) A Relinquishment Offer, unless accepted under clause 26.3(a), has no effect on this Contract.

## 26.2 Withdrawal of Relinquishment Offer

Shipper may at any time before Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to Operator that it wishes:

- (a) to withdraw that Relinquishment Offer; or
- (b) to amend that Relinquishment Offer,

and that Relinquishment Offer is by force of this clause 26.2 withdrawn or amended, as the case requires, from the time when that notice is received by Operator.

## 26.3 Operator may accept Relinquishment Offer

- (a) (i) Operator may at any time give notice in writing to Shipper accepting a Relinquishment Offer (***Relinquishment Acceptance***).
  - (ii) A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.
  - (iii) A Relinquishment Acceptance must not apportion Relinquished Capacity between Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(d).
- (b) A Relinquishment Acceptance must specify:
  - (i) the amount of Relinquishable Capacity that Operator has agreed to relinquish (***Relinquished Capacity***);
  - (ii) the changes to the Access Request Form which are required to give effect to the relinquishment of the Relinquished Capacity; and
  - (iii) the date the relinquishment is to take effect.
- (c) Subject to clause 26.3(b), Operator's discretion in determining:
  - (i) whether or not to give a Relinquishment Acceptance;
  - (ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and

- (iii) the order in which it accepts offers of relinquishment from:
  - (A) Shipper under this clause 26; and
  - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,

is to be absolute and unfettered.
- (d) Operator's discretion is not to be limited by:
  - (i) any circumstances of Shipper;
  - (ii) the current or projected level of utilization of capacity of the DBNRP;
  - (iii) the number or magnitude of current or anticipated offers of relinquishment from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or
  - (iv) the order in which offers of relinquishment are received by Operator from:
    - (A) Shipper under this clause 26; and
    - (B) if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

#### 26.4 Effect of Relinquishment Acceptance

- (a) Upon receipt by Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:
  - (i) Shipper's Contracted Capacity is amended in accordance with the Relinquishment Acceptance;
  - (ii) if, as a result of a reduction under clause 26.4(a)(i), Shipper's Contracted Capacity is reduced to zero, then this Contract is terminated; and
  - (iii) if the Relinquishment Acceptance is given in respect of:
    - (A) part only of the Relinquishable Capacity, the Relinquishment Offer remains in effect, subject to clause 26.2, in respect of the Relinquishable Capacity which has not become Relinquished Capacity; or
    - (B) all of the Relinquishable Capacity, the Relinquishment Offer ceases to have effect.

- (b) Subject to clause 26.4(a)(ii), this Contract, as amended under clause 26.4(a)(i), remains in effect after receipt by Shipper of the Relinquishment Acceptance, and Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by Shipper.
- 26.5 Notification of relinquishment of capacity by other shippers**

If another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, Operator must, whenever requested by Shipper to do so, provide Shipper, at Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26.

- 26.6 Administrative expenses**

Shipper must, when requested by Operator to do so, reimburse Operator for all reasonable expenses incurred by Operator by reason of any:

- (a) Relinquishment Offer;
- (b) notice given under clause 26.2(a); or
- (c) Relinquishment Acceptance.

## ***Trading or Transferring Contracted Capacity (clause 27)***

- 27. Trading or Transferring Contracted Capacity**

- 27.1 No transfer of Contracted Capacity other than by this clause**

- (a) The Shipper must not Transfer any of its Contracted Capacity other than in accordance with this clause 27 or clause 25, as the case may be.
- (b) Subject to clause 25.6, neither clause 27.1(a) nor clause 25.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of another shipper or another shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

- 27.2 Transfer by way of sub-contract**

Shipper may, without Operator's consent, transfer all or any of Shipper's contracted capacity to a third party by way of sub-contract in accordance with rule 105(2) of the Rules, subject to Shipper immediately giving notice to Operator of:

- (a) the subcontract and its likely duration;
- (b) the identity of the other shipper; and
- (c) the amount of contracted capacity which is being transferred.

- 27.3 Replacement Shipper must be another shipper or an Approved Prospective Shipper**

Other than a transfer in accordance with clause 27.2, the Shipper may Transfer Contracted Capacity only to a person who is, prior to the Transfer, another shipper or an Approved Prospective Shipper (**Replacement Shipper**).

- 27.4 Transfer of Capacity by Shipper - Approval of transfer terms**

- (a) If the Shipper desires to transfer all or part of its Contracted Capacity to a Replacement Shipper, the Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (**Tradeable Capacity**), make a written request to the Operator for the approval of the Transfer of that Tradeable Capacity (**Request for Approval**).
- (b) A Request for Approval must set out in detail the terms and conditions on which the Shipper is prepared to Transfer the Tradeable Capacity to a Replacement Shipper, including:
  - (i) the duration of the Transfer;
  - (ii) the Inlet Point or Inlet Points and the Outlet Point or Outlet Points at which the Tradeable Capacity is to be Transferred;
  - (iii) the circumstances in which, and the terms on which, the Shipper may interrupt a Replacement Shipper;
  - (iv) the quantity of Tradeable Capacity; and
  - (v) whether there are any rights reserved in respect of the Tradeable Capacity by the Shipper.
- (c) The Shipper may retain a right in specified circumstances to Resume the Traded Capacity, either permanently or temporarily.
- (d) The Operator must, within 5 Working Days of receipt of the Request for Approval, notify the Shipper that it either approves, or rejects, the Transfer Terms. The Operator may reject the Transfer Terms if the Operator as a Reasonable and Prudent Person considers for any reason that its operation of the DBNGP cannot accommodate:
  - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; or
  - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (e) The Operator must not unreasonably withhold its approval of Transfer Terms if the Transfer is to an existing shipper who is not in default of any of its contracts for Capacity Services and Spot Transactions and, the Operator (acting as a Reasonable and Prudent Person) believes the DBNGP can accommodate:
  - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; and
  - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (f) If the Operator does not notify the Shipper that it rejects the Transfer Terms in the terms and within the time stipulated in clause 27.4(d), then the Transfer of the Tradeable Capacity on the Transfer Terms is deemed to have been approved by the Operator.
- (g) If:
  - (i) the Operator notifies the Shipper that it approves the Transfer of the Tradeable Capacity; or
  - (ii) the Operator is taken to have approved the Transfer of the Tradeable Capacity, (in either case **Approved Tradeable Capacity**) on the

Transfer Terms, then (subject to clause 27.6) the Shipper may Transfer the Tradeable Capacity to a Replacement Shipper on those terms.

#### 27.5 Posting of Tradeable Capacity

- (a) The Operator may, if requested by the Shipper, notify all other shippers of which the Operator is aware who are or may be interested in taking a Transfer of Tradeable Capacity are notified of details of Approved Tradeable Capacity in such a way that they all receive notice (by the CRS or otherwise) at approximately the same time as the Operator makes available to the shippers any bulletin dealing with the amount of Capacity available for Nomination or Renomination on a Gas Day.
- (b) The Operator may provide a statement of the current details of all other shippers' Approved Tradeable Capacity at the Shipper's request.

#### 27.6 Notification of traded capacity

The Shipper must notify the Operator of a Transfer of Approved Tradeable Capacity to a Replacement Shipper at least 2 Working Days before the Transfer of Approved Tradeable Capacity takes effect.

#### 27.7 Replacement Contract

- (a) A Transfer of Approved Tradeable Capacity to a Replacement Shipper is deemed to be a contract between the Operator and the Replacement Shipper in respect of the Approved Tradeable Capacity.
- (b) A Replacement Contract is governed by the terms and conditions of this Contract.
- (c) A Replacement Contract is deemed to include a provision that the Traded Capacity is subject to all the Operator's rights over that Traded Capacity under this Contract.
- (d) Prior to the Operator exercising any rights to terminate the Replacement Contract as a result of the Replacement Shipper's default, the Operator must give at least 20 Working Days notice to the Shipper specifying the nature of the default, and the Operator must not terminate the Replacement Contract if within that period the Shipper:
  - (i) cures the default; or
  - (ii) resumes the Tradeable Capacity (having cured the default).

#### 27.8 Shipper's Contract

- (a) Subject to this clause 27, this Contract remains in full force and effect following any Transfer of Traded Capacity and the Operator is not obliged to release any deposit, bond, security or other form of assurance provided by the Shipper.
- (b) For the duration of the Replacement Contract, this Contract is deemed to be amended so that the Shipper's Contracted Capacity in respect of the relevant Inlet Point or Inlet Points or Outlet Point or Outlet Points is reduced by the amount of the Traded Capacity.

#### 27.9 Resumption of Traded Capacity by Shipper

- (a) If the Shipper wishes to exercise a right under the Transfer Terms to resume the Traded Capacity, the Shipper must give a Resumption Notice to the Operator and the Replacement Shipper, specifying the amount of Capacity Resumed and the duration of the Resumption.
- (b) The Operator, on receipt of a Resumption Notice, must as soon as practicable confirm to the Shipper and the Replacement Shipper that the Capacity has been Resumed.
- (c) In any proceedings brought against the Operator in relation to a Resumption, a Resumption Notice is conclusive proof of the validity of its issue and of its contents.
- (d) To the extent that a Resumption Notice is invalidly issued or a purported Resumption is not authorised by the Transfer Terms, a Replacement Shipper's remedy lies against the Shipper.
- (e) For the duration of a Resumption, this Contract and the Replacement Contract is deemed to be amended to the extent necessary to reflect the Resumption of Traded Capacity and the duration and terms of that Resumption.
- (f) Traded Capacity which is resumed by the Shipper, or Capacity which is otherwise transferred or reverts to the Shipper, is subject to the terms of this Contract and treated as the same Capacity Service that applied prior to its Transfer, regardless of the terms applying to it prior to the resumption.

#### 27.10 Administrative expenses

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator by reason of the Request for Approval and any Resumption.

### **Confidential Information (clause 28)**

#### 28. Confidentiality

##### 28.1 Confidential Information

- (a) Subject to clauses 28.2 and 28.3, each Party must keep the terms and conditions of this Contract, and all information specifically relating to or provided pursuant to or in accordance with this Contract or in the negotiations leading to the execution of this Contract (**Confidential Information**), confidential.
- (b) To avoid doubt Confidential Information includes all information received by the Operator in the Operation and Expansion of the DBNGP which relates to the Shipper, the disclosure or misuse of which might reasonably be expected to materially affect the Shipper's commercial interests, including information relating to the Shipper's gas flows and flow rates, billing, and the Shipper's maintenance schedules and plant availability.
- (c) A reference in this clause 28 to information being disclosed to or received by a Party, includes information being communicated to or created, ascertained, discovered or derived by it or on its behalf.

##### 28.2 Exceptions to Confidentiality

Either Party may disclose Confidential Information which:

- (a) at the time when it is disclosed to the Party, is publicly known;
- (b) subject to clauses 28.4 and 28.5, at the time when it is disclosed to the Party, is already known to the Party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 28.1, and which the Party can prove by prior or contemporaneous written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) after the time when it is disclosed to the Party, comes into the public domain otherwise than as a result of any breach of the confidentiality undertaking owed pursuant to clause 28.1;
- (d) subject to clauses 28.4 and 28.5, the other Party acquires from a source other than that Party or any Related Body Corporate or representative of that Party where such source is entitled to disclose it and such disclosure is not subject to confidentiality restrictions under this Contract;
- (e) that Party is required by the ASX, court order, Law, the Regulator, or requested by the ACCC to disclose, and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be);
- (f) is necessary in relation to any discovery of documents, or any proceedings before a court, tribunal, ACCC, other governmental agency or stock exchange, and in such cases, the disclosing Party must promptly notify the other Party of that requirement;
- (g) with the consent of the other Party and subject to any conditions of that consent;
- (h) it is necessary or convenient in relation to any notification by the Shipper to ACCC or ERA under clause 28.7;
- (i) is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a Party, a Related Body Corporate of a Party, the Diversified Utility and Energy Trust No 1 and No 2 or the POWERS Trust, or any funding vehicle of any of those parties;
- (j) is requested by an operator of a pipeline which is inter-connected with the DBNRP, subject to the Confidential Information being relevant to and necessary for the operation of the inter-connected pipeline;
- (k) is required by Law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the DBNRP and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be); or
- (l) comprises the terms of the Operator's Standard Shipper Contract.

### 28.3 Permitted Disclosure

- (a) Either Party may disclose Confidential Information to:
  - (i) subject to clauses 28.4 and 28.5, its, and its Related Bodies Corporate, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers (and for the purpose of this clause 28.3(a) Alcoa, WestNet and the System

Operator must be considered Related Bodies Corporate of the Operator); and

- (ii) subject to clauses 28.4 and 28.5, a bona fide proposed or prospective transferee (and their employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial advisers, Related Entities, co-bidders or bid consortium members and actual or proposed joint venturers) of:
  - (A) a 20% or more legal or equitable interest in a relevant part or the whole of a Party's business;
  - (B) a 20% or more legal or equitable interest in any property to which the information relates;
  - (C) 20% or more of the shares in a Party; or
  - (D) 20% or more (by value) of the shares or units (or both) in a company or trust (or both) which, directly or indirectly, controls (as that term is defined in the Corporations Act) a Party, to the extent those persons have a need to know the Confidential Information.
- (b) Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:
  - (i) any person who is directly involved in:
    - (A) the distribution of Gas to customers through the Western Australia – Natural Gas Distribution System as that term is used in the National Third Party Access Rules for Natural Gas Pipeline Systems (as amended from time to time);
    - (B) the retailing of Gas within Western Australia;
    - (C) the generation or sale of electricity in Western Australia;
    - (D) contracting for Capacity on the DBNGP; or
    - (E) the management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or
  - (ii) such person's employees, officers, agents, contractors, consultants and technical advisers who are themselves directly involved in any of the activities described in clause 28.3(b)(i), except to the extent that such person is:
    - (iii) the System Operator and requires the disclosure of information to it by the Operator or by it to enable it to perform its obligations to the Operator under the relevant operating and maintenance services contract (provided that at no time may the System Operator or its employees, officers, agents, contractors, consultants and technical advisers (which, without limiting clauses 28.4 and 28.5, does not include WestNet to the extent it provides corporate and other head office services to the System Operator) be directly or indirectly involved in anything listed in clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D) or clause 28.3(b)(i)(E) to the extent it relates to clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D));

- (iv) a director or senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate through which they have a direct or indirect equity interest in the DBNRP, and requires the disclosure of information in connection with the management of their respective equity interests in the DBNRP; or
- (v) a senior manager of Alcoa or WestNet, or any of their Related Bodies Corporate, who:
  - (A) is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or
  - (B) by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv), which disclosure under clauses 28.3(b)(iii), 28.3(b)(iv) and 28.3(b)(v) is, subject to clauses 28.4 and 28.5, permitted in accordance with the provisions of this clause 28.3.
- (c) Any Party seeking to disclose information under clause 28.3(a)(ii) must:
  - (i) seek the consent of the other Party as to the protocols, arrangements and agreements which will govern the disclosure of the information and the prevention of further disclosure of the information, which consent is not to be unreasonably withheld or unreasonably delayed; and
  - (ii) consult with the other Party to ascertain whether there is any commercially sensitive information which may not be disclosed at all or may only be disclosed on terms and conditions agreed between the Parties, and must give effect to the reasonable requirements of the other Party in these respects.
- (d) The Operator will comply with the ring fencing obligations in Chapter 4, Part 2 of the National Gas Law.

#### 28.4 Disclosure by recipient of Confidential Information

- (a) Any Party disclosing information under clauses 28.2 or 28.3 must ensure that persons receiving Confidential Information from it, or from any person or persons to whom the Confidential Information has been disclosed, do not:
  - (i) disclose the information except in circumstances permitted in clauses 28.2 or 28.3 (as the case may be); and
  - (ii) use the information except in the circumstances permitted by clause 28.5.
- (b) If the Operator and the System Operator disclose information to a person under clauses 28.3(b)(iii), 28.3(b)(iv) or 28.3(b)(v), then the Operator must ensure that (unless in the circumstances of a particular case it is not possible to do so) the information is disclosed in a manner which minimises the disclosure of the Confidential Information referred to in clause 28.1(b), including by one or more of aggregating the information with like information from other shippers, presenting it in summary form, or presenting it (so far as is practicable) in a form which does not identify it as relating to the Shipper.

#### 28.5 Use of Confidential Information

A Party who has received Confidential Information from another under this Contract must not use it, and a Party who has disclosed Confidential Information to a person

under clause 28.3 must procure that that person, and any person or persons to whom the Confidential Information is subsequently disclosed, does not use it, except for the purpose of exercising the Party's rights or performing the Party's obligations under this Contract or as otherwise contemplated under this Contract, with the exception of those persons set out in clause 28.3(a)(ii), who must not use the Confidential Information received from another under this Contract except for and in relation to assessing the value of, and preparing a bid for, the relevant interest under clause 28.3(a)(ii) that is proposed to be acquired and who must comply with the protocols, arrangements and agreements agreed under clause 28.3(c)(i).

#### 28.6 Information received by Operator

- (a) The Operator must develop, implement and enforce, policies and procedures to:
  - (i) give effect to its obligations under:
    - (A) clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c); and
    - (B) clauses 28.4 and 28.5 to the extent related to disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b);
  - and
  - (ii) ensure that all shippers are treated equally and fairly, and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.
- (b) The Operator recognises that some information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that where the information is commercially sensitive (as determined by the Operator acting reasonably), in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP. The Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.
- (c) The Operator must make available to the Shipper upon request a copy of the policies and procedures developed and implemented under clause 28.6(a). Despite this clause 28, the Shipper may in any submissions to the ERA or the ACCC disclose this clause 28 and the policies and procedures developed and implemented under clause 28.6(a).
- (d) Nothing in clause 28.6(c) requires the Operator to consult with the Shipper regarding, or to seek the Shipper's agreement with, any policies and procedures developed and implemented under clause 28.6(a).

#### 28.7 Breach by Operator

- (a) The Shipper must notify the Operator immediately if it has evidence able to be substantiated of a breach by the Operator, or any party for whom the Operator is responsible under this clause 28, of any of:
  - (i) clauses 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c);
  - (ii) clauses 28.4 or 28.5 to the extent related to disclosure under clause 28.3(a)(i), 28.3(b) or 28.6(b); or
  - (iii) the policies or procedures referred to in clause 28.6(a),  
(each a **Relevant Breach**).
- (b) Within 30 days after receipt of a notice under clause 28.7(a), the Operator must:
  - (i) notify the Shipper as to whether or not it agrees that a Relevant Breach has occurred; and
  - (ii) if it agrees that a Relevant Breach has occurred, specify the manner in which the Operator proposes to address the breach and ensure that it is not repeated and if applicable make a proposal of compensation for the Shipper's loss (which proposal must take into account the fact that the exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under clauses 28.7(c) and 28.7(e)).
- (c) If the Operator does not agree that a Relevant Breach has occurred, or if the Operator's response under clause 28.7(b) does not resolve the matter to the Shipper's reasonable satisfaction or include a proposal of compensation acceptable to the Shipper acting reasonably, or if the Operator does not respond within the time required by clause 28.7(b), the Shipper may notify the ACCC. If the ACCC confirms that there was a Relevant Breach of this clause 28, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(c).
- (d) If, following notification from the Shipper to ACCC under clause 28.7(c), the ACCC does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ACCC, the Shipper may notify the ERA.
- (e) If, following notification from the Shipper to ERA under clause 28.7(d), the ERA confirms that there was a Relevant Breach of this clause 28 or does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ERA, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(e).
- (f) If the Shipper considers that a breach of this clause 28 has occurred by the Operator or any party for whom the Operator is responsible under this clause 28 but the Shipper does not have evidence of such breach, then the Shipper may notify the Operator.
- (g) Within 30 days after receipt of a notice under clause 28.7(f), the Operator must:

- (i) notify the Shipper as to whether or not it agrees that a breach has occurred; and
- (ii) if it agrees that a breach has occurred, confirm the manner in which the Operator proposes to address the breach and ensure that it is not repeated.
- (h) If the Operator's response under clause 28.7(g) does not address the Shipper's concern to the Shipper's reasonable satisfaction, the Shipper may notify the ERA.
- (i) Following notification under clause 28.7(h), if the ERA determines that there was a breach of this clause 28 it may suggest an appropriate remedy, however the Parties agree that the Operator is not liable to the Shipper for any damages in these circumstances.
- (j) The procedures outlined in clauses 28.7(a) to 28.7(i) represent the sole and exclusive means by which the Shipper may obtain damages in relation to such breaches or alleged breaches by the Operator. No right of termination arises for a Relevant Breach. This clause 28.7(j) does not limit clause 28.10.
- (k) If, and for so long as, either or both of the ERA and the ACCC are unable to accept the role intended for them under this clause 28.7, the Parties agree that the references to the ERA or ACCC, as applicable, is deemed to be to an Independent Expert under clause 24 and the provisions of clause 24 will apply subject only to the following modifications:
  - (i) the matter will be considered a Technical Matter;
  - (ii) the appointing authority in clause 24.8(b) will in the first instance be the Chairman for the time being of the ERA or, if he or she fails or declines to make the appointment within 10 days of being asked to do so, then it will revert to the appointing body as set out in 24.8(b); and
  - (iii) the following will be added to clause 24.10(g): "and the Independent Expert must, and the Parties must assist as applicable to, make a determination within 30 days of his appointment".
- (l) The Parties agree to cooperate to make submissions to the applicable person or body to seek the conferral of the relevant power on the ERA or ACCC, as applicable, in order that they may accept the role intended for them under this clause 28.7.

## 28.8 Publicity

A Party must not make press or other announcements or releases relating to this Contract and the transactions the subject of this Contract without the approval of the other Party as to the form and manner of the announcement or release (which approval must not be unreasonably withheld or delayed) unless and to the extent that the announcement or release is required to be made by the Party by Law or by a stock exchange. This clause 28.8 does not apply:

- (a) if the second Party unreasonably delays or withholds approval; or
- (b) to the extent that the proposed announcement or release relates to a matter regarding which the Parties are in a bona fide dispute or disagreement.

Nothing in this clause 28.8 authorises the disclosure of Confidential Information.

## 28.9 No disclosure of terms of this Contract

Except as otherwise agreed or duly required by Law or any regulatory authority, no Party may disclose the terms of this Contract to any person other than pursuant to clauses 28.2(d) to 28.2(f) and 28.3.

#### 28.10 Remedies

The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause 28 and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

#### 28.11 Survival

This clause 28 survives termination (for whatever reason) of this Contract.

### **Notices (clause 29)**

#### 29. Notices

##### 29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading

- (a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5, 9.9(c), and 17.6(a) must be communicated by facsimile to the facsimile number set out in the Access Request Form, until further notice is given under clause 29.3(c).
- (b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.
- (c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each install and maintain a dedicated facsimile machine on a separate facsimile number for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new facsimile number which takes effect in substitution for the number set out in the Access Request Form.

##### 29.2 The CRS

- (a) Subject to clauses 29.2(b) and 29.2(c), Accumulated Imbalance Notices, Resumption Notices, and all notices under clause 8 (Nominations) may be provided through the CRS.
- (b) If at any time and for any reason the CRS fails to function properly, then each of the notices specified in clause 29.2(a) that are required to be given during the period of failure, must be communicated by the method set out in clause 29.1.
- (c) The terms and conditions of access to the CRS will be as published by the Operator from time to time, provided that the CRS must not be used for giving notices which have contractual effect unless the Shipper has agreed to the terms and conditions (such agreement not to be unreasonably withheld).

##### 29.3 Notices generally

- (a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing

and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by facsimile transmission to the facsimile number, last notified under this clause.

- (b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses and facsimile numbers of the Parties are as set out in the Access Request Form.
- (c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- (d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

#### 29.4 Receipt of notices

- (a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or facsimile machine, or posted to the CRS, by no later than that time.
- (b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.
- (c) When the time printed on the transmission report referred to in clause 29.4(b) is between:
  - (i) 00:00 hours and 09:00 hours; or
  - (ii) 17:00 hours and 24:00 hours,

on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.

- (d) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in the Access Request Form (**Dedicated Email Address**). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4, taken to be given and received at the time the sender receives an automatic response message to the email.
- (e) For the purposes of this Contract, a notice sent by certified mail is taken to be received on the earlier of the date of receipt or on the second Working Day after the notice was committed to post.
- (f) For the purposes of this Contract:

- (i) a notice sent by the CRS between 00:00 hours and 17:00 hours on a Working Day will be taken to have been received on that Working Day; and
- (ii) the other notices sent by the CRS will be taken to have been received at the commencement of the next Working Day.

## ***Representations and Warranties (clause 30)***

### 30. Representations and Warranties

#### 30.1 Operator's Representations and Warranties

- (a) The Operator represents and warrants to the Shipper that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental and Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental and Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract and to allow those obligations to be enforced;
  - (iii) it has in full force and effect all materially necessary leases, licences or easements to construct, Operate and Maintain the Outlet Point Station at each Outlet Point specified in the Access Request Form and all metering and other facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) the Operator does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
  - (vi) this Contract and any transaction under it does not contravene the Operator's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
  - (vii) it is the operator of the DBNGP;
  - (viii) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the person except debts mandatorily preferred by Law;
  - (ix) the Operator is not in default under a Law affecting it or its assets, or any obligation or undertaking by which it or any of its assets are bound which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (x) the Nominations Plan will be applied to the allocation of Gas Transmission Capacity to all shippers on the DBNGP and the Curtailment Plan will be applied to the Curtailment of the Delivery of Gas to all shippers on the DBNGP; and

- (xi) it will not enter into a contract arrangement or understanding for a Capacity Service that has a priority of allocations of Nominations for the purposes of clause 8.8, and for the purposes of Curtailments under clause 17.7(a), that is inconsistent with clause 8.8 and in particular, but without limitation, it will not allow a Capacity Service to have a priority of allocation of Nominations which sits between Alcoa's Exempt Delivery Entitlement and the B1 Service, or between any of the Types of Capacity Services listed in the Curtailment Plan.
- (b) The representations and warranties in clause 30.1(a) are made on and from the Capacity Start Date, and must be taken to be made anew on each day thereafter for the duration of this Contract.

### 30.2 Shipper's Representations and Warranties

- (a) Subject to clause 30.2(b), the Shipper represents and warrants to the Operator that:
  - (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental And Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
  - (ii) it has in full force and effect all authorisations necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract, and to allow those obligations to be enforced;
  - (iii) it has, or its Producers have, in full force and effect all necessary leases, licences or easements to construct, Operate and Maintain all facilities for which it is responsible under this Contract;
  - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) this Contract and any transaction under it does not contravene the Shipper's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
  - (vi) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the Shipper except debts mandatorily preferred by Law;
  - (vii) neither the Shipper nor any of its Related Bodies Corporate is in default under a Law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
  - (viii) there is no pending or threatened action or proceeding affecting the Shipper or any of its Related Bodies Corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
  - (ix) neither the Shipper nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether

through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and

(x) the Shipper is not an agent or trustee in relation to this Contract or in relation to the Gas to be Received or Delivered under this Contract.

(b) The representations and warranties in clause 30.2(a) are made on and from the Capacity Start Date, and are taken to be made anew on each day thereafter for the duration of this Contract.

### 30.3 Pipeline Trustee's Representations and Warranties

(a) The Pipeline Trustee represents and warrants to the Shipper that:

(i) it is empowered by the constitution of its Trust to enter into and perform this Contract, to carry on its business as now conducted or contemplated and to own its assets in its capacity as trustee of the Pipeline Trust, and there is no restriction on or condition of its doing so;

(ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the constitution of its Trust for it to enter into and perform this Contract;

(iii) it is the sole trustee and responsible entity of the Pipeline Trust;

(iv) no property of the Pipeline Trust has been re-settled or set aside or transferred to any other trust;

(v) the Pipeline Trust has not been terminated, nor has any event for the vesting of the assets of the Pipeline Trust occurred;

(vi) its right of indemnity out of, and lien over, the assets of the Pipeline Trust has not been limited in any way (other than as required by section 601GA(2) of the Corporations Act) including, without limitation, it has no liability which may be set off against that right of indemnity;

(vii) the constitution of its Trust complies with all applicable Laws; and (viii) it has complied in all material respects with its obligations and duties under the constitution of its Trust and the Corporations Act.

(b) The representations and warranties in clause 30.3(a) are made on and from the Capacity Start Date and must be taken to be made anew on each day thereafter for the duration of this Contract.

### 30.4 Creditworthiness of Shipper

The Operator may from time to time seek confirmation from the Shipper (including provision of the most recent audited financial accounts of the Shipper) that the Shipper is in a position to meet its obligations under this Contract.

### 30.5 Failure to Satisfy Operator of Creditworthiness

If the Operator is (acting reasonably) not sufficiently certain that the Shipper is in a position to meet or continue to meet its obligations under this Contract, the Operator may require, and the Shipper must provide, security for those obligations to the Operator's reasonable satisfaction.

## **Records and Information (clause 31)**

### 31. Records and Information

- (a) Except where otherwise provided in this Contract, both the Operator and the Shipper must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to this Contract, and must retain those books, accounts, records and inventories for at least seven years.
- (b) If the Shipper requests (which it may not do more frequently than every 12 months) and without limiting any other obligation on the Operator to provide information under this Contract, another contract or at Law, the Operator shall provide the Shipper with a non-binding indicative summary of its material planned expansions (if any) of the Gas Transmission Capacity for the following 5 years. The Shipper agrees that these plans will be prepared and provided to the Shipper without any warranty or undertaking that such planned expansions will be undertaken, or if undertaken will be effective and available to the Shipper.

## **Insurances (clause 32)**

### 32. Insurances

- (a) Subject to clause 32(d), the Shipper must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
  - (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment (if any) at the Inlet Point Station or Outlet Point Station; and
  - (iii) liability insurance for such amount as the Operator may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.
- (b) Subject to clause 32(d), the Shipper must:
  - (i) arrange for the Operator's interest to be noted on the policies referred to in clauses 32(a)(ii) and 32(a)(iii) to the reasonable satisfaction of the Operator so that the Operator is covered under those policies; and
  - (ii) use all reasonable endeavours to arrange for the insurers to waive rights of subrogation against the Operator.
- (c) Subject to clause 32(d), the Shipper must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Operator with certificates of currency of the insurances and endorsements required by this clause 32.
- (d) The Operator may waive compliance by the Shipper with any or all of the requirements of clauses 32(a), 32(b) and 32(c), if the Operator:

- (i) is satisfied that the Shipper has adequate alternative arrangements; or
  - (ii) accepts the Shipper as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.
- (e) Subject to clause 32(h), the Operator must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
- (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA), and for the Operator's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the DBNPG and all associated equipment; and
  - (iii) liability insurance for such amount as the Shipper may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.
- (f) Subject to clause 32(h), the Operator must use all reasonable endeavours to arrange for:
- (i) (A) endorsement on the policies referred to in clauses 32(e)(ii) and 32(e)(iii) of the Shipper as an insured or co-insured; or
  - (B) the Shipper's interest to be noted on those policies to the satisfaction of the Shipper so that the Shipper is covered under those policies; and
  - (ii) the insurers to waive rights of subrogation against the Shipper.
- (g) Subject to clause 32(h), the Operator must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Shipper with certificates of currency of the insurances and endorsements required by this clause.
- (h) The Shipper may waive compliance by the Operator with any or all of the requirements of clauses 32(e), 32(f) and 32(g), if the Shipper:
- (i) is satisfied that the Operator has adequate alternative arrangements;
  - (ii) accepts the Operator as a self-insurer; or
  - (iii) determines that there is other sufficient reason to do so.

## No Waiver (clause 33)

### 33. No Waiver

No failure or delay by a Party in exercising any of its rights under this Contract operates as a waiver of the Party's rights or prevents the Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of this Contract.

## **Entire Agreement (clause 34)**

### 34. Entire Agreement

This Contract constitutes the entire agreement between the Parties on the subject matter of this Contract and supersedes all prior negotiations, representations and agreements between the Parties.

## **Severability (clause 35)**

### 35. Severability

If any clause or provision of this Contract is held to be illegal or unenforceable by any judgment of a court, arbitrator, tribunal or authority having competent jurisdiction, the judgment does not affect the remaining provisions of this Contract which remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included in this Contract.

## **Entry and Inspection (clause 36)**

### 36. Entry and Inspection

- (a) Each Party must grant to, or use its reasonable endeavours to procure for, the other Party all reasonable rights of entry:
  - (i) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP);
  - (ii) to inspect for safety or other reasons the construction, installation, Operation, Maintenance and repair of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP); and
  - (iii) for any other purpose connected with or arising out of this Contract.
- (b) Any entry under clause 36(a) is made in all respects at the expense and risk of the entering Party, who must, subject to clause 23 make good any damage occasioned by or resulting from the entry.
- (c) Except in the case of emergency, a Party must:
  - (i) when it seeks to exercise a right of entry under this clause 36, give reasonable notice to the other Party specifying the proposed time and duration of entry; and
  - (ii) take all reasonable steps to ensure that during the entry its employees, servants, consultants, independent contractors and agents cause as little inconvenience to the other Party as possible and at all times comply with all reasonable safety standards and other requirements of that Party.
- (d) To the extent that any equipment or thing is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a right of entry to that third person's premises.

## ***Ownership, Control, Maintenance and Risk (clause 37)***

37. Ownership, Control, Maintenance and Risk

- (a) In the absence of any agreement between the Parties to the contrary, the Inlet Point and the Outlet Point on the DBNGP mark the boundaries of ownership of all plant, equipment, pipelines and facilities and, as between the Parties and in the absence of evidence to the contrary:
  - (i) the Shipper is presumed to own any relevant thing upstream of the Inlet Point and downstream of an Outlet Point; and
  - (ii) the Operator is presumed to own any relevant thing between the Inlet Point and the Outlet Point.
- (b) In the absence of any agreement between the Parties to the contrary, the responsibility to install, commission, Operate and Maintain, and the risk in relation to, all plant, equipment, pipelines and facilities follows ownership.

## ***Revocation, Substitution and Amendment (clause 38)***

38. Revocation, Substitution and Amendment

- (a) The Operator and the Shipper may at any time agree in writing to revoke, substitute or amend any provision of this Contract (including the Access Request Form).
- (b) Clause 38(b) does not prevent the Shipper from:
  - (i) relocating Contracted Capacity under this Contract;
  - (ii) making a Nomination or Renomination for and being scheduled Capacity under this Contract which exceeds the Shipper's Contracted Capacity;
  - (iii) contracting for and having Capacity transferred to it by another shipper; or
  - (iv) varying this Contract in accordance with clauses 14.9 or 17.7(f).
- (c) If the Parties agree to an increase in Contracted Capacity, this Contract (including the Access Request Form) is to be amended to reflect this.

## ***No Common Carriage (clause 39)***

39. No Common Carriage

Neither the Operator nor the Shipper is a common carrier of Gas transported through the DBNGP.

## ***Operator not a Supplier of Gas (clause 40)***

40. Operator Not a Supplier of Gas

Nothing in this Contract requires the Operator to supply Gas to the Shipper but the Operator is required to Deliver Gas from time to time in accordance with this Contract.

## **Stamp Duty (clause 41)**

41. Stamp duty

The Shipper must pay all stamp duty payable in respect of this Contract.

## **No Third Party Benefit (clause 42)**

42. No Third Party Benefit

Subject to clauses 24.4(c) and 23, no person other than the Operator or the Shipper obtains any right, benefit or entitlement under this Contract, despite that person being referred to in this Contract or belonging to a class of persons which is referred to in this Contract.

## **Governing Law (clause 43)**

43. Governing Law

This Contract must be construed and interpreted in accordance with the Law of Western Australia and the Parties entering into this Contract submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **General (clause 44)**

44. General

44.1 Operator's discretion

In circumstances in which the Operator has a discretion to take action under this Contract, including any of clauses 9.7, or 10.3(a)(iii) that may limit the amount of Capacity available to the Shipper, or that may affect the way in which the Shipper may use Capacity, during a certain period, which action is not governed by the provisions of clauses 8.8, or 8.9, relating to Nominations or clauses 17.9 or 17.10 relating to Curtailment, the Operator must treat the Shipper fairly and reasonably in the circumstances with all other shippers who should or may be subject to similar action.

44.2 Refusal to Receive or Deliver Gas

Where the Operator is entitled under this Contract to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, then the Operator may take whatever action it believes, acting as a Reasonable and Prudent Person, is necessary to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, including by physically reducing, interrupting or stopping completely or in part the flow of Gas at the Inlet Point or Outlet Point.

## **Non-discrimination clause (clause 45)**

45. Non-Discrimination Clause

45.1 Access to DBNGP information

If the Operator, the System Operator or any of their contractors or agents, or any person or persons to whom information from the Operator or the System Operator has been disclosed, provides any information to any shipper or a Related Body

Corporate or officer of a shipper (acting in their respective capacity as shippers) about availability of Capacity, including:

- (a) information relating to planned and unplanned maintenance;
- (b) policies and procedures under which the market for Spot Capacity and Curtailment is administered; or
- (c) DBNGP flow data between each compressor station and each other significant point,

then, other than to the extent that such information relates to an inlet point, outlet point or gate station which is specific to an individual shipper, the Operator must ensure that the Shipper receives that information at substantially the same time and in the same format.

Nothing in this clause 45.1 limits the Operator's obligations under clause 28.

#### 45.2 Arms' length dealings

The Operator must, and must procure that the System Operator does, in Operating and Expanding the DBNGP and exercising the discretions afforded to the Operator under this and other contracts:

- (a) treat all shippers (including shippers which are Associates of a Relevant Company) on an arms' length basis; and
- (b) ensure that no shipper which is an Associate of a Relevant Company receives a benefit, compared with another shipper which is not, unless the benefit is attributable to an arms' length application of the two shippers' respective contractual entitlements entered into on terms and conditions that are comparable with the Standard Shipper Contract.

### **Pipeline Trustee's Limitation of Liability (clause 46)**

#### 46. Pipeline Trustee's Limitation of Liability

- (a) The Pipeline Trustee enters into this Contract only in its capacity as trustee of the Pipeline Trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Pipeline Trustee only to the extent to which it can be satisfied out of property of the Pipeline Trust out of which the Pipeline Trustee is actually indemnified for the liability. Except as provided in clause 46(b), this limitation of the Pipeline Trustee's liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Pipeline Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.
- (b) Clause 46(a) does not act to limit:
  - (i) the Shipper's entitlements to seek orders against the Pipeline Trustee (in its capacity as trustee of the Pipeline Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Shipper under any Law; or
  - (ii) Pipeline Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

### ***Unused Clause (clause 47)***

47. Not Used

# **Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline**

## **Appendix 2 – Pipeline Description**

Revised by reason of and pursuant to orders of the Australian Competition Tribunal made on 26 July 2012

5 October 2012

**Economic Regulation Authority**

WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at  
[www.erawa.com.au](http://www.erawa.com.au).

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## Appendix 2 - Pipeline Description

1. The Economic Regulation Authority's Final Decision on the proposed revised access arrangement to the DBNGP dated 31 October 2011 and amended on 22 December 2011 required that the revised access arrangement proposal should be amended so that the description of the DBNGP is current as of the date of approval of the access arrangement (Required Amendment 1).
2. It is understood that the attached pipeline description date 1 September 2011, is the most current and up to date description available.

**DAMPIER TO BUNBURY NATURAL  
GAS PIPELINE SYSTEM:  
DESCRIPTION OF THE  
GAS TRANSMISSION SYSTEM  
AS AT  
1 SEPTEMBER 2011**



## **TABLE OF CONTENTS**

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1.	Introduction	1
2.	Description of the Gas Transmission System: Inlet Points, Outlet Points and Notional Gate Points	2
3.	Description of the Gas Transmission System: Component Parts	12
4.	Pipeline Route Maps	19

## **1. Introduction**

The gas transmission system is described in Section 2 in terms of the boundaries of the transmission pipeline system between Dampier and Bunbury. These boundaries are defined by the system's inlet and outlet points and notional gate points.

At inlet points, ownership of gas transfers from shippers to DBP. Facilities upstream of the inlet points are owned by shippers or by parties other than DBP.

At outlet points, ownership of gas transfers from DBP to shippers. Facilities downstream of the outlet points are owned by shippers or by parties other than DBP.

Section 3 describes the major component parts of the gas transmission system.

Section 4 provides the route map for the Dampier to Bunbury Natural Gas Pipeline system.

## 2. Description of the Gas Transmission System: Inlet Points, Outlet Points and Notional Gate Points

The schematic on the following page describes the gas transmission system in terms of its inlet and outlet points.

“Inlet point” means *a flange or joint or other point specified in an access contract as the point at which the shipper delivers gas to the DBNGP Owner under the contract*. Table 1 defines each of the inlet points in the gas transmission system.

“Outlet point” means *a flange or joint, notional gate point or other point specified in an access contract as a point at which the DBNGP Owner delivers gas to the shipper under the contract*. Table 2 defines each of the outlet points.

“Notional gate point” means the point for a distribution sub-network at which all grants of capacity in respect of that sub-network are to be made. Each notional gate point is defined in Table 3 which also shows the associated outlet points.

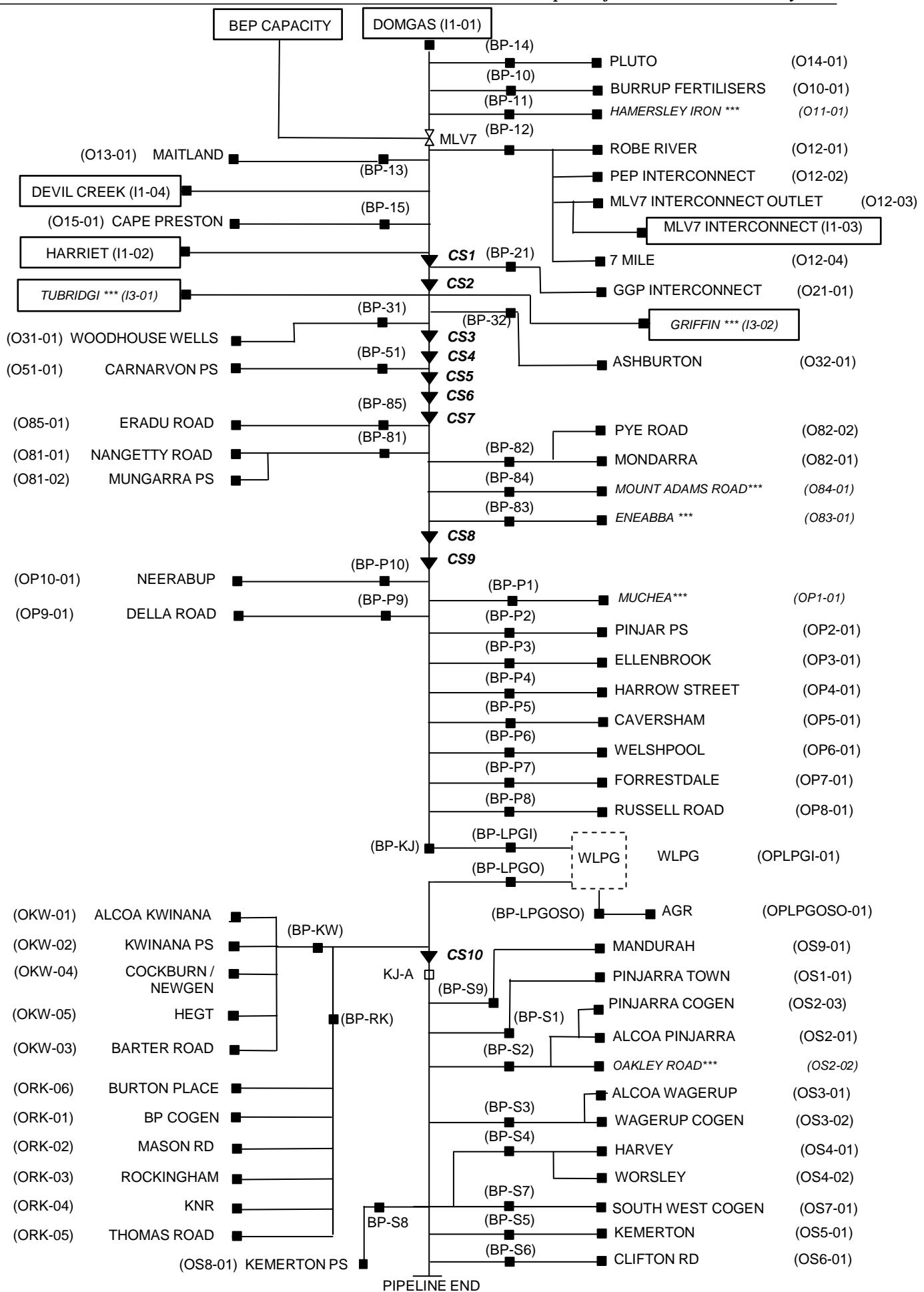
“BEP Capacity” means the accessible capacity under the BEP Lease Agreement between BEP Owners and the *DBNGP Owners to delivers DBNGP gas using the BEP Pipeline*.

The following designations are used in the schematic and tables:

	Gas source
	Inlet point x-xx
	Outlet point y-yy
	Branching point zz. Branching points have no regulatory significance but serve to identify points of branching from the main pipeline.
	Inline metering facility KJ-A Kwinana Junction Meter Station M2A KJ-B*** Kwinana Junction Meter Station M2B
	Compressor Station n
	Power Station
Number of inlet points	= 4
Number of inactive inlet points	= 2
Number of branching points	= 40
Number of outlet points	= 51
Number of inactive outlet points	= 5
Number of notional gate points	= 12

(\*\*\* *Inactive Inlet or Outlet points are currently inactive, not used or decommissioned*)

**Dampier To Bunbury Natural Gas Pipeline**  
**Description of the Gas Transmission System**



**Note** Inlet or Outlet Points with \*\*\* are inactive/decommissioned

**TABLE 1**  
**GAS TRANSMISSION SYSTEM: INLET POINTS**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
DOMGAS Dampier Plant	I1-01	0.000	Inlet point is at the upstream flange of the flange joint upstream of the monolithic insulation joint on the main gas pipeline just inside the fence of the Dampier facilities compound.
MLV7 Interconnect Inlet	I1-03	21.968	Inlet point is at the PEP side flange of isolation valve HV5020 located on the meter run 3/4 within MLV7 compound
Devil Creek	I1-04	58.66	Inlet point is located at the insulation joint downstream of the hot-tap valve within the offtake compound.
Harriet	I1-02	136.924	Inlet point is at the second insulation gasket upstream of valve ZV1 between the Harriet meter station and the mainline interconnecting pipe. This gasket is located inside the Harriet meter compound.
Tubridgi	I3-01	272.694	Inlet point is at the second insulation gasket upstream of valve ZV1 between the Tubridgi meter station and the mainline interconnecting pipe. This gasket is located inside the Tubridgi meter compound.
Griffin	I3-02	272.729	Inlet point is at the second insulation gasket upstream of valve ZV2 between the Griffin meter station and the mainline interconnecting pipe. This gasket is located inside the Griffin meter compound.

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
Branching Point Burrup Fertilisers	BP-10	3.574	This is a branching point located at the insulation gasket downstream of the hot-tap valve within the Burrup Fertilisers metering compound
Burrup Fertilisers	O10-01	3.574	Outlet point is at the insulation gasket downstream of the venturi nozzle RO019 located within the Burrup Fertilisers metering compound
Branching Point Pluto	BP-14	2.3	This is a branching point located at the insulation joint downstream of the hot-tap valve within the metering compound
Pluto	O14-01	2.3	Outlet point is at the insulating joint downstream of Pluto meter station. This joint is located outside the meter compound.
Branching Point MLV6	BP-11	8.845	This is a branching point located at the first tee downstream of HV100A and HV100B valves located inside the MLV6 compound.
Hamersley Iron	O11-01	9.440	Outlet point is on the upstream side of the insulation joint located 0.5km downstream of the odourant facilities.
Branching Point MLV7	BP-12	21.933	This is a branching point located at the first reducer downstream of HV100A and HV100B valves located inside the MLV7 compound.
PEP Interconnect	O12-02	21.968	Outlet point is at the spectacle-blind upstream joint located downstream of the meter station.
MLV7 Interconnect Outlet	O12-03	21.968	Outlet point is at the PEP side flange of isolation valve HV5020 located on the meter run 3/4 within MLV7 compound
Robe River	O12-01	22.083	Outlet point is at the reducer on the downstream side of the odourant injection facility at the outlet of Cajaput Well meter station.
7 Mile	O12-04	21.950	Outlet point is at the last insulating joint downstream of the meter runs. This joint is located inside the MLV 7 compound.
Branching Point Maitland	BP-13	29.993	This is a branching point located at the insulation gasket downstream of the hot-tap valve within the metering compound
Maitland	O13-01	29.993	Outlet point is at the downstream flange of the drop-out spool downstream of the hand valve HV134 within the meter station
Branching Point Cape Preston	BP-15	82.490	This is a branching point located at the insulation joint downstream of the hot-tap valve within the metering compound
Cape Preston	O15-01	82.490	Outlet point is at the insulating joint downstream of Cape Preston meter station. This joint is located outside the meter compound.
Branching Point GGP Interconnect	BP-21	137.2	This is a branching point located at the connection downstream of the station bypass line within the Compressor Station at CS1

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS (CONTINUED)**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
GGP Interconnect	O21-01	137.2	Outlet point is on the downstream pipe linking the DBNGP and the GGT and at the intersection between the DBNGP and the GGT easements
Branching Point Ashburton	BP-32	272.729	This is a branching point on CS 2 emergency station bypass pipe located upstream of valve ZV2.
Ashburton	O32-01	272.729	Outlet point is downstream of valve SDV5101.
Branching Point Woodhouse Wells	BP-31	311.586	This is a branching point located at downstream of the hot-tap valve within the metering compound
Woodhouse Wells (Exmouth PS)	O31-01	311.586	Outlet point is on the downstream flange of the reducer downstream of the insulation joint within the meter compound
Branching Point MLV55	BP-51	578.858	This is a branching point located at the first flanged joint downstream of HV100A and HV100B located at the MLV55 compound.
Carnarvon Power Station	O51-01	748.583	Outlet point is at the insulation joint downstream of the pig receiver located at the Carnarvon Power Station.
Branching Point MLV90	BP-85	967.096	This is a branching point located at the pipeline junction between valve HV205C and HV206 inside the MLV90 compound.
Eradu Road	O85-01	967.116km	Outlet point is at the first isolation joint located downstream of Eradu Road meter station located inside the MLV90 compound.
Branching Point MLV91	BP-81	996.544	This is a branching point located at the first reducer downstream of HV100A and HV100B located at the MLV91 compound.
Nangetty Road	O81-01	996.851	Outlet point is at the first insulation flange located downstream of the injection line of the odorant facility. This insulating flange is located inside the Nangetty Road compound.
Mungarra Power Station	O81-02	999.126	Outlet point is on the upstream side of the isolation valves on each gas turbine generating unit located downstream of pressure relief valves.
Branching Point Pye Road	BP-82	1043.730	This is a branching point located on the downstream flange of valve HV001 located inside the Pye Road meter station compound.
Mondarra	O82-01	1043.740	Outlet point is at the insulating gasket downstream of Mondarra meter station. This gasket is located inside the Mondarra compound.
Pye Road	O82-02	1043.765	Outlet point is at the insulating flange upstream of the odorant injection point, located inside the Boral compound at the Pye Road meter station.
Branching Point MLV93	BP-84	1054.211	This is a branching point located at the first insulating joint on the supply line to the meter station. The insulating joint is located in the MLV93 compound.

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS (CONTINUED)**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
Mount Adams Road	O84-01	1054.216	Outlet point is at the first insulation joint located downstream of Mount Adams Road meter station located inside the MLV 93 compound.
Branching Point CS8	BP-83	1113.551	This is a branching point located on the downstream side of HV105B. The branching point is located in the MLV95 and Eneabba meter station compound.
Eneabba	O83-01	1113.621	Outlet point is at the insulation joint downstream of the launcher isolating valve.
Branching Point Muchea	BP-P1	1307.000	This is a branching point located at the downstream flange of HV1 located in the Muchea meter station compound.
Muchea	OP1-01	1307.036	Outlet point is at the reducer located downstream of the odorant injection facility.
Branching Point Neerabup	BP-P10	1309.835	This is a branching point located at the insulation joint downstream of the hot-tap valve within the metering compound
Neerabup	OP10-01	1309.835	Outlet point is at the insulating joint downstream of meter station. This joint is located outside the meter compound.
Branching Point MLV116	BP-P2	1311.157	This is a branching point located on the downstream side of the HV 100A valve located inside the MLV116 compound.
Branching Point MLV117	BP-P9	1323.931	This is a branching point comprising the downstream flanges of valves HV100A and HV100B located inside the MLV117 compound.
Della Road Meter Station (MLV117)	OP9-01	1323.996	Outlet point is at the insulating joint upstream of the distribution system valve pit located outside the MLV117 compound.
Pinjar Power Station	OP2-01	1326.157	Outlet point is on the upstream side of isolation valves on each gas turbine generating unit located downstream of pressure relief valves.
Branching Point MLV118	BP-P3	1336.740	This is a branching point located at the first insulation joint on the supply line to the Ellenbrook meter station. This insulation joint is located inside the MLV118 compound.
Ellenbrook	OP3-01	1336.750	Outlet point is at the first insulation joint located downstream of valve HV010.
Branching Point Harrow Street	BP-P4	1343.510	This is a branching point located at the first tee upstream of HV100A on the 350mm inlet header to the Harrow Street meter station.
Harrow Street	OP4-01	1343.610	Outlet point is on the upstream side of the second outlet valve located downstream of odorant injection facility.
Branching Point MLV119	BP-P5	1347.339	This is a branching point located at the first reducer downstream of valves HV100A and HV100B located inside the MLV119 compound.

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS (CONTINUED)**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
Caversham	OP5-01	1347.434	Outlet point is at the insulation joint located downstream of the odorant injection facility.
Branching Point MLV120	BP-P6	1359.664	This is a branching point located at the first reducer downstream of valves HV100A and HV100B inside the MLV120 compound.
Welshpool	OP6-01	1359.714	Outlet point is on the upstream side of the second outlet valve located downstream of the odorant injection facility.
Branching Point MLV122	BP-P7	1379.695	This is a branching point located at the first reducer downstream of valves HV100A and HV100B inside the MLV122 compound.
Forrestdale	OP7-01	1379.750	Outlet point is on the upstream side of the second outlet valve located downstream of the odorant injection facility.
Branching Point MLV129	BP-P8	1398.638	This is a branching point located on the downstream side of valve HV700 located on the inlet side of the Russell Road pre-regulation set. The point is adjacent to the Kwinana Junction scrubber bypass.
Russell Road	OP8-01	1408.183	Outlet point is on the upstream side of the second outlet valve located downstream of the odorant injection facility.
Branching Point Kwinana Junction	BP-KJ	1399.000	This is a branching point located at the centreline of the valve HV401A, located in the Kwinana Junction compound.
Branching Point Inlet to WLPG	BP-LPGI	1401.997	This branching point is at the first insulating flange located downstream of the pressure reducing valve PV035.
Branching Point Second Outlet from WLPG	BP-LPGOSO	1401.997	This branching point is at the insulating gasket upstream of the AGR metering facility located at the second return line from the WLPG plant.
WLPG	OPLPGI-01	1402.025	Outlet point is at the second insulating flange located downstream of the pressure reducing valve PV035.
Branching Point Outlet from WLPG	BP-LPGO	1402.066	This branching point is at the first insulating flange upstream of valve V14 located on the return line from the WLPG plant.
AGR	OPLPGOSO-01	1402.297	Outlet point is at the spectacle blind located on the downstream side of the restriction nozzle/blind located downstream of the AGR meter skid.
Branching Point Kwinana West	BP-KW	1405.217	This is a branching point located at 500 to 300 reducer located upstream of valves KLV3 and KLV4.
Branching Point KLV1	BP-RK	1405.327	This is a branching point located at the downstream side of valve VB11 located upstream of the TiWest Cogen meter station offtake.
Burton Place	ORK-06	1405.327	Outlet point is downstream of insulation joint. This joint is downstream of valve HV056 inside CS 10 compound.

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS (CONTINUED)**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
Thomas Road	ORK-05	1407.620	Outlet point is on the upstream side of the TiWest valve located inside the TiWest cogeneration facility.
BP Cogen	ORK-01	1407.716	Outlet point is at the upstream flange of the isolation valve (HV017) located downstream of the meter skid.
Mason Road	ORK-02	1409.647	Outlet point comprises the upstream flange of the second valve located downstream of the pig receiver of the BP Kwinana lateral and the first insulation gasket downstream of the first valve located downstream of the pig receiver of the BP Kwinana lateral.
Kwinana Power Station	OKW-02	1409.651	Outlet point is at the insulating gasket on the downstream side of the meter station outlet valve HV501A.
Cockburn PS / NewGen	OKW-04	1409.651	Outlet point is at the insulation gasket on the downstream side of the sonic nozzle (F0439).
HEGT	OKW-05	1409.651	Outlet point is at the insulation joint on the downstream side of the sonic nozzle (RO 001).
Barter Road	OKW-03	1409.751	Outlet point comprises the upstream flange of the second meter station outlet valve downstream of the insulation joint and the upstream flange of the valve located downstream of the insulation joint.
Alcoa Kwinana	OKW-01	1410.557	Outlet point comprises the outlet flanges on the downstream side of the meter station outlet valves HV601A and HV601B.
KNR (Previously known as WMC)	ORK-04	1410.837	Outlet point comprises the upstream side of the second isolating valve located on the KNR boundary for the high pressure line and the insulation joint located upstream of the second isolation valve for the low pressure line.
Rockingham	ORK-03	1410.857	Outlet point comprises the: i) upstream flange of the meter station outlet valve located downstream of the odorant injection facilities. ii) upstream flange of the second valve located downstream of the CSBP pipe.
Branching Point South 1	BP-S1	1449.456	This is a branching point located at the first insulating flange downstream of valve HV001 located upstream of the MLV143 compound.
Mandurah Branching Point	BP-S9	1434.870	Branching point is downstream of valve HV03. This valve is located downstream of insulating joint inside the meter compound.
Mandurah Offtake	OS9-01	1434.870	Outlet point is at the insulating joint upstream of pig launcher compound. This joint is located inside the offtake compound.
Pinjarra Town	OS1-01	1449.476	Outlet point is on the upstream side of the second outlet valve located downstream of the odorant injection facility.

**TABLE 2**  
**GAS TRANSMISSION SYSTEM: BRANCHING POINTS AND OUTLET POINTS (CONTINUED)**

LOCATION	POINT DESIGNATION	DISTANCE FROM DAMPIER (Pipeline kilometres)	DESCRIPTION
Branching Point South 2	BP-S2	1458.106	This is a branching point located at the anchor flange located downstream of valve PLV1 located inside the MLV143 compound.
Oakley Road	OS2-02	1462.592	Outlet point is at the insulation gasket located downstream of valve HV105.
Alcoa Pinjarra	OS2-01	1463.426	Outlet point comprises the outlet flanges on the downstream side of the meter station outlet valves HV601A and HV601B
Pinjarra Cogen	OS2-03	1463.426	Outlet point is at the insulation gasket located downstream of valve ZV784
Branching Point South 3	BP-S3	1489.329	This is a branching point located at the first tee upstream of MLV150 located inside the Wagerup West compound.
Alcoa Wagerup	OS3-01	1498.857	Outlet point comprises the outlet flanges on the downstream side of the meter station outlet valves HV601A and HV601B.
Wagerup Cogen	OS3-02	1498.857	Outlet point is at the insulation gasket located downstream of shutdown valve
Branching Point South 8	BP-S8	1507.18	This is a branching point located on the downstream side of the hand valve HV012 located inside the MLV154/155 compound.
Kemerton PS	OS8-01	1511.91	Outlet point is at the upstream flange of the drop out spool located downstream of the insulation gasket downstream of the pressure reduction skid
Branching Point South 4	BP-S4	1513.630	This is a branching point located at the first tee upstream of the insulation joint adjacent to MLV154 located inside the MLV154 compound.
Branching Point South 7	BP-S7	1513.635	This is a branching point located on the tee at the junction of the SW loop and the Worsley Cogeneration lateral, below ground in the MLV154/155 compound.
Harvey	OS4-01	1522.096	Outlet point is at the upstream flange of the isolation valve located downstream of the odorant injection facility.
Branching Point South 5	BP-S5	1525.104	This is a branching point located on the downstream side of the offtake valve HV1 located inside the Kemerton meter station.
Kemerton	OS5-01	1525.124	Outlet point is at the upstream flange of the valve located downstream of the insulation joint.
Branching Point South 6	BP-S6	1530.439	This is a branching point located at the first reducer downstream of MLV156 and situated in the Clifton Road compound.
Clifton Road	OS6-01	1530.457	Outlet point is at the first insulating joint located downstream of the odorant injection facility.
South West Cogeneration	OS7-01	1546.000	Outlet point is at the first insulating flange located downstream of the meter skids.
Worsley	OS4-02	1546.620	Outlet point is at the flange downstream of the insulation joint located downstream of the meter station outlet valve.

**TABLE 3**  
**GAS TRANSMISSION SYSTEM: NOTIONAL GATE POINTS**

NOTIONAL GATE POINT	ASSOCIATED OUTLET POINT/S	TRANSMISSION OUTLET POINT/S DESIGNATION
NGP - Nangetty Rd	Nangetty Road	O81-01
NGP - Eneabba	Eneabba	O83-01
NGP - Muchea	Muchea	OP1-01
NGP - Ellenbrook	Ellenbrook	OP3-01
NGP - North Metro	Harrow Street Caversham	OP4-01 OP5-01
NGP - South Metro	Welshpool Forrestdale Russell Road	OP6-01 OP7-01 OP8-01
NGP - Barter Road	Barter Road	OKW-03
NGP - Rockingham	Rockingham	ORK-03
NGP - Pinjarra	Pinjarra Town Oakley Road	OS1-01 OS2-02
NGP - Harvey	Harvey	OS4-01
NGP - Kemerton	Kemerton	OS5-01
NGP - Clifton Road	Clifton Road	OS6-01

NGP - “name”      Notional gate point - “name”

### **3. Description of the Gas Transmission System: Component Parts**

The principal component parts of the gas transmission system are:

- a) the main line between Dampier and Bunbury;
- b) gas turbine driven centrifugal compressor units and associated facilities including aftercoolers;
- c) main line valves;
- d) laterals;
- e) outlet stations;
- f) Kwinana Junction metering station;
- g) supervisory control and data acquisition (SCADA) system and the associated microwave communications facility; and
- h) odourising facilities.

#### **General Description**

The gas transmission system comprises high pressure gas transmission pipeline, including laterals, and associated compression plant, and valves, linking gas suppliers in the north west of Western Australia with markets principally in the South West.

The gas transmission system is not a single continuous entity, and consists of the following major parts.

#### Dampier to Kwinana Section

The Dampier to Kwinana section is rated and operates at 8.48MPa. It delivers gas to all part haul outlet points, and to all full haul outlet points between Compressor Station 9 (CS9) and Kwinana Junction. Five laterals ranging in diameter from 350mm (14 inches) to 150mm (6 inches) are connected to this pipeline section. The main line loops to Wesfarmers LPG Plant at Kwinana Junction. Under an arrangement with Wesfarmers LPG Pty Ltd, gas leaves the system at a point immediately upstream of the company's LPG extraction plant at Kwinana and is returned to the system immediately downstream of the plant.

#### Kwinana Junction

Kwinana Junction, 1,399km downstream of Dampier, is a major junction in the gas transmission system. All gas delivered to Kwinana West, Rockingham Lateral, WLPG Plant and Pipeline South pass through Kwinana Junction. Facilities for gas quality measurement upstream and downstream of the LPG plant are also located at Kwinana Junction.

#### Kwinana West Lateral

This section is rated at 6.89MPa and operates at approximately 4.5MPa. It consists of three different pipes ranging in diameter from 500mm (20 inches) to 200mm (8 inches). The Kwinana West Lateral delivers gas to outlet points at Alcoa Kwinana, Kwinana Power Station, and to the outlet point at Barter Road.

#### Rockingham Lateral

A short 180m long, 600mm (18 inches) pipeline provides a link between the suction of CS10 and Rockingham lateral. The Rockingham lateral and the link are rated at 6.89MPa and operates at approximately 4.5MPa. It consists of three different pipes ranging in diameter from 300mm (12 inches) to 150mm (6 inches). The Rockingham Lateral delivers gas to outlet points in the Kwinana industrial area and supplying the distribution system serving Rockingham and Mandurah.

#### Pipeline South

Compressor Station Number 10 (CS10) is located at the beginning of Pipeline South. Pipeline South MAOP is equal to 6.89MPa. It consists of three different pipes ranging in diameter from 500mm (20 inches) down to 200mm (8 inches). It terminates at MLV157 located at Clifton Road, north of Bunbury. Five laterals ranging in diameter from 450mm (14 inches) to 250mm (10 inches) are connected to this pipeline section. The pipeline section between MLV150 and MLV154 is looped with 18" diameter pipeline. The Pipeline South delivers gas to outlet points at Alcoa Pinjarra, Alcoa Wagerup and Worsley Alumina, South West Cogen, Kemerton Power Station, and to outlet points supplying the distribution systems at Pinjarra Town, Oakley Road, Harvey, Kemerton and south of Clifton Road.

#### Stage 4, 5A and 5B Looping Sections

The 26" diameter loop sections have been designed, constructed and tested to operate at 10.2MPa, however, the loop sections are currently operated at the same MAOP as the existing Mainline at 8.48MPa. Stage 4 consists of 217km loops in 10 sections immediately downstream of CS1 to CS10. Stage 5A loops continues from stage 4 for another 571km. Stage 5B loops continue 430km from stage 5A but also includes the eleventh section from MLV 7 to CS 1. This is called loop 0.

The physical characteristics of the main pipeline and laterals are in the following Tables 4 and 5. The details for the looped sections are set out in Table 6.

#### Mainline Valves

The locations of the main line valves which control gas flow through the Dampier to Bunbury main line are shown on the Pipeline Route Maps of Section 6. Areas through which the main line passes are classified (in accordance with Australian Standard 2885) as broad rural R1 and suburban T1. In areas classified as R1, main line valves are spaced approximately 30km apart. They are approximately 10km apart in areas classified as T1. The majority of the mainline valves can be remotely actuated from the control centre.

“MAOP” denotes maximum allowable operating pressure.

**TABLE 4**  
**MAIN LINE: PHYSICAL CHARACTERISTICS**

<b>SECTION: DAMPIER TO KWINANA JUNCTION</b>	
Length	1,311.2km
Nominal size	660mm
Wall thickness	8.74mm
Steel type	API 5LX 65 DSAW
MAOP	8,480kPa (gauge)

<b>SECTION: KWINANA JUNCTION - WLPG PLANT - KWINANA JUNCTION</b>	
Length	6.4km
Nominal size	660mm
Wall thickness	14.27mm
Steel type	API 5LX 65 DSAW
MAOP	8,480kPa (gauge)

<b>SECTION: KWINANA JUNCTION TO MAIN LINE VALVE 141</b>	
Length	10.8km
Nominal size	500mm
Wall thickness	7.94mm
Steel type	API 5LX 65 DSAW
MAOP	6,890kPa (gauge)

<b>SECTION: MAIN LINE VALVE 141 TO MAIN LINE VALVE 150</b>	
Length	73.5km
Nominal size	500mm
Wall thickness	5.56mm
Steel type	API 5LX 65 DSAW
MAOP	6,890kPa (gauge)

<b>SECTION: MAIN LINE VALVE 150 TO MAIN LINE VALVE 154</b>	
Length	23.9km
Nominal size	250mm
Wall thickness	4.80mm
Steel type	API 5LX 52 ERW
MAOP	6,890kPa (gauge)

<b>SECTION: MAIN LINE VALVE 154 TO MAIN LINE VALVE 157</b>	
Length	16.9km
Nominal size	200mm
Wall thickness	4.80mm
Steel type	API 5LX 52 ERW
MAOP	6,890kPa (gauge)

**TABLE 5**  
**GAS TRANSMISSION SYSTEM LATERALS (CONTINUED)**

<b>SECTION: MAIN LINE VALVE 150 TO MAIN LINE VALVE 154 (LOOPLINE)</b>	
Length	24.3km
Nominal size	450mm
Wall thickness	6.35mm
Steel type	API 5LX 60 ERW
MAOP	8,280kPa (gauge)

<b>SECTION: CS10 TO ROCKINGHAM LATERAL PIPELINE (ROCKINGHAM LATERAL LINK)</b>	
Length	0.18km
Nominal size	600mm
Wall thickness	12.65mm
Steel type	API 5LX 70 ERW
MAOP	6,890kPa (gauge)

<b>HAMERSLEY IRON</b>	
Length Nominal size Wall	0.5km 200mm
Thickness Steel	6.4mm
Type MAOP	API 5LX 52 ERW
	8,480kPa (gauge)

<b>GGT INTERCONNECT</b>	
Length Nominal size Wall	1.48km 300mm
Thickness Steel	9.5mm
Type MAOP	API 5LX42
	10,200kPa (gauge)

<b>CARNARVON</b>	
Length Nominal size Wall	163.7km 150mm
Thickness Steel	4.8mm
Type MAOP	API 5LX 42 ERW
	8,480kPa (gauge)
	7.4km 150mm
	6.4mm
	API Grade B ERW
	1,900kPa (gauge)

<b>MUNGARRA</b>	
Length Nominal size Wall	2.5km 150mm
Thickness Steel	6.4mm
Type MAOP	API 5L Grade B ERW
	8,480kPa (gauge)

<b>PINJAR</b>	
Length Nominal size Wall	14.2km 350mm
Thickness Steel	7.1mm
Type MAOP	API 5LX 52 ERW
	8,480kPa (gauge)

**TABLE 5**  
**GAS TRANSMISSION SYSTEM LATERALS (CONTINUED)**

<b>RUSSELL ROAD</b>			
Length Nominal size Wall	7.3km 300mm		
<b>KWINANA WEST</b>			
Thickness Steel	9.5mm		
Type MAOP	API 5LX 46 ERW		
	6,890kPa (gauge)		
<b>ROCKINGHAM</b>			
Length Nominal size Wall	2.0km 500mm	2.8km 350mm	1.5km 200mm
Thickness Steel	7.9mm	9.5mm	8.7mm
Type MAOP	API 5LX 65DSAW	API 5LX 52 ERW	API Grade B ERW
	6,890kPa (gauge)	6,890kPa (gauge)	6,890kPa (gauge)
<b>KNC/BP (Part of Rockingham Lateral Located Downstream of Mason Road Outlet Station)</b>			
Length Nominal size Wall	3.2km 300mm	2.6km 150mm	
Thickness Steel	9.5mm	6.4mm	
Type MAOP	API 5LX 46 ERW	API 5L Grade B ERW	
	6,890kPa (gauge)	6,890kPa (gauge)	
<b>COGEN (Part of Rockingham Lateral Located Downstream of Cogen Outlet Station)</b>			
Length Nominal size Wall	0.9km 200mm		
Thickness Steel	8.2mm		
Type MAOP	API 5LX 42 ERW		
	6,890kPa (gauge)		
<b>TIWEST COGENERATION LATERAL (Part of Rockingham Lateral)</b>			
Length Nominal size Wall	0.58km 150mm		
Thickness Steel	7.1mm		
Type MAOP	API 5LX 42 ERW		
	6,890kPa (gauge)		

**TABLE 5**  
**GAS TRANSMISSION SYSTEM LATERALS (CONTINUED)**

<b>ALCOA PINJARRA</b>		
Length Nominal size Wall	2.5km 300mm	2.9km 300mm
<b>ALCOA WAGERUP</b>		
Thickness Steel	7.1mm	9.5mm
Type MAOP	API 5L Grade B ERW 6,890kPa (gauge)	API 5LX 52 ERW 6,890kPa (gauge)
<b>WORSLEY</b>		
Length Nominal size Wall	8.0km 350mm	1.5km 350mm
Thickness Steel	7.1mm	9.5mm
Type MAOP	API 5L Grade B ERW 6,890kPa (gauge)	API 5LX 42 ERW 6,890kPa (gauge)
<b>SOUTH WEST COGENERATION LATERAL</b>		
Length Nominal size Wall	32.9km 250mm	
Thickness Steel	4.8mm	
Type MAOP	API 5LX 52 ERW 6,890kPa (gauge)	
<b>KEMERTON POWER STATION LATERAL</b>		
Length Nominal size Wall	32.9km 450mm	
Thickness Steel	6.35mm	
Type MAOP	API 5LX 60 ERW 8,280kPa (gauge)	

**TABLE 6**  
**STAGE 4, 5A AND 5B LOOPING SECTIONS**

<b>LOOP 0 (DOWNSTREAM OF MLV 7)</b>	
Length Nominal size Wall	115.08km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 1 (DOWNSTREAM OF CS1)</b>	
Length Nominal size Wall	116.91km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 2 (DOWNSTREAM OF CS2)</b>	
Length Nominal size Wall	120.43km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 3 (DOWNSTREAM OF CS3)</b>	
Length Nominal size Wall	118.35km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 4 (DOWNSTREAM OF CS4)</b>	
Length Nominal size Wall	118.96km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 5 (DOWNSTREAM OF CS5)</b>	
Length Nominal size Wall	118.03km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 6 (DOWNSTREAM OF CS6)</b>	
Length Nominal size Wall	115.22km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag

<b>LOOP 7 (DOWNSTREAM OF CS7)</b>	
Length Nominal size Wall	110.13km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 8 (DOWNSTREAM OF CS8)</b>	
Length Nominal size Wall	123.20km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 9 (DOWNSTREAM OF CS9)</b>	
Length Nominal size Wall	90.505km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag
<b>LOOP 10 (DOWNSTREAM OF CS10)</b>	
Length Nominal size Wall	70.96km 660mm
Thickness Steel	8.74mm
Type MAOP	API 5LX 70 ERW Current Operating 8,480kPag, Design 10,200kPag

## Compressor Stations

Ten compressor station sites are spaced at intervals of about 140km along the main line. Gas turbine driven centrifugal compressors at eight of these stations are used to maintain pipeline pressure to meet natural gas demand in the Perth metropolitan area and at the inlet to Wesfarmers LPG Plant.

A summary of compression plant is presented in Table 7.

**TABLE 7**  
**COMPRESSOR STATIONS**

COMPRESSOR STATION	DISTANCE FROM DAMPIER (KM)	GAS TURBINE DRIVER
1	137.2	Unit 1 Solar Mars 15000hp (10MW) Unit 2 Solar Mars 15000hp (10MW)
2	272.1	Unit 1 General Electric LM500 (4MW) Unit 2 Solar Mars 15000hp (10MW) Unit 3 Solar Mars 15000hp (10MW)
3	409.3	Unit 1 Solar Mars 15000hp (10MW) Unit 2 General Electric Model LM500 (4MW) Unit 3 Solar Mars 15000hp (10MW)
4	546.9	Unit 1 General Electric LM500 (4MW) Unit 2 Solar Mars 15000hp (10MW) Unit 3 Solar Mars 15000hp (10MW)
5	684.8	Unit 1 Solar Mars 15000hp (10MW) Unit 2 Solar Mars 15000hp (10MW)
6	824.9	Unit 1 General Electric Model LM500 (4MW) Unit 2 Nuovo Pignone PGT10 (10MW) Unit 3 Solar Mars 15000hp (10MW)
7	966.6	Unit 1 General Electric LM500 (4MW) Unit 2 Solar Mars 15000hp (10MW) Unit 3 Solar Mars 15000hp (10MW)
8	1114.1	Unit 1 Solar Mars 15000hp (10MW) Unit 2 Solar Mars 15000hp (10MW)
9	1256.8	Unit 1 Nuovo Pignone PGT10 (10MW) Unit 2 Solar Mars 15000hp (10MW)
10	1402.3	Unit 1 Solar Centaur 4000hp (3.0MW) Unit 2 Solar Centaur 4000hp (3.0MW) Unit 3 Solar Taurus 10000hp (7MW) Unit 4 Solar Taurus 10000hp (7MW)

### **Aftercoolers**

Aftercoolers are installed immediately downstream of the Domgas Dampier Plant inlet point, and immediately downstream of CS1 to CS10 compressor stations. The aftercoolers have been designed to control the downstream gas temperature below 45°C.

## **Outlet and Inlet Stations**

DBP owns and operates outlet stations on the Dampier to Bunbury Natural Gas Pipeline.

“Outlet station” means *either a gate station or the metering equipment site associated with a transmission outlet point, and includes all facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services.*

Inlet stations are located upstream of the inlet points to the gas transmission system and are owned and operated by parties other than DBP.

## **SCADA System**

The SCADA system is a micro-computer facility located at the control centre. The master station is a network of nineteen stations interconnected by a local area network, and consists of four operator stations, two logging stations, seven communication stations, three remote stations and three remote operator stations. Over one hundred Field Remote Terminal Units (RTUs) are polled by the communication stations for data and respond to commands from the master station.

The communication link to stations north of Perth is a microwave system. There are microwave antennas and repeater stations at main line valve stations and at compressor stations. SCADA communications south of Perth make use of a UHF radio system.

## **Odorising**

Gas in the main pipeline between Dampier and the Wesfarmers LPG plant at Kwinana is not odourised. Upstream of Kwinana Junction, gas is odourised at outlet stations with the exception of those stations serving the Port Hedland Pipeline and the Geraldton area. Gas into the Geraldton area is odourised at the Nangetty Road outlet station. Downstream from Kwinana Junction, gas is odourised in accordance with the *Gas Standards Act* sufficient for commercial/industrial use. The level of odourant is increased at outlet stations delivering gas into the distribution system and at Clifton Road outlet station.

## Appendix 2 – Required revisions to the access arrangement information

# Access Arrangement Information for the Dampier to Bunbury Natural Gas Pipeline

Revised by reason of and pursuant to orders of the Australian Competition Tribunal made on 26 July 2012

5 October 2012

**Economic Regulation Authority**  
WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority website at  
[www.erawa.com.au](http://www.erawa.com.au).

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## Contents

<b>Access Arrangement Information</b>	<b>1</b>
Introduction (section 1)	1
Basis on which financial information is provided (section 2)	1
Capital expenditure over the 2005 to 2010 access arrangement period (section 3)	1
Operating expenditure over the 2005 to 2010 access arrangement period (section 4)	2
Pipeline utilisation over the 2005 to 2010 access arrangement period (section 5)	2
Capital Base for the 2005 to 2010 access arrangement period (section 6)	4
Projected Capital Base for the 2011 to 2015 access arrangement period (section 7)	8
Forecast pipeline utilisation over the 2011 to 2015 access arrangement period (section 8)	14
Forecast operating expenditure (section 9)	14
Key Performance Indicators (section 10)	15
Rate of return (section 11)	15
Taxation (section 12)	17
Incentive Mechanism (section 13)	17
Tariff setting approach (section 14)	17
Reference tariff variation mechanism rationale (section 15)	19
Un-used section (section 16)	21
Total Revenue (section 17)	21
Interpretation (section 18)	22

## List of Tables

Table 1	Actual (2005 to 2010) and forecast (2011 to 2015) December values of the Consumer Price Index (All groups, Weighted Average of Eight Capital Cities) and implied inflation rates.	1
Table 2	Conforming capital expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)	2
Table 3	Operating expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)	2
Table 4	Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Full Haul Pipeline Service inlet and outlet points	3
Table 5	Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Part Haul Pipeline Service inlet and outlet points	3
Table 6	Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Back Haul Pipeline Service inlet and outlet points	3
Table 7	Shipper number for each inlet and outlet point	3
Table 8	Calculation of the opening capital base for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	6
Table 9	Conforming capital expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)	7
Table 10	Capital contributions in the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)	7
Table 11	Depreciation allowances for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)	7
Table 12	Value of asset disposals in the 2005 to 2010 access arrangement period (real \$million at 31 December 2010)	8
Table 13	Forecast conforming capital expenditure for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	10
Table 14	Asset lives applied in calculation of depreciation allowances	12
Table 15	Values of depreciation allowances for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	12
Table 16	Projected capital base for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	13
Table 17	Forecast of pipeline capacity	14
Table 18	Forecast of pipeline capacity	14
Table 19	Forecast of operating expenditure for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	15
Table 20	Parameter values applied in determination of the rate of return	16
Table 21	Total revenue for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)	22

# Access Arrangement Information

## Introduction (section 1)

### 1. INTRODUCTION

- 1.1. This document comprises the Access Arrangement Information (**AAI**) for the revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline proposed and given effect from 1 January 2012 by the Economic Regulation Authority (the Authority) pursuant to rule 64 of the National Gas Rules 2009 (**NGR**).

## Basis on which financial information is provided (section 2)

### 2. BASIS ON WHICH FINANCIAL INFORMATION IS PROVIDED

- 2.1. Unless otherwise stated, financial information in this AAI is provided on a calendar year basis and in real terms with values expressed at dollar values of 31 December 2010.
- 2.2. Where necessary to express financial values in dollar values of 31 December 2010, the financial values have been escalated at the rate of inflation as measured by the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) as published by the Australian Bureau of Statistics (**CPI**), or de-escalated at a forecast rate of inflation. Actual and forecast values of the CPI and year on year percentage changes are as shown in Table 1.

**Table 1      Actual (2005 to 2010) and forecast (2011 to 2015) December values of the Consumer Price Index (All groups, Weighted Average of Eight Capital Cities) and implied inflation rates.**

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CPI	150.6	155.5	160.1	166.0	169.5	174.0	178.8	183.7	188.8	193.9	199.3
Infl.	2.80%	3.25%	2.96%	3.69%	2.11%	2.65%	2.75%	2.75%	2.75%	2.75%	2.75%

## Capital expenditure over the 2005 to 2010 access arrangement period (section 3)

### 3. CAPITAL EXPENDITURE OVER THE PRIOR ACCESS ARRANGEMENT PERIOD

- 3.1. Conforming Capital Expenditure (by asset class) made during the Prior Access Arrangement Period is shown in Table 2.

**Table 2 Conforming capital expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Pipeline	8.589	257.230	1.246	517.327	-	489.960	1,274.351
Compression	47.620	171.988	0.148	132.939	-	52.261	404.956
Metering	-	-	-	-	0.078	4.756	4.834
Other depreciable	4.067	0.879	2.336	<u>3.650</u> <u>5.905</u>	<u>-1.696</u> <u>0.559</u>	<u>73.060</u> <u>71.224</u>	<u>82.296</u> <u>84.970</u>
Other non-depreciable	-	-0.134	1.950	1.484	0.679	0.666	4.645
<b>Total</b>	<b>60.277</b>	<b>429.962</b>	<b>5.680</b>	<b>655.399 657.654</b>	<b>-0.939 1.316</b>	<b>620.703 618.866</b>	<b>1,771.082 1,773.755</b>

## Operating expenditure over the 2005 to 2010 access arrangement period (section 4)

### 4. OPERATING EXPENDITURE OVER THE PRIOR ACCESS ARRANGEMENT PERIOD

4.1. Operating Expenditure for the Prior Access Arrangement Period is shown in Table 3.

**Table 3 Operating expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Costs other than fuel gas	43.248	44.227	46.397	59.455	82.189	55.158	330.674
Fuel gas	27.870	23.985	33.249	15.877	19.119	12.552	132.653
<b>Total</b>	<b>71.118</b>	<b>68.212</b>	<b>79.647</b>	<b>75.332</b>	<b>101.308</b>	<b>67.710</b>	<b>463.327</b>

## Pipeline utilisation over the 2005 to 2010 access arrangement period (section 5)

### 5. PIPELINE UTILISATION OVER THE PRIOR ACCESS ARRANGEMENT PERIOD

5.1. Outlined below are the total minimum, maximum and average demand for inlet and outlet points used for the following Pipeline Services:

- (a) Full Haul Services (see Table 4)
- (b) Part Haul (Forward Haul) Services (see Table 5)
- (c) Back Haul Services (see Table 6)

**Table 4 Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Full Haul Pipeline Service inlet and outlet points**

Year	2005 – 2010
Minimum quantity	560.37
Maximum quantity	894.03
Average quantity	627.04

**Table 5 Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Part Haul Pipeline Service inlet and outlet points**

Year	2005 – 2010
Minimum quantity	52.27
Maximum quantity	137.24
Average quantity	77.23

**Table 6 Min, Max and Average demand over the Prior Access Arrangement Period (TJ/d) for Back Haul Pipeline Service inlet and outlet points**

Year	2005 – 2010
Minimum quantity	0
Maximum quantity	136.67
Average quantity	93.80

5.2 The information contained in the above tables is aggregated information. It is aggregated because, pursuant to Rule 43(2) of the NGR, it contains elements of information which are sensitive information, the public disclosure of which could cause undue harm to the legitimate business interests of the service provider, a Shipper or a Prospective Shipper.

5.3. Table 7 contains details of:

- (a) The number of Shippers for each Inlet Point;
- (b) The number of Shippers for all Outlet Points (in aggregate form) downstream of Compressor Station 9; and
- (c) The number of Shippers for all Outlet Points (in aggregate form) to which Part Haul Services are provided.

**Table 7 Shipper number for each inlet and outlet point**

Year	Number of customers
<b>Inlet (Receipt point)</b>	
DOMGAS Dampier Receipt	19
Griffin	1
Harriet Group Receipt	16
MLV7 Interconnect	7
<b>Outlet (Delivery point)</b>	

Full Haul Outlet Points	14
Part Haul Outlet Points	9
Back Haul Outlet Points	6

- 5.4. The information contained in the above table for Outlet Points is aggregated information. It is aggregated because, pursuant to Rule 43(2) of the NGR, it contains elements of information which are sensitive information, the public disclosure of which could cause undue harm to the legitimate business interests of the service provider, a Shipper or a Prospective Shipper.

## Capital Base for the 2005 to 2010 access arrangement period (section 6)

### 6. OPENING CAPITAL BASE FOR THE 2011 to 2015 PERIOD

#### *Calculation of Opening Capital Base for the 2011 to 2015 Access Arrangement Period*

- 6.1. In accordance with Rule 77(2) the Opening Capital Base for the 2011 to 2015 Access Arrangement Period (i.e. the closing Capital Base as at 31 December 2010 or opening Capital Base 1 January 2011) has been determined by the following formula:
- (a) The Opening Capital Base as at the commencement of the Prior Access Arrangement Period (adjusted, if at all, for the difference between estimated and actual Capital Expenditure made in the access arrangement period that preceded the Prior Access Arrangement Period and included in that Opening Capital Base) (the amount is in Table 8);
- plus:
- (b) Conforming Capital Expenditure made, or to be made, during the Prior Access Arrangement Period (the amounts are in Table 9); and
  - (c) Capital Contributions by Shippers added to the Capital Base under rule 82(3) of the NGR (the amounts are in Table 10);
- less:
- (d) Depreciation over the Prior Access Arrangement Period (Depreciation is set out in Table 11); and
  - (e) The value of pipeline assets disposed of during the Prior Access Arrangement Period.
- 6.2. The Opening Capital Base at the commencement of the Prior Access Arrangement Period (**PAAP Opening Capital Base**) did not need amending for any expenditure incurred during the access arrangement period that preceded the Prior Access Arrangement Period because the PAAP Opening Capital Base was determined using only actual capital expenditure during that period (as opposed to forecast capital expenditure).
- 6.3. The Opening Capital Base for the 2011 to 2015 Access Arrangement Period has not been amended for any amounts in any of the following categories because there are

no amounts during the Prior Access Arrangement Period that fall within these categories:

- (a) Amounts to be added to the Capital Base under rule 84 of the NGR.
  - (b) Amounts to be added to the Capital Base under rule 86 of the NGR.
  - (c) Amounts to be subtracted from the Opening Capital Base, being for redundant assets identified during the course of the Prior Access Arrangement Period.
- 6.4. The Opening Capital Base as at the commencement of the Prior Access Arrangement Period (i.e. 31 December 2004) was \$1,922.162 million (real dollar values as at 31 December 2010).
- 6.5. The following Table 8 demonstrates how the Capital Base during the Prior Access Arrangement Period changed and how the Opening Capital Base for the Access Arrangement Period is calculated.

**Table 8 Calculation of the opening capital base for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)**

Year ending 31 December	2005	2006	2007	2008	2009	2010
<b>Total Capital Base</b>						
Capital Base at 1 January	1,922.162	1,925.979	2,317.192	2,275.456	<u>2,867.059</u> <u>2,869.314</u>	<u>2,794.740</u> <u>2,799.250</u>
<i>plus</i>						
Conforming Capital Expenditure	60.277	429.962	5.680	<u>655.399</u> <u>657.654</u>	<u>-0.939</u> <u>1.316</u>	<u>620.703</u> <u>618.866</u>
Forecast Capital Contributions	2.995	14.081	8.425	1.060	-	-
Correction for over-depreciation	-	-	-	-	-	<u>32.669</u> <u>30.715</u>
<i>less</i>						
Redundant and disposed assets	6.964	-	0.035	0.026	0.085	0.011
Depreciation	52.490	52.830	55.806	64.830	71.295	72.987
<b>Capital base at 31 December</b>	<b>1,925.979</b>	<b>2,317.192</b>	<b>2,275.456</b>	<b><u>2,867.059</u> <u>2,869.314</u></b>	<b><u>2,794.740</u> <u>2,799.250</u></b>	<b><u>3,375.114</u> <u>3,375.833</u></b>
<b>DBNGP assets</b>						
Capital Base at 1 January	1,922.162	1,922.984	2,300.117	2,249.956	<u>2,840.498</u> <u>2,842.753</u>	<u>2,768.179</u> <u>2,772.690</u>
<i>plus</i>						
Conforming Capital Expenditure	60.277	429.962	5.680	<u>655.399</u> <u>657.654</u>	<u>-0.939</u> <u>1.316</u>	<u>620.703</u> <u>618.866</u>
Correction for over-depreciation	-	-	-	-	-	<u>32.669</u> <u>30.715</u>
<i>less</i>						
Redundant and disposed assets	6.964	-	0.035	0.026	0.085	0.011
Depreciation	52.490	52.830	55.806	64.830	71.295	72.987
<b>Capital base at 31 December</b>	<b>1,922.984</b>	<b>2,300.117</b>	<b>2,249.956</b>	<b><u>2,840.498</u> <u>2,842.753</u></b>	<b><u>2,768.179</u> <u>2,772.690</u></b>	<b><u>3,348.553</u> <u>3,349.273</u></b>
<b>Shipper-funded assets</b>						
Capital Base at 1 January	-	2.995	17.076	25.501	26.560	26.560
<i>plus</i>						
Capital contribution	2.995	14.081	8.425	1.060	-	-
Correction for over-depreciation	-	-	-	-	-	-
<i>less</i>						
Redundant and disposed assets	-	-	-	-	-	-
Depreciation	-	-	-	-	-	-

<b>Capital base at 31 December</b>	<b>2.995</b>	<b>17.076</b>	<b>25.501</b>	<b>26.560</b>	<b>26.560</b>	<b>26.560</b>
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6.6. The amounts for each of the line items in Table 8 are broken down in the following tables:

**Table 9 Conforming capital expenditure for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Pipeline	8.589	257.230	1.246	517.327	-	489.960	1,274.351
Compression	47.620	171.988	0.148	132.939	-	52.261	404.956
Metering	-	-	-	-	0.078	4.756	4.834
Other depreciable	4.067	0.879	2.336	<u>5.905</u> <u>3.650</u>	<u>-0.559</u> <u>1.696</u>	<u>71.224</u> <u>73.060</u>	<u>84.970</u> <u>82.296</u>
Other non-depreciable	-	-0.134	1.950	1.484	0.679	0.666	4.645
<b>Total</b>	<b>60.277</b>	<b>429.962</b>	<b>5.680</b>	<b><u>657.654</u> <u>655.399</u></b>	<b><u>-1.316</u> <u>0.939</u></b>	<b><u>618.866</u> <u>620.703</u></b>	<b><u>1773.755</u> <u>1,771.082</u></b>

**Table 10 Capital contributions in the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Pipeline	0.749	5.085	-	-	-	-	5.835
Compression	-	-	5.508	-	-	-	5.508
Metering	2.113	8.996	2.914	1.014	-	-	15.307
Other depreciable	0.133	-	0.003	0.045	-	-	0.181
Other non-depreciable	-	-	-	-	-	-	-
<b>Total</b>	<b>2.995</b>	<b>14.081</b>	<b>8.425</b>	<b>1.060</b>	<b>-</b>	<b>-</b>	<b>25.560</b>

#### ***Depreciation Schedule for the Prior Access Arrangement Period***

6.7. The depreciation schedule setting out the basis on which the pipeline assets constituting the capital base during the Prior Access Arrangement Period are depreciated is in Table 11.

**Table 11 Depreciation allowances for the 2005 to 2010 access arrangement period (real \$ million at 31 December 2010)**

<b>Year ending 31 December</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Pipelines	32.535	32.611	32.709	37.022	41.671	43.089	219.636
Compression	14.894	14.972	17.695	22.339	23.939	23.955	117.795

Metering	0.708	0.734	0.764	0.767	0.767	0.767	<b>4.507</b>
Other depreciable	4.354	4.512	4.638	4.701	4.918	5.176	<b>28.300</b>
Non depreciable	-	-	-	-	-	-	-
<b>Total</b>	<b>52.490</b>	<b>52.830</b>	<b>55.806</b>	<b>64.830</b>	<b>71.295</b>	<b>72.987</b>	<b>370.238</b>

***Disposal of Assets during the Prior Access Arrangement Period***

- 6.8. The value of pipeline assets disposed of during the Prior Access Arrangement Period and relevant categories of assets that these disposals relate to are in Table 12.
- 6.9. The revised access arrangement proposal should be amended so that the calculation of total revenue and reference tariffs reflects a treatment of asset disposals that comprises:
- (a) adjustment of the capital base by deduction (as “accelerated depreciation”) of the value of the disposed-of assets from the relevant asset classes in the asset account of the initial capital base; and
  - (b) addition of the amount of accelerated depreciation to total revenue to compensate for the reduction in the capital base.

**Table 12      Value of asset disposals in the 2005 to 2010 access arrangement period (real \$million at 31 December 2010)**

<b>Year ending 31 December</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Pipelines	-	-	-	-	-	-	-
Compressors	4.465	-	-	-	-	-	<b>4.465</b>
Meters	-	-	-	-	-	-	-
Other depreciable	0.080	-	0.035	0.026	0.085	0.011	<b>0.237</b>
Non depreciable	2.420	-	-	-	-	-	<b>2.420</b>
<b>Total</b>	<b>6.964</b>	-	<b>0.035</b>	<b>0.026</b>	<b>0.085</b>	<b>0.011</b>	<b>7.122</b>

## **Projected Capital Base for the 2011 to 2015 access arrangement period (section 7)**

### **7.     PROJECTED CAPITAL BASE**

- 7.1. The Projected Capital Base for the Access Arrangement Period is calculated, in accordance with rule 78 of the NGR, by way of the following formula:
- (a) the Opening Capital Base for the Access Arrangement Period;

plus

- (b) forecast conforming capital expenditure for the Access Arrangement Period (including forecast capital expenditure to which Shippers are expected to have contributed) – Table 13 summarises this forecast expenditure;

less

- (c) forecast of depreciation for the Access Arrangement Period.

- 7.2. There is no forecast value of pipeline assets to be disposed of during the Access Arrangement Period.
- 7.3. Applying the formula in clause 7.1 above, the Projected Capital Base for each year of the Access Arrangement Period is outlined in Table 16.
- 7.4. The derivation of the values for each element of the formula in clause 7.1 for establishing the Projected Capital Base is explained in the remainder of this section of the AAI.

***Forecast Conforming Capital Expenditure 2011 to 2015***

- 7.5. Forecast conforming capital expenditure for the Access Arrangement Period is summarized in Table 13.

**Table 13 Forecast conforming capital expenditure for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)**

<b>Year ending 31 December</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Total</b>
<b>Expansion</b>						
Pipelines	13.476	-	-	-	-	<b>13.476</b>
Compression	27.219	-	-	-	-	<b>27.219</b>
Metering	0.141	-	-	-	-	<b>0.141</b>
Other depreciable assets	45.174	-	-	-	-	<b>45.174</b>
BEP Capacity	<u>18.858</u> 17.840	-	-	-	-	<u>18.858</u> <b>17.840</b>
Non-depreciable assets	-	-	-	-	-	-
<b>Sub-total</b>	<b><u>104.868</u></b> <b>103.689</b>	-	-	-	-	<b><u>104.868</u></b> <b>103.689</b>
<b>Stay-in-business</b>						
Pipelines	7.903	3.850	4.155	0.515	0.715	<b>17.138</b>
Compression	8.582	6.565	2.052	2.792	5.982	<b>25.972</b>
Metering	0.409	0.485	2.655	2.655	0.155	<b>6.359</b>
Other depreciable assets	<u>33.493</u> 32.985	2.490	1.900	4.500	3.900	<u>46.283</u> <b>45.775</b>
BEP Capacity	-	-	-	-	-	-
Non-depreciable assets	-	-	-	-	-	-
<b>Sub-total</b>	<b><u>50.386</u></b> <b>49.879</b>	<b>13.390</b>	<b>10.762</b>	<b>10.462</b>	<b>10.752</b>	<b><u>95.245</u></b> <b>95.752</b>
<b>Shipper funded assets</b>						
Pipelines	15.166	-	-	-	-	<b>15.166</b>
Compression	2.683	-	-	-	-	<b>2.683</b>
Metering	3.713	2.718	1.473	-	-	<b>7.905</b>
Other depreciable assets	-	-	-	-	-	-
BEP Capacity	-	-	-	-	-	-
Non-depreciable assets	-	-	-	-	-	-
<b>Sub-total</b>	<b>21.562</b>	<b>2.718</b>	<b>1.473</b>	-	-	<b>25.754</b>
<b>Total</b>						
Pipelines	<u>36.546</u> 59.663	3.850	4.155	0.515	0.715	<u>45.781</u> <b>68.898</b>
Compression	38.484	6.565	2.052	2.792	5.982	<b>55.875</b>
Metering	4.262	3.204	4.128	2.655	0.155	<b>14.404</b>
Other depreciable assets	<u>78.666</u> 55.042	2.490	1.900	4.500	3.900	<u>91.456</u> <b>67.832</b>
BEP Capacity	<u>18.858</u> 17.679	-	-	-	-	<u>18.858</u> <b>17.679</b>
Non-depreciable assets	-	-	-	-	-	-
<b>Total</b>	<b><u>176.816</u></b> <b>175.290</b>	<b>16.108</b>	<b>12.235</b>	<b>10.462</b>	<b>10.752</b>	<b><u>226.374</u></b> <b>224.848</b>

***Forecast Depreciation Schedule - 2011 to 2015***

- 7.7. A separate depreciation schedule has been determined for each of the 4 classes of physical assets that form the DBNGP, these 4 asset classes are:
- (a) pipeline assets;
  - (b) compressor station assets;
  - (c) metering assets; and
  - (d) other assets.
- 7.8. The depreciation schedule has been designed:
- (a) so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services;
  - (b) so that each asset or group of assets is depreciated over the economic life of that asset or group of assets;
  - (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset, or a particular group of assets;
  - (d) so that (subject to the rules about capital redundancy), an asset is depreciated only once (i.e. that the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted for inflation)); and
  - (e) so as to allow for the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.
- 7.9. For the assets in each of the 4 asset classes, depreciation has been determined using the straight-line method with the life of assets in each class as shown in Table 14.
- 7.10. The depreciation on each class of assets for the period 1999 to 2004 was the depreciation used in the determination of the reference tariff applicable during that period. Similarly, the depreciation on each class of assets for the period 2005 to 2010 was the depreciation used in the determination of the reference tariff applicable during that period.
- 7.11. The depreciation, for the Access Arrangement on the initial Capital Base as at 1 January 2000 and on Conforming Capital Expenditure made from 2000 to 2004, is determined using the straight line method with the following assumptions as to asset lives:
- (a) In the case of the initial Capital Base as at 1 January 2000 – using the remaining asset lives for the four asset classes as follows:
    - (i) Pipeline assets – 54.50 years;
    - (ii) Compression assets – 19.34 years;
    - (iii) Meter station assets – 39.98 years;
    - (iv) Other assets – 16.85 years; and

- (b) In the case of Conforming Capital Expenditure made from 2000 to 2004 – using lives in each class of asset as shown in Table 14.
- 7.12. The depreciation, for the Access Arrangement Period, on Conforming Capital Expenditure made in 2005 to 2010 has been determined using the straight line method with the lives in each class of asset as shown in Table 14.
- 7.13. The depreciation for the Access Arrangement Period on forecast Conforming Capital Expenditure for that period has been determined using the straight line method with the lives in each class of asset shown in Table 14.

**Table 14 Asset lives applied in calculation of depreciation allowances**

Asset	Asset Life (years)
Pipeline assets	70
Compression assets	30
Metering assets	50
Other depreciable assets	30
BEP Capacity asset	57

- 7.14 Table 15 shows the depreciation schedule for each class of assets comprising the Capital Base. It sets out the basis on which the pipeline assets constituting the capital base are to be depreciated for the purpose of determining the Reference Tariff.

**Table 15 Values of depreciation allowances for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)**

Year ending 31 December	2011	2012	2013	2014	2015	Total
Pipelines	51.113	51.635	51.690	51.749	51.756	<b>257.942</b>
Compression	29.101	30.384	30.603	30.671	30.764	<b>151.522</b>
Metering	1.133	1.219	1.283	1.365	1.418	<b>6.419</b>
Other depreciable	<u>7.068</u> <u>7.038</u>	<u>9.690</u> 9.644	<u>9.773</u> 9.727	<u>9.837</u> 9.790	<u>9.987</u> 9.940	<b>46.355</b> <b>46.139</b>
BEP Capacity	-	<u>0.331</u> 0.313	<u>0.331</u> 0.313	<u>0.331</u> 0.313	<u>0.331</u> 0.313	<b>1.323</b> <b>1.252</b>
Non depreciable	-	-	-	-	-	-
<b>Total</b>	<b>88.415</b> <b>88.385</b>	<b>93.258</b> <b>93.194</b>	<b>93.679</b> <b>93.615</b>	<b>93.953</b> <b>93.888</b>	<b>94.256</b> <b>94.192</b>	<b>463.561</b> <b>463.273</b>

**Projected Capital Base Calculation**

- 7.15. Table 16 is the application of the formula for the establishment of the Projected Capital Base for each year of the Access Arrangement Period, as outlined in section 7.1.

**Table 16 Projected capital base for the 2011 to 2015 access arrangement period  
(real \$ million at 31 December 2010)**

Year	2011	2012	2013	2014	2015
<b><u>Total capital base</u></b>					
Capital Base at 1 January	3,375.114 <u>3,375.833</u>	-3,462.019 <u>3,464.234</u>	-3,384.933 <u>3,387.085</u>	-3,303.554 <u>3,305.641</u>	3,220.128 <u>3,222.150</u>
<i>plus</i>					
Forecast Conforming Capital Expenditure	153.728 <u>154.254</u>	13.390	10.762	10.462	10.752
Forecast Capital Contributions	21.562	2.718	1.473	-	-
<i>less</i>					
Redundant and disposed assets	-	-	-	-	-
Depreciation	88.385 <u>88.415</u>	93.194 <u>93.258</u>	93.615 <u>93.679</u>	93.888 <u>93.953</u>	94.192 <u>94.256</u>
<b>Capital Base at 31 December</b>	<b>3,462.019 <u>3,464.234</u></b>	<b>3,384.933 <u>3,387.085</u></b>	<b>3,303.554 <u>3,305.641</u></b>	<b>3,220.128 <u>3,222.150</u></b>	<b>3,136.688 <u>3,138.646</u></b>
<b><u>DBNGP assets</u></b>					
Capital Base at 1 January	3,348.553 <u>3,349.273</u>	-3,414.524 <u>3,416.737</u>	-3,335.723 <u>3,337.874</u>	-3,253.931 <u>3,256.017</u>	3,171.594 <u>3,173.616</u>
<i>plus</i>					
Conforming Capital Expenditure	153.728 <u>155.254</u>	13.390	10.762	10.462	10.752
<i>less</i>					
Redundant and disposed assets	-	-	-	-	-
Depreciation	87.760 <u>87.790</u>	92.188 <u>92.253</u>	92.555 <u>92.619</u>	92.799 <u>92.863</u>	93.102 <u>93.167</u>
<b>Capital base at 31 December</b>	<b>3,414.521 <u>3,416.737</u></b>	<b>3,335.723 <u>3,337.874</u></b>	<b>3,253.931 <u>3,256.017</u></b>	<b>3,171.594 <u>3,173.616</u></b>	<b>3,089.243 <u>3,091.201</u></b>
<b><u>Shipper-funded assets</u></b>					
Capital Base at 1 January	26.560	47.498	49.210	49.624	48.534
<i>plus</i>					
Forecast Capital Contributions	21.562	2.718	1.473	-	-
<i>less</i>					
Redundant and disposed assets	-	-	-	-	-
Depreciation	0.625	1.006	1.060	1.089	1.089
<b>Capital base at 31 December</b>	<b>47.498</b>	<b>49.210</b>	<b>49.624</b>	<b>48.534</b>	<b>47.445</b>

## Forecast pipeline utilisation over the 2011 to 2015 access arrangement period (section 8)

### 8. FORECAST PIPELINE CAPACITY AND UTILISATION

- 8.1. Table 17 details the forecast of the Pipeline Capacity over the 2011 to 2015 Access Arrangement Period.

**Table 17 Forecast of pipeline capacity**

Year	2011	2012	2013	2014	2015
<i>Full haul</i>					
Pipeline capacity (TJ/day)	869	888	888	888	888

- 8.2. Table 18 outlines the forecast of the Capacity of the DBNGP that remains contracted for certain pipeline services during the 2011 to 2015 Access Arrangement Period, and forecasts of the volumes of Contracted Capacity expected by the Operator to be used by Shippers of these pipeline services.

**Table 18 Forecast of pipeline capacity**

Year	2011	2012	2013	2014	2015
<i>Full haul</i>					
Contracted capacity (TJ/day)	851.3	860.3	860.3	860.3	860.3
Throughput (TJ/day)	703.1	718.8	719.7	725.8	732.5
<i>Part haul (forward haul)</i>					
Contracted capacity (TJ/day)	215.4	215.4	215.4	215.4	215.4
Throughput (TJ/day)	191.5	189.7	189.7	189.7	189.7
<i>Part haul (backward haul)</i>					
Contracted capacity (TJ/day)	130.0	130.0	130.0	130.0	130.0
Throughput (TJ/day)	112.3	112.3	112.3	112.3	112.3

## Forecast operating expenditure (section 9)

### 9. FORECAST OPERATING EXPENDITURE

- 9.1. Forecast operating expenditure over the Access Arrangement Period is shown in Table 19.

**Table 19 Forecast of operating expenditure for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)**

<b>Year ending 31 December</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Total</b>
Fuel gas	20.385	21.538	21.446	21.842	22.285	<b>107.496</b>
Costs other than fuel gas	73.008	78.231	83.495	85.562	86.676	<b>406.971</b>
<b>Total</b>	<b>93.393</b>	<b>99.769</b>	<b>104.940</b>	<b>107.404</b>	<b>108.961</b>	<b>514.467</b>

## Key Performance Indicators (section 10)

### 10. KEY PERFORMANCE INDICATORS

- 10.1. One key performance indicator supports the expenditure to be incurred during the Access Arrangement Period. That indicator is to compare the forecast operating expenditure for each year against the actual forecast operating expenditure (except for the expenditure items listed below) for that same year of the Access Arrangement Period:
- (a) forecast expenditure for System Use Gas; and
  - (b) forecast expenditure for government imposts.
- 10.2. The reasons for why it is relevant to include this KPI as stated in clause 10.2 are:
- (a) the firm full haul capacity of the DBNGP is fully contracted for the Access Arrangement Period under Access Contracts for non reference services;
  - (b) the tariffs payable under these non reference service Access Contracts are structured in such a way that the Operator is incentivised to reduce its operating expenditure to the lowest sustainable costs;
  - (c) the non reference services are structured in a way that the Operator has limited control of the throughput on the DBNGP and therefore, expenditure for System Use Gas will be largely driven by the throughput requirements of Shippers; and
  - (d) there has been a significant increase in government imposts since 2005 and the Operator is forecasting a continued steep increase in this type of expenditure during the Access Arrangement Period. Operator has limited control over the level of government imposts imposed on it.

## Rate of return (section 11)

### 11. RATE OF RETURN

- 11.1. The Rate of Return used to determine the Total Revenue, and therefore the Reference Tariff, has been set in accordance with the requirements of Rule 87 of the NGR.
- 11.2. The Rate of Return to be used in determining Total Revenue for each year of the Access Arrangement Period is **5.7477%** (real, pre-tax).

- 11.3. The Rate of Return has been established as a real pre-tax weighted average of the cost of equity and the cost of debt.
- 11.4. The cost of equity has been determined from the capital asset pricing model (CAPM).
- 11.5 The cost of debt has been determined from observations of implied yields on traded corporate bonds with credit ratings of BBB- to BBB+.
- 11.6. Parameter values applied in determining the rate of return are set out in Table 20.

**Table 20 Parameter values applied in determination of the rate of return**

Parameter	Value
Nominal Risk Free Rate ( $R_f$ )	3.80%
Real Risk Free Rate ( $R_f^r$ )	1.02%
Inflation Rate $\pi_e$	2.75%
Debt Proportion ( $D$ )	60%
Equity Proportion ( $E$ )	40%
Cost of Debt: Debt Risk Premium (DRP) (BBB+)	<a href="#">3.082%</a> <a href="#">3.143%</a>
Cost of Debt: Debt Issuing Cost (DIC)	0.125%
Cost of Debt: Risk Margin (RM)	<a href="#">3.207%</a> <a href="#">3.268%</a>
Australian Market Risk Premium (MRP)	6%
Equity Beta ( $\beta_e$ )	0.8
Corporate Tax Rate ( $T_c$ )	30%
Franking Credit ( $\gamma$ )	25%
Nominal Cost of Debt ( $R_d^n$ )	<a href="#">7.01%</a> <a href="#">7.07%</a>
Real Cost of Debt ( $R_d^r$ )	<a href="#">4.14%</a> <a href="#">4.20%</a>
Nominal Pre Tax Cost of Equity ( $R_e^{n,\text{pre-tax}}$ )	11.10%
Real Pre Tax Cost of Equity ( $R_e^{r,\text{pre-tax}}$ )	8.12%
Nominal After Tax Cost of Equity ( $R_e^{n,\text{post-tax}}$ )	8.60%
Real After Tax Cost of Equity ( $R_e^{r,\text{post-tax}}$ )	5.69%

## Taxation (section 12)

### **12. METHOD FOR DEALING WITH TAXATION**

- 12.1. An implicit allowance is made for the cost of corporate income tax through the use of a value for the Rate of Return that is determined on a pre-tax basis.

## Incentive Mechanism (section 13)

### **13. EFFICIENCY CARRYOVER [R. 72 (1)(i)]**

- 13.1. The forecast Total Revenue also makes allowances in 2011 and 2012 for amounts as a result of the application of the incentive mechanism under the Prior Access Arrangement.

These amounts are as follows:

- (a) 2011 - \$11.938 million; and
- (b) 2012 - \$11.938 million.

## Tariff setting approach (section 14)

### **14. TARIFF SETTING APPROACH [R. 72 (1)(j)]**

- 14.1. Subject to clause 14.3, the Reference Tariffs (being the T1 Tariff, P1 Tariff and B1 Tariff) has been designed to recover from Shippers using the Reference Services that portion of the Total Revenue that reflects:
  - (a) those costs (including capital costs) which are directly attributable to the provision of the Reference Services; and
  - (b) a share of those costs (including capital costs) which are attributable to provision of the Reference Services jointly with Pipeline Services provided to other Shippers with contractual rights existing prior to the commencement of this Access Arrangement Period and other Pipeline Services which Operator considers are reasonably foreseeable to be offered during the Access Arrangement Period.
- 14.2. In determining the Reference Tariffs for the T1 Service, P1 Service and B1 Service, costs have been allocated to the Services provided to Shippers with Access Contracts entered into prior to the commencement of the Access Arrangement Period, as if those Shippers had been provided with the respective Reference Services.
- 14.3. In accordance with section 12 of the Access Arrangement, the Operator and Nominees will not benefit, through increased revenue, from each amount of Funded Capital Expenditure that has been rolled into the Capital Base. So, subject to clause 12.4(b) of the Access Arrangement, the portion of the Total Revenue for each year of the Access Arrangement that equals the sum of the return on the Funded Capital Expenditure and the depreciation of the Funded Capital Expenditure will not be allocated to any pipeline service, including the Reference Tariffs.

14.4. The Reference Tariffs are designed:

- (a) to generate from the provision of the Reference Services the portion of Total Revenue attributable to provision of the Reference Services;
- (b) to generate from a Shipper or class of Shippers to which a Reference Service is provided, the portion of Total Revenue referable to providing the Reference Service to the Particular Shipper or class of Shippers; and
- (c) consistently with the pricing and revenue principles in the NGL.

14.5. For the purpose of recovery of costs from Shippers and of earning the portion of Total Revenue attributable to the Reference Services, each of the Reference Tariffs are divided into a two part tariff structure:

- (a) Capacity Reservation Tariff; and
- (b) Commodity Tariff.

#### ***Capacity Reservation Tariff***

14.6. The Capacity Reservation Tariff for each Reference Service, when applied to determine the Capacity Reservation Charge, recovers from each Reference Service Shipper a proportion of the return and depreciation on, and a proportion of the operating expenditure incurred in operating and maintaining, the DBNPG other than those assets that make up the DBNPG for which a capital contribution has been made by a Shipper.

14.7. In accordance with the terms of the Access Contract Terms and Conditions for each Reference Service:

- (a) the Shipper must pay a Capacity Reservation Charge for each Gas Day during the Period of Supply regardless of whether the Shipper provides Gas at any Inlet Point and regardless of whether the Shipper takes Gas at any Outlet Point; and
- (b) the Capacity Reservation Charge is the aggregate of the Shipper's Contracted Capacity for the Reference Service at each Outlet Point multiplied by the Capacity Reservation Tariff.

14.8. The Capacity Reservation Tariff is a number of dollars per GJ of Contracted Capacity for the T1 Service and per GJ of Contracted Capacity per kilometre for the P1 Service and B1 Service and is:

- (a) as at the commencement of the Access Arrangement Period - as specified in the Access Arrangement;
- (b) otherwise varied in accordance with clause 11 of the Access Arrangement.

#### ***Commodity Tariff***

14.9. The Commodity Tariff for each Reference Service, when applied to determine the Commodity Charge, recovers from the Shipper a proportion of the cost of the System Use Gas used on the DBNPG and a proportion of the forecast cost of carbon tax.

14.10. In accordance with the terms of the Access Contract Terms and Conditions, the Shipper must pay a Commodity Charge for each Gas Day during the Period of Supply by calculating the multiple of the Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for the relevant Service at all Outlet Points by the Operator on that Gas Day.

14.11. The Commodity Tariff is:

- (a) for the T1 Service, a number of dollars per GJ of gas actually Delivered to any Outlet Point on the DBNGP; and
- (b) for the P1 Service and B1 Service, a number of dollars per GJ of gas actually Delivered to any Outlet Point per kilometre.

***Other tariff matters***

- 14.12. The Shipper using a Reference Service is required to pay Other Charges as required by the Access Contract Terms and Conditions;
- 14.13. The Capacity Reservation Charge, the Commodity Charge and all Other Charges, as determined in accordance with the Access Contract Terms and Conditions, are exclusive of GST.

## Reference tariff variation mechanism rationale (section 15)

### 15. REFERENCE TARIFF VARIATION MECHANISM RATIONALE

- 15.1. Rule 92 of the NGR requires inclusion of a Reference Tariff Variation Mechanism in the Access Arrangement.
- 15.2. Rule 97 of the NGR provides that a Reference Tariff Variation Mechanism may provide for variation of a Reference Tariff:
  - (a) in accordance with a schedule of fixed tariffs;
  - (b) in accordance with a formula set out in the Access Arrangement; or
  - (c) as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax).
- 15.3. The Access Arrangement contains a Reference Tariff Variation Mechanism that is made up of 4 parts – see section 11 of the Access Arrangement:
  - (a) CPI Formula Variation;
  - (b) Tax Changes Variation;
  - (c) New Costs Pass Through Variation; and
  - (d) Any variation mechanism that is otherwise included in the Reference Service Access Contract Terms and Conditions.
- 15.4. Rule 92(2) of the NGR requires that the Reference Tariff Variation Mechanism be designed to equalize (in terms of present values):
  - (a) forecast revenue from Reference Services over the Access Arrangement Period; and
  - (b) the portion of Total Revenue allocated to Reference Services for the Access Arrangement Period.

15.5. Rule 97 of the NGR also sets out criteria that the Reference Tariff Variation Mechanism must meet. They are that the Reference Tariff Variation Mechanism has regard to:

- (a) the need for efficient tariff structures;
- (b) the possible effects of the reference tariff variation mechanism on the administrative costs of the regulator, the service provider, and users or potential users;
- (c) the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed reference tariff variation mechanism;
- (d) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and any other relevant factor.

15.6. Accordingly, each part of the Reference Tariff Variation Mechanism is justified against these criteria as follows:

15.7. In relation to the CPI Formula Variation formula:

- (a) The Reference Tariff in the Access Arrangement is set using real, December 2009 values. Therefore, if the tariff components are not periodically varied for the effects of inflation during the Access Arrangement Period, the Operator will not have the opportunity of recovering its efficiently incurred – nominal - costs of providing Reference Services.
- (b) The Access Arrangement provides for annual inflation adjustment of the reference tariff using the CPI, All Groups, Weighted Average of Eight Capital Cities.
- (c) The formula will not impact on the administrative costs of the Regulator.
- (d) The formula is consistent with the variation mechanism in the Prior Access Arrangement Period and with variation mechanisms in access arrangements for other covered pipelines.

15.8. In relation to the Tax Change Variation formula:

- (a) The Access Arrangement contains amounts for certain types of Taxes that are likely to be incurred by the Operator but does not contain amounts:
  - (i) where the precise quantum of the costs is not certain; and
  - (ii) where those uncertain costs are expected to be significant in their quantum.
- (b) Therefore there is a significant risk that without this formula:
  - (i) if an amount is not included or an insufficient amount is included, the Operator would be adversely affected and not be able to recover its costs; or
  - (ii) if an amount is included and this amount is significantly larger in quantum than the actual expenditure for this item, the Operator would recover more than its costs for providing the Reference Services.

- (c) So, this formula will ensure that forecast revenue from Reference Services over the 2011 to 2015 Access Arrangement Period will be equalised (in terms of present values) with the portion of Total Revenue allocated to the Reference Service for the 2011 to 2015 Access Arrangement Period.
- (d) In the case of other Taxes, there is a requirement for a review to be undertaken of the fees payable to the State under the Dampier to Bunbury Pipeline Act 1998 in relation to rights granted to the Operator for the use of the DBNPG corridor. The State has issued invoices to the Operator for a revised fee although these are previously under review by the State.
- (e) It is therefore appropriate that a formula be included to ensure there is no under recovery or over recovery of amounts for such Tax Changes and that Shippers are reimbursed for any over recovery.

15.9. In relation to the New Costs Pass Through Variation:

- (a) It allows the Operator to recover certain costs which are beyond its control, and which could not be predicted with any great certainty prior to the time at the revisions to the Access Arrangement was approved but which relate to defined events.
- (b) This is an efficient tariff structure as the Operator will neither over-recover nor under-recover, and the Shipper will pay a Reference Tariff that reflects the costs of providing the Reference Service.
- (c) This formula is largely consistent with regulatory arrangements in place for other transmission pipelines.
  - (i) In Western Australia, there is no other provider of services similar to the Reference Services provided by the Operator. There is, therefore, no issue of consistency between the Reference Tariff Variation Mechanism and regulatory arrangements for similar services.

## Un-used section (section 16)

### 16. NOT USED

This has been left intentionally blank

## Total Revenue (section 17)

### 17. TOTAL REVENUE

17.1. Calculation of Total Revenue

- (a) The Total Revenue for each year of the Access Arrangement Period has been calculated using the building block approach described in Rule 76 of the NGR.
- (b) The Total Revenue for each year of the Access Arrangement Period has been calculated as the sum over the Access Arrangement Period of the costs in each year of the Access Arrangement Period that comprise the sum in each year of:
  - (i) a return on the projected capital base for the year;

- (ii) depreciation on the projected capital base for the year;
  - (iii) (if any) increments or decrements for the year resulting from the operation of the incentive mechanism that existed in the Prior Access Arrangement; and
  - (iv) a forecast of operational expenditure for the year.
- 17.2. There are no amounts included in the Total Revenue calculation for each year of the 2011 to 2015 Access Arrangement Period for the estimated cost of corporate income tax.
- 17.3. The Total Revenue for each year of the 2011 to 2015 Access Arrangement Period is indicated in Table 21.

**Table 21 Total revenue for the 2011 to 2015 access arrangement period (real \$ million at 31 December 2010)**

Year ending 31 December	2011	2012	2013	2014	2015
Return on capital base	<u>192.046</u> <u>193.280</u>	<u>195.829</u> <u>197.173</u>	<u>191.310</u> <u>192.622</u>	<u>186.619</u> <u>187.899</u>	<u>181.897</u> <u>183.143</u>
Depreciation	<u>87.760</u> <u>87.790</u>	<u>92.188</u> <u>92.253</u>	<u>92.555</u> <u>92.619</u>	<u>92.799</u> <u>92.863</u>	<u>93.102</u> <u>93.167</u>
Incentive mechanism	11.938	11.938	-	-	-
Correction for over-depreciation	<u>-34.543</u> <u>-32.487</u>	-	-	-	-
Operating expenditure	93.393	99.769	104.940	107.404	108.961
<b>Total</b>	<u>353.914</u> <u>350.594</u>	<u>401.133</u> <u>399.724</u>	<u>390.182</u> <u>388.805</u>	<u>388.166</u> <u>386.822</u>	<u>385.271</u> <u>383.960</u>
<b>Total for access arrangement period</b>	<u>1,918.655</u> <u>1,909.905</u>				

## Interpretation (section 18)

### 18. INTERPRETATION

- 18.1. Unless the context otherwise requires, terms used in capitals in this AAI have:
- (a) the meaning given in this section 18;
  - (b) if no meaning is given in this section 18, the meaning given in the Access Arrangement or the Access Contract Terms and Conditions; and
  - (c) if no meaning is given in this section 18 or in the Access Arrangement or the Access Contract Terms and Conditions, the meaning given in the NGA.
- 18.2. In this AAI:

**AAI** has the meaning given in clause 1.1.

**Back Haul** means a Pipeline Service where the Inlet Point is downstream of the Outlet Point on the DBNGP.

**CAPM** means a model used to determine the cost of equity known as the (Sharpe-Lintner) capital asset pricing model.

**Full Haul** means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.

~~means a Pipeline Service where the Outlet Point is downstream of Compressor Station 9, regardless of the location of the Inlet Point, but does not include Back Haul.~~

**KPI** means key performance indicator.

**Pipeline Capacity** means the capacity to deliver pipeline services immediately downstream of Compressor Station 9 on the DBNGP.

**Prior Access Arrangement Period** means the period to which the Prior Access Arrangement applied.

**Rate of Return** means the rate, identified in clause 11.2 of this AAI, required for the purposes of establishing the Total Revenue and as determined under Rule 87 of the NGR.

**Reference Tariff** means a reference tariff for a Reference Service and as outlined in the Access Arrangement, and as varied in accordance with the Access Arrangement.

**Total Revenue** means the total revenue as determined for each regulatory year of the Access Arrangement Period by applying the formula in Rule 76 of the NGR.

**WACC** means the weighted average cost of capital approach.

## Appendix 3 - Glossary

<i>Term</i>	<i>Definition</i>
Access Arrangement decision	The decision entitled <i>Economic Regulation Authority's revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline</i> published on 22 December 2011
Authority	Economic Regulation Authority of Western Australia established pursuant to the <i>Economic Regulation Authority Act 2003</i>
DBP	DBNGP (WA) Nominees Pty Ltd as trustee for the DBNGP WA Pipeline Trust and DBNGP (WA) Transmission Pty Ltd.
DRP	Debt risk premium
ERA	Economic Regulation Authority
NGA	<i>National Gas Access (Western Australia) Act 2009 (WA)</i>
NGR	The National Gas Rules made under the <i>National Gas Access (Western Australia) Act 2009</i> .
Tribunal	Australian Competition Tribunal
WACC	Weighted average cost of capital