

## Attachment 3: P1 Reference Service Terms and Conditions

### Terms and Conditions for the P1 Service

#### 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 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 Gases (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(a).

**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.

**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 3.2(b)(iv) 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 section 2 of the Access Arrangement (as approved for the period 2016 – 2020) 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 service** means a Gas transportation service on the DBNGP where the Inlet Point is upstream of mainline valve 31 (MLA31) on the DBNGP and the Outlet 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.

**Gate Station** means the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure 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.

**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(b).

**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 A to the Access Arrangement (as approved for the period 2016 – 2020).

**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:

- (i) cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and
- (ii) 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 means:**

- (a) 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; and
- (b) for an Inlet Point on a particular Gas Day in respect of a shipper, means one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Inlet 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 a Gate Station or 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** has the meaning given in clause 3.3(b).

**P1 Capacity Reservation Tariff** has the meaning given in clause 3.4(c) of the Access Arrangement.

**P1 Commodity Tariff** has the meaning given in clause 3.4(c) of the Access Arrangement as adjusted by the Reference Tariff Variation Mechanism from time to time.

**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 3.4(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 P1 Service set out in clauses 3.4 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time.

**Part Haul service** means a pipeline 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.

**REMC** 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 Full Haul capacity with priority as set out in the Curtailment Plan.

**T1 Tariff** means the reference tariff for T1 Service set out in clauses 3.3 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 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 22.10(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.

**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:

$$WobbeIndex = \frac{HigherHeatingValue}{\sqrt{RelativeDensity}}$$

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

## 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 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.

**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 Part 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 8.17 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 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 shippers with a T1 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.



**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 specified in the Access Request Form as the Requested Reference Service End Date.

**4.3 Option to renew Contract**

Subject to clauses 4.4, 4.5, 4.6, 4.7 and 4.8, 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 clauses 4.5 or 4.8 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 clauses 4.5 or 4.8 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 clauses 4.5 or 4.8 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.

**4.8 Put and call of Options**

- (a) If the Operator receives a duly completed access request form from a shipper (**Third Party Access Request**) which specifies a start date for the requested service occurring more than 12 months prior to the Shipper's Capacity End Date, and at the time when the service requested in the Third Party Access Request will be required there is or is reasonably likely to be insufficient Capacity to meet the requirements of the Third Party Access Request and the Shipper has one or more Options that it has not exercised, then the Operator must give a written notice to the Shipper as soon as practicable after receipt of the access request form from the other shipper:
  - (i) confirming receipt of the Third Party Access Request, the start date for the requested service and the amount of Contracted Capacity which is requested in the Third Party Access Request; and
  - (ii) requiring the Shipper to confirm whether the Shipper intends to exercise its available Options or wishes for those Options to lapse;
- (b) No later than 45 days after receipt of the Operator's notice issued under clause 4.8(a) and notwithstanding clause 4.5, a Shipper may give written notice to the Operator that it wishes to exercise its available Options. If such notice is not given before such time or the Shipper confirms that it wishes for those Options to lapse, the Options lapsed, are of no force and effect whatsoever, and cannot be exercised.

**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 either:
  - (i) at any time during a Gas Day, the Receipt of that Gas at an Inlet Point exceeds the Shipper's MHQ for that Inlet Point for that Gas Day; or
  - (ii) the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all the Shipper's Contract Capacity, in respect of that Inlet Point for that Gas Day,

and 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 at the relevant Inlet Point.

#### **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 reasonably 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 the 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, 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, unless the refusal is deemed to be a Curtailment under clause 5.5, in which case clause 17 applies.

#### **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)(ii) (Consequences of exceeding Hourly Peaking Limit);
  - (v) clause 10.6(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, 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(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, 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, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies.

**5.11 No change to Contracted Capacity**

- (a) 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)(iii).



**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 Multi-shipper 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 Multi-shipper 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 Multi-shipper 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, 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 Receives 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 Delivered by the Operator at the Outlet Point on that Gas Day will be as 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 the proportionate share so determined of the Gas Delivered by the Operator at that Outlet Point on that Gas Day at a constant rate over 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 available for any available Capacity Services (other than P1 Service) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a); and
  - (iii) third, 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
- (vi) 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 an 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 or 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 6.9.

**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, flare or burn 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, flared or burnt 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 Odourisation**

The Operator will Deliver Gas to the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004 odourised 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.

**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 P1 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 P1 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 8.18 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 T1 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 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, provided that such outlet point is above CS9; and
- (b) in excess of Shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,

(being **Aggregated P1 Service**).

#### **8.17 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.

**8.18 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.

**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 Contracted Capacity under Spot Transactions and quantities, referred to as the Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service and 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 and, 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 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 9.5(b)(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 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 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) 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(g)(i) or 9.5(g)(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 or 9.6(a) 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(a) 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 or 9.6(a).

#### **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.

**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 and 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 10.3(a)(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 the Operator issues a notice under clause 10.3(a)(iii):
  - (i) subject to clause 10.3(b), the Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then the 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) The 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, the 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 [deleted]**

**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.

**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 the 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 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.

**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.



**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.

**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 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 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) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity;

- (i) 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 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), in addition to the matters described in clause 14.7(c), 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) Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in Gas being transported from an Inlet Point upstream of mainline valve 31 (MLV31) on the DBNGP to an Outlet Point down stream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to:
  - (i) be treated as if it were on the same terms and conditions as Full Haul Capacity for T1 Service, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
  - (ii) be 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.

**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 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 a 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 a 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.



**16. Not Used**

**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 P1 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;
- (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 under clause 17.3(a) or otherwise, except as may be provided in clause 17.4, for a Curtailment 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) or 17.2(b); 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);
  - (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)(iii) 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,
- (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), 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.

**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(b), 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.

**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 18(e) and 18(g), the Operator may determine the timing and extent of any Curtailment necessitated by Major Works in its discretion.

**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.

**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 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 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(c));
  - (ii) Hourly Peaking Charge (clauses 10.3(b));
  - (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, 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) the P1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and:
- (iii) the P1 Tariff shall be re-set to reflect any new P1 Tariff approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

#### **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**      **[Not used]**



**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.

**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(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
  - (iii) in respect of an event described in clause 22.1(b), 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), (ii) or (iii) 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 40 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 22.8(b), 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 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.

## **22.10 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 22.10(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 22.10(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 22.10(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 22.10(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.

**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.

**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

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- (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.

**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 chargor 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;
  - (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) 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) 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 DBNGP Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNGP (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 DBNGP 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 DBNGP and owns the DBNGP in its capacity as trustee of the DBNGP 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 rights, title or interest in the DBNGP without requiring the dispositive 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 dispositive 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 dispositive, execute the deed of assumption in terms of clause 25.5(f).
- (h) If the dispositive 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 dispositive. 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.



**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, the Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to the 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 the 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**

The Shipper may at any time before the Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to the 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 the Operator.

**26.3 Operator may accept Relinquishment Offer**

- (a)
  - (i) The Operator may at any time give notice in writing to the 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 the 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 the 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), the 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 DBNGP;
  - (iii) the number or magnitude of current or anticipated offers of relinquishment from:
    - (A) the 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 the Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:
  - (i) the 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), the 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 the Shipper of the Relinquishment Acceptance, and the Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by the 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, the Operator must, whenever requested by the Shipper to do so, provide the Shipper, at the 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**

The Shipper must, when requested by the Operator to do so, reimburse the Operator for all reasonable expenses incurred by the Operator by reason of any:

- (a) Relinquishment Offer;
- (b) notice given under clause 26.2(a); or
- (c) Relinquishment Acceptance.

**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 expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably incurred) by reason of the Request for Approval and any Resumption, provided that the Operator can demonstrate that the costs have been reasonably and properly incurred.

**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 28.3(d) 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 28.3(d) 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 28.3(d) 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 and the System Operator must be considered Related Bodies Corporate of the Operator); and
    - (ii) subject to clauses 28.3(d) 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 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 any of Alcoa's 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 any of Alcoa's 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 28.3(d) 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 28.3(d) 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(c) 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.

**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 email to the Dedicated Email 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, Dedicated Email 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, of a Dedicated Email Address 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.



**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.

**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.

**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.

**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.

**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.

**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.



**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.

**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.

**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) If the Parties agree to an increase in Contracted Capacity, this Contract (including the Access Request Form) is to be amended to reflect this.

**39. No Common Carriage**

Neither the Operator nor the Shipper is a common carrier of Gas transported through the DBNGP.

**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.

**41. Duty**

The Shipper must pay all duty payable in respect of this Contract.

**42. No Third Party Benefit**

Subject to clause 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.

**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.



**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)(i) 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.

**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.

**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.

47. [Not Used]



**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	
Telephone Number	
Facsimile Number	
Email	
Nominated Representative	

2. OPERATOR DETAILS

Name	<b>DBNGP (WA) TRANSMISSION PTY LIMITED</b>
ABN	69 081 609 190
Address	Level 6, 12-14 The Esplanade
	Perth WA 6000
Telephone Number	(08) 9223 4300
Facsimile Number	(08) 9223 4301
Email	<a href="mailto:dbpnotices@dbp.net.au">dbpnotices@dbp.net.au</a>
Nominated Representative	Manager, Commercial Operations

3. SERVICE DETAILS

Requested Reference Service	
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Requested Reference Service Start Date	
---	--

Requested Reference Service End Date	
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**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 T1 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 T1 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:**



**Executed by Pipeline Trustee:**

**Executed by**

**DBNGP (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**

All amounts in this Schedule 2 are exclusive of GST.

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(d))	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

#### Item 1 Gas Specifications

Component		Inlet Points and Outlet Points
Maximum carbon dioxide (mol %)		4.0
Maximum inert gases (mol %)		7.0
Minimum higher heating value (MJ/m3)		37.0
Maximum higher heating value (MJ/m3)		42.3
Minimum Wobbe Index		46.5
Maximum Wobbe Index		51.0
Maximum total sulphur (mg/m3)	Unodorised Gas	10
	Odorised Gas	20
Maximum Hydrogen Sulphide (mg/m3)		2
Maximum Oxygen (mol %)		0.2
Maximum Water (mg/m3)		48
Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute		Below 0°C
Maximum radioactive components (Bq/m3)		600
Minimum Extractable LPGs (t/ TJ)*		0

\* Extractable LPG means LPG that can be extracted from Gas without causing the Gas to fail to comply with the Operating Specifications for Outlet Points.

In addition, the following temperature and pressure specifications apply:

## **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 - Pipeline Description**

*Description of the Dampier to Bunbury Natural Gas Pipeline System (as at 1 January 2016)*

Available as part of the Economic Regulation Authority's *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline – Appendix 7 "ERA Approved Access Arrangement"*, 30 June 2016.

### 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

### Part A

Order of Priority	System Curtailment
1	Any Capacity Service insofar as it is for the Shipper's relevant share of the Distribution Networks' IPQ
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
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
5	Firm Service
6	(other than Tp Service)
7	Spot Capacity

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
2	Alcoa's Priority Quantity
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), 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 that is Contracted Capacity at the relevant point
6	Other Reserved Service (other than Tp Service) that is Contracted Capacity at the relevant point
7	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
8	Spot Capacity

**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:

$$AP = \frac{AE}{PE}$$

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 DBNGP 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  $\frac{1}{3}$  of the capacity of the last such Capacity expansion programme or 30 TJ/d.



**Schedule 7– Form of Tripartite Deed**

<http://dbp.net.au/wp-content/uploads/2015/01/07-07-05-Pro-Forma-Tripartite-Deed.pdf>