

Amended Proposed Revised Access Arrangement  
~~21~~24 ~~January~~ June 2005

# DAMPIER TO BUNBURY NATURAL GAS PIPELINE

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**IMPORTANT NOTE: This revised proposed Access Arrangement is provided in draft. It does not purport to be a definitive nor final statement of the Operator's position in respect to the Regulator's Draft Decision amendments and, accordingly, the Regulator should not rely upon it as such. Operator reserves its rights to make further changes to its proposed Access Arrangement.**

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## **1. INTRODUCTION**

- 1.1 This document comprises the proposed revised Access Arrangement ("Access Arrangement") for the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") pursuant to the requirements of the Gas Pipelines Access (Western Australia) Act 1998, which incorporates the National Third Party Access Code for Natural Gas Pipeline Systems ("Code").
- 1.2 It contains proposed revisions to the access arrangement drafted and approved on 30 December 2003 (corrected by corrigenda included in a notice dated 12 January 2004) by the Regulator ("Original Access Arrangement").
- 1.3 The DBNGP is operated by DBNGP (WA) Transmission Pty Ltd ("Operator") and is owned by DBNGP (WA) Nominees Pty Ltd ("Nominees") as Trustee for the DBNGP WA Pipeline Trust.
- 1.4 This Access Arrangement sets out the policies and basic terms and conditions applying to third party access to services provided by Operator in relation to the DBNGP.
- 1.5 Operator will negotiate access to services on the pipeline. If, however, prospective shippers are unable to conclude negotiations for access, this Access Arrangement contains the terms and conditions for access to the Reference Service.

## **2. BACKGROUND**

- 2.1 On 30 December 2003, the Relevant Regulator (then the Independent Gas Pipelines Access Regulator in Western Australia but now the Economic Regulation Authority) drafted and approved the Original Access Arrangement.
- 2.2 The Original Access Arrangement was corrected by a corrigenda issued by the Regulator on 12 January 2004.
- 2.3 On 14 January 2004, Operator (formerly Epic Energy (WA) Transmission Pty Ltd) and Nominees (formerly Epic Energy (WA) Nominees Pty Ltd) applied to the WA Gas Review Board ("GRB") for a review of the decision of the Regulator to draft and approve the Original Access Arrangement ("GRB Appeal #1").
- 2.4 At or about the same time, applications for review were also filed by:
- (a) Western Power ("GRB Appeal #3"); and
  - (b) North West Shelf Gas Pty Ltd ("GRB Appeals #2 & 4").
- 2.5 As required by the ACCC under undertakings given by Operator and Nominees (and others) pursuant to section 87B of the Trade Practices Act 1974 ("ACCC Undertakings"), GRB Appeal #1 was discontinued in November 2004.
- 2.6 Also in November 2004, GRB Appeals #2 & 4 were withdrawn and the proceedings discontinued.
- ~~2.7 However, as at the date of submission of this proposed revised Access Arrangement to the Regulator, aspects of GRB Appeal #3 remain. As at the date of filing of this Access Arrangement, it is to be heard by the GRB in March 2005. Accordingly, without limitation to its rights, Operator reserves its rights to propose further revisions to the Original Access Arrangement as a result of any orders that the GRB might make in connection with GRB Appeal #3 prior to the revised Access Arrangement commencing to have effect.~~

### **3. THE DBNGP (DESCRIPTION OF THE PIPELINE SYSTEM)**

3.1 The DBNGP is as described in the following pipeline licences:

- (a) PL 40 (as amended or varied before the date the Access Arrangement for the DBNGP commences to have effect);
- (b) PL 41 (as amended or varied before the date the Access Arrangement for the DBNGP commences to have effect); and
- (c) PL 47 (as amended or varied before the date the Access Arrangement for the DBNGP commences to have effect).

3.2 A detailed description of the DBNGP and maps showing the pipeline system are annexed to the Access Arrangement Information.

#### **4. COMMENCEMENT**

~~4.1 Subject to section 4.2 of this Access Arrangement, the revisions to the Access Arrangement are to have effect on 1 July 2005.~~

~~4.24.1 Despite section 4.1 of this Access Arrangement, t~~The revisions to the Access Arrangement are to have effect on the later of:

- (a) the date the approval under sections 2.38, 2.41 or 2.42 of the Code becomes effective (under section 2.48); and
- (b) 1 July 2005.

## **5. ACCESS REQUESTS AND QUEUING POLICY**

### **5.1 Informal Requests and Reports**

- (a) Prospective Shippers are encouraged to consult with Operator on available capacity and facilities prior to making an Access Request.
- (b) Where the consultation requires extensive investigations and/or reports by Operator, the Prospective Shipper may be required to pay the cost for such investigations and/or reports. Operator will, as soon as practicable after the consultation, advise the Prospective Shipper of the likely cost of any such investigations and/or reports required. Operator reserves the right to require the Prospective Shipper to pay in advance Operator's estimate of the likely costs.
- (c) Operator is not obliged to proceed with investigations and/or reports unless the Prospective Shipper undertakes to pay the reasonable costs of those investigations and/or reports as required by Operator.

### **5.2 Submission of Access Requests**

- (a) Prospective Shippers may apply for access to a Service by submitting an Access Request in accordance with this section 5.2.
- (b) An Access Request must specify:
  - (i) whether the Service requested is a Reference Service or a Non-Reference Service;
  - (ii) a Commencement Date for the Service, which must be a date at least 30 days after the date the Access Request is submitted;
  - (iii) a Capacity End Date for the Service, which must, in the case of an Access Request for a Reference Service, be a date no earlier than the date 5 years after the Commencement Date;
  - (iv) in the case of a Reference Service and any other capacity related Non-Reference Service:
    - (A) each Receipt Point and Delivery Point for the Service; and
    - (B) the amount of the requested Service (in TJ/d) for each Receipt Point and Delivery Point;
  - (v) the terms and conditions on which the Service is requested, by:
    - (A) in the case of a Reference Service, stating that the Prospective Shipper accepts the Access Contract Terms and Conditions or identifying any variations the Prospective Shipper proposes to the Access Contract Terms and Conditions;
    - (B) in the case of a Non-Reference Service (other than a Spot Capacity Service), specifying the terms and conditions the Prospective Shipper proposes should apply to the Service or requesting Operator to propose the terms and conditions for provision of the Service; or

- (C) in the case of a Spot Capacity Service, stating that the Prospective Shipper accepts the Spot Transaction Terms and Conditions and agrees to comply with the Spot Market Rules; and
  - (vi) any conditions that apply to the Access Request.
- (c) An Access Request must:
  - (i) contain or be accompanied by any other information or documents identified in the Information Package;
  - (ii) be in the form for the particular Service requested specified from time to time by Operator on its nominated website. As at the date of this Access Arrangement, the Access Request forms comprise:
    - (A) the Reference Service (Tf Service) Access Request Form, for use for an Access Request for a Reference Service;
    - (B) the Non-Reference Service (other than Spot Capacity Service) Access Request Form, for use for an Access Request for a Non-Reference Service (other than Spot Capacity Service) or an Access Request for a Reference Service in circumstances where the Prospective Shipper proposes variations to the Access Contract Terms and Conditions; and
    - (C) the Spot Capacity Service Access Request Form, for use for an Access Request for Spot Capacity Service;
  - (iii) be executed by or on behalf of the Prospective Shipper in accordance with sections 127(1), (2) or (3) of the Corporations Act 2001 or in such other manner as Operator, acting reasonably, may approve; and
  - (iv) be submitted in duplicate to the address from time to time specified by Operator for this purpose on its nominated website.
- (d) An Access Request must be accompanied by the Prescribed Fee (plus the amount of GST payable in respect of the Prescribed Fee). The Prescribed Fee is payable by cheque drawn in favour of Operator or by any other means approved by Operator prior to submission of the Access Request. If an Access Contract is entered into as a result of an Access Request, the charges payable under the Access Contract will be adjusted over the first year of the Access Contract by an amount equal to the Prescribed Fee.
- (e) A Prospective Shipper may withdraw an Access Request at any time before Operator accepts the Access Request by giving notice in writing of the withdrawal to Operator. If an Access Request is withdrawn, any refund of the Prescribed Fee is entirely within the discretion of Operator.
- (f) A Prospective Shipper may amend an Access Request at any time prior to its acceptance by Operator by submitting a further Access Request which states expressly that it amends the previous Access Request ("Original Access Request") and is marked up to show the changes from the Original Access Request. The amended Access Request supersedes the Prospective Shipper's Original Access Request. Operator may require the payment of a further Prescribed Fee before an amended Access Request is deemed to have been validly submitted.

### 5.3 Assessment of Access Requests

- (a) Operator will assess and respond to an Access Request in accordance with section 5.4 of the Code based on the information provided to it with the Access Request.
- (b) The information specified in the Access Request form and the Information Package does not necessarily contain all of the information Operator may need to assess an Access Request. Operator may:
  - (i) request further information from a Prospective Shipper (including any evidence reasonably required by Operator that the Access Contract that would be formed by Operator's acceptance of the Access Request would be a valid and binding obligation of the Prospective Shipper); or
  - (ii) advise the Prospective Shipper that investigations are required to be undertaken prior to responding to the Access Request, as contemplated by section 5.4(c) of the Code,if it reasonably considers that such information or investigations are necessary to assess the Prospective Shipper's Access Request.
- (c) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper because the Access Request is:
  - (i) for a Non-Reference Service; or
  - (ii) for a Reference Service but the Prospective Shipper has not indicated its acceptance of the Access Contract Terms and Conditions,the Prospective Shipper must promptly on request by Operator proceed to negotiate in good faith with Operator the terms and conditions on which the Service is to be provided.
- (d) Operator may accept an Access Request:
  - (i) where the Access Request is for a Reference Service and is made on the basis of the Access Contract Terms and Conditions or is for a Spot Capacity Service, by executing the two copies of the Access Request Form executed by the Prospective Shipper and returning one executed copy to the Prospective Shipper; or
  - (ii) where the Access Request is for a Non-Reference Service (other than a Spot Capacity Service), or is for a Reference Service otherwise than on the Access Contract Terms and Conditions, and Operator and the Prospective Shipper have agreed the terms and conditions for the Service, by submitting an Access Contract in the form agreed to the Prospective Shipper for execution. If the Access Contract is not executed by the Prospective Shipper and returned to Operator (together with any evidence reasonably required by Operator that the Access Contract is a valid and binding obligation of the Prospective Shipper) within 10 Business Days, the Access Request will be deemed to have been withdrawn by the Prospective Shipper.
- (e) Operator may reject an Access Request at any time prior to its acceptance if:

- (i) the Access Request is incomplete or otherwise does not comply with the requirements specified in section 5.2;
- (ii) the Prospective Shipper fails to comply with a reasonable request by Operator for further information, or to consent to a plan and allocation of costs for investigations proposed by Operator, within 20 Business Days (or such longer period as Operator may agree in a particular case) after receipt of such request or proposed plan and cost allocation;
- (iii) Operator considers, acting as a reasonable and prudent pipeline operator, that the Prospective Shipper is not capable of meeting its obligations under the Access Contract;
- (iv) acceptance of the Access Request would require an expansion of or extension to the DBNGP and the expansion or extension is inconsistent with the extensions and expansions policy set out in section 11;
- (v) the requested Service cannot be provided having regard to the load characteristics set out in the Access Request and the load characteristics of Other Shippers;
- (vi) where the Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper, the Prospective Shipper fails to negotiate in good faith when required to do so under section 5.3(c);
- (vii) the Access Request is for substantially the same Service as another current Access Request submitted by the Prospective Shipper; or
- (viii) Operator considers, acting as a reasonable and prudent pipeline operator, that the Access Request is not a bona fide request for access.

#### 5.4 Queuing Policy

- (a) If Operator notifies a Prospective Shipper in accordance with section 5.4 of the Code that Spare Capacity does not exist to satisfy an Access Request, Operator will create a queue for determining the priority of access to Spare Capacity and Developable Capacity that will apply as between that Access Request and any other Access Request.
- (b) Operator will maintain a single queue for access to Reference Services and Non-Reference Services.
- (c) Access Requests are to have priority of access to Spare Capacity and Developable Capacity in the order in which they are entered in the queue by Operator in accordance with this section 5.4. Subject to sub-sections 5.4(d) to 5.4(k), Operator will enter Access Requests in the queue with a priority date being the date on which they are received (or, as appropriate, deemed to be received) by Operator. Access Requests entered in the queue with the same priority date will have equal priority in the queue as between each other.
- (d) Subject to sections 5.4(e) and (f), an Access Request will only be entered in the queue if it complies with the requirements specified in section 5.2.

- (e) If an Access Request is incomplete or otherwise does not comply with the requirements of section 5.2 and, in Operator's opinion, the Prospective Shipper remedies the deficiencies within 10 Business Days after being given notice of the deficiencies by Operator (which notice must be given promptly), the Access Request may be entered in the queue with a priority date being the date on which the original Access Request was received by Operator. This section only applies once. Otherwise, the Access Request will be entered in the queue with a priority date being the date on which, in Operator's opinion, the deficiencies are remedied.
- (f) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the queue with a priority date being the date of receipt of the Access Request by Operator. However, unless:
- (i) where Operator notifies Shipper in accordance with section 5.4 of the Code that there is Spare Capacity sufficient to satisfy the Access Request, within 40 Business Days after the date Operator responds to the Prospective Shipper in accordance with section 5.4 of the Code in respect of Access Request; or
  - (ii) where Operator notifies Shipper in accordance with section 5.4 of the Code that there is not Spare Capacity sufficient to satisfy the Access Request, within 60 Business Days after the date Shipper consents to a plan and allocation of costs for investigations proposed by Operator and referred to in section 5.4 of the Code in respect of Access Request,
- either:
- (iii) the negotiations are completed and/or the conditions are satisfied; or
  - (iv) the Prospective Shipper has agreed to amend the Access Request such that it becomes an Access Request for a Reference Service made on the basis of the Access Contract Terms and Conditions,
- the Access Request will be removed from the queue and will subsequently be re-entered in the queue with a priority date being the date that negotiations are completed and/or the conditions are, in Operator's opinion, satisfied. However, where a dispute between Operator and the Prospective Shipper arises in respect of the terms and conditions of access and that dispute is referred to arbitration under section 6 of the Code, the period of time remaining pursuant to paragraphs (i) and (ii) (as applicable) will be suspended from the date the dispute is referred to arbitration until a determination is made by the Arbitrator.
- (g) Operator may deal with Access Requests out of order provided that:
- (i) the Access Request that is being dealt with out of order is materially different to the Access Requests which have the same or earlier priority dates; and
  - (ii) Prospective Shippers with the Access Requests which have the same or earlier priority dates do not suffer any material prejudice as a result.

- (h) Access Requests received by mail are deemed to be received on the day they are delivered to Operator. Access Requests delivered by hand are received on the date actually received.
- (i) Any Access Request for a Service that was made prior to the revisions to this Access Arrangement coming into effect ("prior AA Access Requests") will have priority over Access Requests made after the revisions to this Access Arrangement come into effect. The priority amongst prior AA Access Requests is to be determined in accordance with the order in which they were received by Operator.
- (j) If an Access Request is rejected, that Access Request's priority in the queue is lost.
- (k) If a Prospective Shipper amends an Access Request in accordance with section 5.2(f), the following shall apply:
  - (i) if the amendment is made in accordance with section 5.4(f), is limited to a reduction in the amount of the Service requested or a change in the requested Commencement Date, or is not in Operator's opinion a material change to the Original Access Request, the amended Access Request will have the same priority date as the Original Access Request; and
  - (ii) in all other cases, the amended Access Request will be removed from the queue and will subsequently be re-entered in the queue with a priority date being the date the amended Access Request is received by Operator.
- (l) This Queuing Policy is subject to any Capacity Expansion Options which may be granted by Operator from time to time under section 11. Nothing in this Queuing Policy prevents Operator offering a Capacity Expansion Option in accordance with section 11 at any time or complying with its obligation to provide capacity to a Prospective Shipper in accordance with a Capacity Expansion Option.
- (m) Where a Prospective Shipper has lodged an Access Request and Operator has agreed to undertake an expansion to satisfy the Access Request (including by the creation of a Capacity Expansion Option in accordance with section 11), the Prospective Shipper's Access Request will remain in the queue until the expansion capacity has become available to satisfy it. If Spare Capacity becomes available to satisfy the Access Request prior to completion of the expansion and Operator and the Prospective Shipper agree, that Spare Capacity may be made available to satisfy the Access Request (in accordance with its priority in the queue at that time) in place of the proposed expansion capacity.
- (n) This Queuing Policy does not apply to access to a service secured pursuant to a Spot Capacity Service.
- (o) Within a reasonable time of Operator becoming aware of any material change (in the context a Prospective Shipper's Access Request) in the expected timing of when the Prospective Shipper's Access Request in the queue will be satisfied, Operator will notify the Prospective Shipper of the change.

## **6. SERVICES POLICY**

### **6.1 Services**

Operator offers the following Services on the DBNGP:

(a) Reference Service

The Reference Service offered by Operator is Tf Service.

(b) Non-Reference Services

- (i) The Services referred to in this sub-section are Non-Reference Services.
- (ii) Operator will, subject to operational availability (as determined by Operator as a reasonable and prudent pipeline operator), make available to a Prospective Shipper the following Service or Services:
  - (A) Part Haul Service;
  - (B) Back Haul Service;
  - (C) Spot Capacity Service;
  - (D) Park and Loan Service;
  - (E) Seasonal Service;
  - (F) Peaking Service;
  - (G) metering information service;
  - (H) pressure and temperature control service;
  - (I) odourisation service; and
  - (J) co-mingling service.
- (iii) Non-Reference Services also include services provided by Operator under contracts entered into prior to commencement of the Access Arrangement Period.
- (iv) Operator is prepared to negotiate to provide a Prospective Shipper with any other service that is not a Reference Service.

### **6.2 Tf Service**

- (a) Tf Service is a Full Haul Service in which Operator (subject to availability of Capacity):
  - (i) takes receipt, at one or more Receipt Points on a Day, of a quantity of the Shipper's gas not exceeding:
    - (A) the sum of the Shipper's MDQ;
    - (B) plus or minus the quantity of gas required to correct any Imbalance on the preceding Day; and
  - (ii) delivers to the Shipper at one or more Delivery Points on that Day a quantity of gas not exceeding the Shipper's MDQ, without interruption or curtailment except as permitted by the Access Contract.
- (b) Prospective Shippers seeking access to Spare Capacity of the DBNGP as it is configured at the time of approval of this Access Arrangement must nominate

a minimum term of 5 years when lodging an Access Request for Tf Service, unless Operator in its absolute discretion agrees otherwise.

- (c) Prospective Shippers seeking access for Developable Capacity must nominate a minimum term of 20 years when lodging an Access Request for Tf Service, unless Operator in its absolute discretion agrees otherwise.

### 6.3 Non-Reference Services

(a) Part Haul

Part Haul is a Gas transportation Service in the DBNGP where the Delivery and Receipt Points are upstream of Compressor Station 9 on the DBNGP, but does not include Back Haul.

(b) Back Haul

Back Haul is a Gas transportation Service in the DBNGP, where the Receipt Point is downstream of the Delivery Point.

(c) Spot Capacity Service

Spot Capacity Service means a Service for Spot Capacity by way of one or more Spot Transactions. Until otherwise agreed, the following principles shall apply to Spot Capacity and Spot Transactions (as the case may be):

- (i) If the Shipper seeks to bid for Spot Capacity for a Day it must, by notice to Operator at any time no later than 15:00 hours on the Day before that Day, notify Operator of the amount of Spot Capacity it requires for that Day ("Daily Bid") and the price it offers to pay for that Spot Capacity for that Day (the "Daily Spot Bid Price").
- (ii) Operator must by no later than 16:00 hours on each Day before the relevant Day allocate Spot Capacity for a Day between Daily Bids on the basis (subject to clause 6.3(c)(iv)) of the Shipper bidding the highest Daily Spot Bid Price for that Day being allocated the Spot Capacity it bid for, the shipper bidding the second highest Daily Spot Bid Price for that Day being allocated the Spot Capacity it bid for, and so on under all Daily Bids are satisfied or until all available Spot Capacity is allocated to Daily Bids. If two or more shippers bid the same Daily Spot Bid Price and there is not sufficient available Capacity to allocate to each of them the amount of Spot Capacity bid for by each of them, the Spot Capacity available to be allocated between them shall be allocated in proportion to the amount of Spot Capacity bid for by each of them respectively at the said Daily Spot Bid Price for that Day.
- (iii) Subject to clause 6.3(c)(v), if the Shipper is allocated Spot Capacity for a Day in response to a Daily Bid the Shipper must pay the Daily Spot Bid Price bid by it for that Spot Capacity for that Day whether or not it uses the Spot Capacity.
- (iv) Operator may set a minimum bid price ("Minimum Bid Price") for Daily Bids and is not obliged to allocate Spot Capacity to any shipper bidding a Daily Spot Bid Price which is less than the Minimum Bid Price. The

Minimum Bid Price for Daily Bids may not be set by Operator at a price greater than 115% of the Base T1 Tariff as defined in the Standard Shipper Contract published by Operator on its nominated website from time to time applying on the relevant Day.

- (v) The Shipper is relieved from paying the Daily Spot Bid Price in relation to Spot Capacity allocated to it for a Day only where:
  - (A) Operator interrupts or curtails the Spot Capacity which has been allocated to the Shipper, and then only to the extent of that interruption or curtailment; or
  - (B) The Shipper does not use the Spot Capacity which has been allocated to it in circumstances where there were no other shippers bidding for Spot Capacity for that Day to which the Spot Capacity allocated to the Shipper could otherwise have been allocated.
- (vi) Operator must provide the following information to the Shipper in respect of each Day as soon as practicable after that Day:
  - (A) the quantities the subject of Daily Bids which relate to that Day;
  - (B) the quantities of Spot Capacity allocated for that Day; and
  - (C) the Daily Spot Bid Prices for all bids allocated Spot Capacity for that Day.
- (vii) Operator will not bid for Spot Capacity and if an Operator Entity, Alcoa, Alinta Limited (ABN 40 087 857 001) or a Related Body Corporate of either Alcoa or Alinta Limited bids and is allocated Spot Capacity, Operator must indicate on its electronic customer reporting system that the relevant Spot Capacity has been allocated to an Operator Entity without disclosing the identity of the Operator Entity.
- (viii) Operator may unilaterally determine (and, if applicable, vary) over time rules governing the market for Spot Capacity in addition to the principles in this clause 6.3(c), provided that those rules are designed with a view to achieving a market with the following objectives:
  - (A) non-discriminatory in respect of the terms and conditions upon which, and the circumstances in which, Spot Capacity is granted to shippers;
  - (B) hindering market manipulation and gaming by Operator or other shippers; and
  - (C) consistent with this clause 6.3.

(d) Park and Loan Service

Shippers or prospective shippers serving end users with gas demands that are difficult to predict from day to day, or when faced with an outage from their gas supplier, may find the maintenance of their imbalances within the tolerance specified in the Access Arrangement difficult. To assist these shippers and prospective shippers, Operator will offer a Park and Loan Service, permitting limited gas storage in the DBNGP, and/or taking of additional gas from the DBNGP when required. Operator's ability to offer a

Park and Loan Service is restricted by the operating characteristics of the DBNGP.

(e) Seasonal Service

Capacity in the DBNGP varies inversely with ambient temperature. A higher pipeline capacity is available during winter months when ambient temperatures are low. A lower capacity is available during summer months, with the lowest capacity usually available in January. Seasonal Service will only be made available subject to operational availability (as determined by Operator as a reasonable and prudent pipeline operator) and Operator meeting its obligations under gas transportation contracts entered into prior to the commencement of the Access Arrangement Period.

(f) Peaking Service

This Service will enable an increase in the MHQ at a Delivery Point for a specified period.

(g) Metering information service

This Service will entail the provision of metering and operational data directly to a shipper in addition to the data the Operator agrees to provide under an Access Contract for the Reference Service.

(h) Pressure and temperature control service

This Service will entail the provision of a Service by the Operator to vary the temperature and/or pressure at which the Operator shall deliver gas at an Delivery Point.

(i) Odourisation service

This Service will entail the provision of a Service by the Operator to odourise the gas being delivered at an Delivery Point.

(j) Co-mingling service

This Service entails the agreement by the Operator with a Shipper to blend Out-of-Specification gas with the main gas stream such that the aggregate of the main gas stream is within specification.

## **7. REFERENCE TARIFF POLICY**

### **7.1 General Principles**

- (a) Operator's Reference Tariff has been designed to recover from shippers using the Reference Service, that portion of the Total Revenue that reflects:
  - (i) those costs (including capital costs) which are directly attributable to the provision of the Reference Service; and
  - (ii) a share of those costs (including capital costs) which are attributable to provision of the Reference Service jointly with Services provided to other shippers with contractual rights existing prior to the commencement of this Access Arrangement Period and other Services which Operator considers are reasonably foreseeable to be offered during the Access Arrangement Period.
- (b) The Reference Tariff has been determined on the basis of the gas specifications prescribed in Items 1 and 2 of Schedule 2 to the Access Contract Terms and Conditions that apply at the commencement of this Access Arrangement Period.

### **7.2 Calculation of Total Revenue**

- (a) The Total Revenue has been calculated using the 'cost of service' ("COS") method described in section 8.4 of the Code. The application of this method for calculation of the Total Revenue is outlined in sections 7.3 to 7.8 of the Access Arrangement.
- (b) The Total Revenue has been calculated as the sum over the Access Arrangement Period of the costs in each year of the Access Arrangement Period that comprise the sum in each year of:
  - (i) return on the Capital Base;
  - (ii) depreciation; and
  - (iii) non capital costs.
- (c) The COS method has been applied in accordance with section 8.5A(c) of the Code, in accordance with which a pre-tax real rate of return is applied to a nominal capital base.

### **7.3 Calculation of Capital Base**

- (a) The Initial Capital Base at 1 January 2000 was \$1,550.00 million.
- (b) For each year after 2000, the Capital Base for the DBNGP at the beginning of the year is:
  - (i) the Capital Base at the beginning of the immediately preceding year; plus
  - (ii) an adjustment to the Capital Base at the beginning of that immediately preceding year for the effect of inflation; plus
  - (iii) New Facilities Investment during the preceding year; less

- (iv) depreciation for the preceding year.
- (c) New Facilities Investment after 1 January 2005 is New Facilities Investment that is forecast to occur during the Access Arrangement Period.

#### 7.4 Forecast New Facilities Investment

- (a) New Facilities Investment forecast to occur during the Access Arrangement Period is reasonably expected to pass the requirements of section 8.16 of the Code when that New Facilities Investment is forecast to occur.
- (b) For the purposes of calculating the Capital Base at the commencement of the next Access Arrangement Period in accordance with section 8.9 of the Code, the New Facilities Investment will consist only of actual New Facilities Investment that has occurred during this Access Arrangement Period.

#### 7.5 Return on the Capital Base

The return on the Capital Base has been determined by multiplying the Capital Base at the beginning of each year of this Access Arrangement Period, plus the annual adjustment for inflation, by the Rate of Return.

#### 7.6 Calculation of Rate of Return

- (a) The Rate of Return has been set as a pre-tax real weighted average of the returns applicable to debt and equity.
- (b) The return on equity referred to in sub-section 7.6(a) has been determined using the capital asset pricing model.
- (c) The return on debt referred to in sub-section 7.6(a) has been determined as the sum of a risk free rate of return, an estimate of the corporate debt margin, and an estimate of the costs of raising debt.
- (d) The following elements used to determine the Rate of Return are Fixed Principles in accordance with section 7.13 of the Access Arrangement:

Parameter		Value
Market risk premium	$R_n - R_f$	6.00%
Asset beta	$\beta_a$	0.60
Debt beta	$\beta_d$	0.20
Ratio of debt to total assets	$D/V$	60.00%
Valuation of imputation credits	$\Gamma$	50.00%

#### 7.7 Depreciation Schedule

- (a) A separate depreciation schedule has been determined for each of the four groups of physical assets that form the DBNGP; these four groups are:
  - (i) pipeline assets;
  - (ii) compressor station assets;
  - (iii) metering assets; and
  - (iv) other assets.

- (b) For the assets in each of the four groups, depreciation has been determined using the straight line method.
- (c) The Depreciation Schedule has been designed so that:
  - (i) each group of assets is depreciated over the economic life of that group; and
  - (ii) each group of assets is depreciated only once (that is, so that the sum of the Depreciation that is attributable to each group over the life of the assets is equivalent to the value of that group of assets at the time at which that value was first included in the Capital Base, subject to such adjustment for inflation as is appropriate given the approach to inflation adopted pursuant to section 8.5A(c) of the Code).

#### 7.8 Non-Capital Costs

The Reference Tariff provides for the recovery of all forecast non-capital costs to the extent permitted under section 8.37 of the Code.

#### 7.9 Allocation of Costs Between Services

In determining the Reference Tariff for Tf Service, costs have been allocated to Services provided to Shippers with Full Haul Access Contracts entered into prior to the commencement of this Access Arrangement Period, as if those Shippers had been provided with Tf Service.

#### 7.10 Allocation of Costs Between Shippers

- (a) The portion of Total Revenue attributable to provision of the Tf Service is recovered through the Reference Tariff.
- (b) For the purpose of recovery of costs from Shippers, the Reference Tariff is divided into:
  - (i) Capacity Reservation Tariff; and
  - (ii) Commodity Tariff.
- (c) The Capacity Reservation Tariff recovers from each Tf Service Shipper a proportion of the return and depreciation on, and a proportion of the non capital costs incurred in operating and maintaining the DBNGP.
- (d) The Commodity Tariff recovers from each Tf Service Shipper a proportion of the cost of the fuel gas used on the DBNGP.

#### 7.11 Form of Regulation

- (a) The Reference Tariff will vary within the Access Arrangement Period in accordance with a 'price path' approach as described in section 8.3 of the Code.
- (b) This variation of the Reference Tariff will be effected by adjustment on 1 January in each of the years 2006, 2007, 2008 and 2009 in accordance with CPI on the following basis:

$$Tariff_n = Tariff_b \times \left( \frac{CPI_n}{CPI_b} \right)$$

where:

$Tariff_n$	=	Capacity Reservation Tariff or Commodity Tariff (as the case may be) in year n, where year n is each of the years 2006, 2007, 2008, 2009;
$Tariff_b$	=	Capacity Reservation Tariff or Commodity Tariff (as the case may be) set out in Schedule 1 to the Access Contract Terms and Conditions;
$CPI_n$	=	CPI for the quarter ending on 30 September of the year before the year for which the Reference Tariff is being adjusted; and
$CPI_b$	=	CPI for the quarter ending on 30 September 2004.

#### 7.12 Use of Incentive Mechanism

- (a) The adoption of the 'price path' approach is intended to provide an incentive to develop the market and reduce costs.
- (b) For the Access Arrangement Period commencing on 1 January 2011, the Total Revenue from which the Reference Tariff is to be determined is to include, in addition to the costs listed in section 7.2(b) of this Access Arrangement, a share of any returns to Operator from the sale of Full Haul services in the previous Access Arrangement Period that exceeded the level of returns that were expected during that previous Access Arrangement Period from the sale of such services.
- (c) The share of returns to Operator referred to in section 7.12(b) of this Access Arrangement is to be calculated, for each year, as shown below:

Year	Share of returns
2011	$S_{2011} = E_{2005} + E_{2006} + E_{2007} + E_{2008} + E_{2009}$
2012	$S_{2012} = E_{2005} + E_{2006} + E_{2007} + E_{2008} + E_{2009}$
2013	$S_{2013} = E_{2005} + E_{2006} + E_{2007} + E_{2008} + E_{2009}$
2014	$S_{2014} = E_{2005} + E_{2006} + E_{2007} + E_{2008} + E_{2009}$
2015	$S_{2015} = E_{2006} + E_{2007} + E_{2008} + E_{2009}$

where:

- $$E_{2005} = (F_{2005} - A_{2005}) \times I_s;$$
- $$E_t = [(F_t - A_t) - (F_{t-1} - A_{t-1}) \times (CPI_t / CPI_{t-1}) \times R_t] \times I_s, \text{ for year } t, \text{ where } t = 2006, 2007, 2008, \text{ and } 2009;$$
- $$R_t = \text{adjustment required for real escalation applied to labour costs in year } t, \text{ as shown in the following table:}$$

T	2005	2006	2007	2008	2009
$R_t$	1.0046	1.0044	1.0039	1.0041	1.0042

- $I_s$  = inflation factor for year  $s$ , where  $s = 2011, 2012, 2013, 2014, 2015$ , which adjusts  $[(F_t - A_t) - (F_{t-1} - A_{t-1}) \times (CPI_t/CPI_{t-1}) \times R_t]$  for inflation from year  $t$  to year  $s$ ;
- $F_t$  = the forecast of non-capital costs for year  $t$  made for the purpose of determining the Reference Tariff for the current Access Arrangement Period;
- $A_t$  = actual non-capital costs for year  $t$ ;
- $F_{t-1}$  = the forecast of non-capital costs for year  $t - 1$  made for the purpose of determining the Reference Tariff for the current Access Arrangement Period;
- $A_{t-1}$  = actual non-capital costs for year  $t - 1$ ;
- $CPI_t$  = CPI for the quarter ending on 30 September of year  $t$ ; and
- $CPI_{t-1}$  = CPI for the quarter ending on 30 September of year  $t - 1$ .

- (d)  $A_t$  and  $A_{t-1}$  must be determined using the same cost categories and methods used to determine, respectively,  $F_t$  and  $F_{t-1}$ .

#### 7.13 Reference Tariff Principles Not Subject to Review

- (a) The following are Fixed Principles in accordance with section 8.47 of the Code:
- (i) the method of determination of the Capital Base at the commencement of each year of the Access Arrangement Period as set out in section 7.3 of the Access Arrangement;
  - (ii) the method of determination of the Rate of Return as set out in sections 7.5 and 7.6 of the Access Arrangement, and the elements used in that determination set out in section 7.6(d) of the Access Arrangement; and
  - (iii) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:
    - (A) the revenue that would have been earned had any of those Services which were Full Haul Services been sold at the Reference Tariff; and
    - (B) the revenue actually earned from the sale of those Services which were Services other than Full Haul Services,must not:
    - (C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying the Reference Tariff Policy which applies on or after 1 January 2011; or
    - (D) otherwise be taken into account directly or indirectly by the Relevant Regulator in performing any of its functions under the Code.
- (b) For the purposes of the Fixed Principles referred to in section 7.13 of this Access Arrangement, the Fixed Period is until 31 December 2031.

7.14 Rebate of Charges

Operator will only rebate Charges in relation to the use of certain delivery points and then only in accordance with clause 3 of the Access Contract Terms and Conditions.

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## **8. REFERENCE TARIFF STRUCTURE AND CHARGES**

### **8.1 Structure**

Each Tf Service Shipper is to pay:

- (a) a Capacity Charge;
- (b) a Commodity Charge; and
- (c) other Charges as required by the Access Contract.

8.2 The Capacity Charge is the aggregate of the Tf Service Shipper's Delivery Point MDQs multiplied by the Capacity Reservation Tariff.

8.3 The Commodity Charge is the aggregate of the quantity of Gas delivered to the Tf Service Shipper at a Delivery Point or Delivery Points multiplied by the Commodity Tariff.

8.4 Other Charges are set out in the Access Contract Terms and Conditions.

### **8.5 Goods and Services Tax ("GST")**

- (a) The Capacity Charge, the Commodity Charge and all Other Charges, as determined in accordance with this section 8, are exclusive of GST.
- (b) The manner in which GST is applicable and payable is set out in the Access Contract Terms and Conditions.

## **9. TERMS AND CONDITIONS**

- 9.1 The terms and conditions upon which Operator will grant parties access to Tf Service in the DBNGP are those terms and conditions contained in the Access Contract Terms and Conditions as amended or varied from time to time in accordance with section 9.3 of the Access Arrangement.
- 9.2 At the date of this Access Arrangement, the Access Contract Terms and Conditions are set out in Annexure A.
- 9.3 Operator may vary the Access Contract Terms and Conditions in accordance with section 2 of the Code.

## **10. TRADING POLICY**

### 10.1 Application of Trading Policy

The application of this clause 10 is not limited to the Reference Service and extends to all Services provided by Operator on the DBNGP.

#### ~~10.1~~10.2 Bare Transfer

Operator will permit a Bare Transfer of all or any part of a Shipper's Contracted Capacity the subject of an Access Contract in accordance with section 3.10 of the Code and clause 19 of the Access Contract Terms and Conditions.

#### ~~10.2~~10.3 Conditional Transfer

Operator will permit a conditional transfer of an Access Contract in accordance with clause 19 of the Access Contract Terms and Conditions.

#### ~~10.3~~10.4 Trading Imbalances

A Shipper may exchange all or part of its accumulated Imbalances in accordance with clause 6 of the Access Contract Terms and Conditions.

#### ~~10.4~~10.5 Relocation of Delivery Point MDQContracted Capacity

A Shipper may relocate all or any part of its MDQ-Contracted Capacity from an existing Delivery Point to a new dDelivery Ppoint or from an existing Receipt Point to a new Rreceipt Ppoint in accordance with clause 3A of the Access Contract Terms and Conditions.

## **11. EXTENSIONS/EXPANSIONS POLICY**

- 11.1 Operator will expand the Capacity of the DBNGP to meet the gas transportation needs of Prospective Shippers where Operator believes the tests in section 6.22 of the Code have been satisfied, and Operator may otherwise expand the Capacity of the DBNGP to meet the needs of Prospective Shippers.
- 11.2 Unless Operator states otherwise in a Capacity Expansion Option, an expansion of the DBNGP pursuant to the exercise of a Capacity Expansion Option by the holder is to be treated as part of the Covered Pipeline.
- 11.3 If Operator proposes to extend, expand or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option, the extension, expansion or enhancement is to become part of the Covered Pipeline unless Operator elects otherwise. Operator will give the Regulator notice of an extension, expansion or enhancement which Operator elects will not become part of the Covered Pipeline.
- 11.4 In considering whether to treat an extension, expansion or enhancement as part of the Covered Pipeline, Operator may have regard to the following factors:
- (a) the application of the matters set out in section 1.9 of the Code in respect of the facilities comprising the extension, expansion or enhancement;
  - (b) the extent to which the Capacity resulting from the extension, expansion or enhancement is Contracted Capacity;
  - (c) the legitimate business interests of Operator;
  - (d) the application of any voluntary right of access to the Capacity resulting from the extension, expansion or enhancement; and
  - (e) the extent to which any Access Contract under which the extension, expansion or enhancement capacity is contracted relies upon a determination of the Reference Tariff.
- 11.5 If an extension, expansion or enhancement of the DBNGP becomes part of the Covered Pipeline, the extension, expansion or enhancement will not affect the Reference Tariff before the next Revisions Commencement Date. Although, if an extension, expansion or enhancement of the DBNGP becomes part of the Covered Pipeline:
- (a) Operator may seek a Capital Contribution from Prospective Users or levy a Surcharge on Incremental Users in accordance with sections 8.23 to 8.26 of the Code; and
  - (b) Operator may submit proposed revisions to this Access Arrangement under section 2.28 of the Code.
- 11.6 Operator may (as determined by Operator in its sole discretion) from time to time seek Surcharges or Capital Contributions from Prospective Shippers in respect of New

Facilities Investment in accordance with sections 8.23 to 8.26 of the Code. If Operator intends to levy a Surcharge on Shippers, it will provide written notice, including to the Regulator, of its intention to do so.

- 11.7 Except where Operator imposes a Surcharge or seeks a Capital Contribution, Shipper's using Incremental Capacity will pay the Reference Tariff.
- 11.8 To assist Prospective Shippers with their future gas transportation needs, Operator may from time to time offer Capacity Expansion Options. Operator acknowledges that at the commencement of this Access Arrangement Period, Capacity Expansion Options have already been granted to certain shippers on the DBNGP.
- 11.9 A Capacity Expansion Option gives a Prospective Shipper a right to a specified quantity of Capacity on the terms and conditions specified in the Capacity Expansion Option. A Capacity Expansion Option will have a purchase price to be determined by Operator and is able to be traded by the Prospective Shipper to another Prospective Shipper.

**12. CAPACITY MANAGEMENT POLICY**

The DBNGP is to be managed as a Contract Carriage Pipeline as defined in section 10.8 of the Code.

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**13. REVIEW DATE**

12.113.1 The Revisions Submission Date is 1 ~~July~~April 2010.

12.213.2 The Revisions Commencement Date is 1 January 2011.

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## **13.14. DEFINITIONS**

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

***Access Arrangement Period*** means the date the Regulator approves the Access Arrangement until the start of the Revisions Commencement Date;

***Access Contract*** means a contract between Operator and a Shipper for Tf Service or Non-Reference Services;

***Access Contract Period*** means the term of the Access Contract specified in the Access Request;

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

***Access Request*** means a request for access as described in section 5.2;

***Access Request Form*** means the Access Request forms for lodging Access Requests for Reference Service and Non-Reference Service in accordance with the Access Arrangement as specified from time to time by Operator and made available on Operator's nominated website;

***Annexure*** means an annexure to this Access Arrangement;

***Back Haul*** means a Gas transportation service in the DBNGP where the Receipt Point is downstream of the Delivery Point;

***Capacity*** means the capacity in the DBNGP, as it is configured at the commencement of the Access Arrangement, to transport quantities of gas from a Receipt Point to a Delivery Point;

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

***Code*** has the meaning given in section 1;

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

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

***Covered Pipeline*** means the Dampier to Bunbury Natural Gas Pipeline which is described in section 3;

***CS#*** means Compressor Station 1 to 10 as the case may be on the DBNGP;

***DBNGP*** means the Covered Pipeline and any extension or expansion of the DBNGP which becomes covered under the Access Arrangement pursuant to section 11;

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

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

**Full Haul** means Gas transportation in the DBNGP where the Delivery Point is downstream of CS9 regardless of the location of the Receipt Point, but does not include Back Haul;

**Non-Reference Service** means any of the Services referred to in sub-section 6.1(b);

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

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

**Park and Loan Service** is a service where Operator agrees that a Shipper may deliver a quantity of gas into the DBNGP at a Receipt Point on a Day, without the Shipper taking delivery of that gas at a Delivery Point on the same Day ("Park Service") OR where Operator agrees that a Shipper may take a quantity of gas at a Delivery Point without supplying an equivalent quantity of gas at a Receipt Point on the same Day and consequently that gas is delivered to Shipper out of Linepack ("Loan Service");

**Part Haul** means a Gas transportation service in the DBNGP where the Delivery Point is upstream of CS9 on the DBNGP regardless of the location of the Receipt Point, but does not include Back Haul;

**Prescribed Fee** means the non-refundable amount of \$5,000;

**Prospective Shipper** means a person who seeks or is reasonably likely to seek to enter into a contract for Services and includes a Shipper who seeks or may seek to enter into a contract for an additional Service;

**Reference Service** means Tf Service;

**Reference Tariff** means Operator's reference tariff for the Reference Service as set out in the Access Contract Terms and Conditions;

**Regulator** means the regulator appointed under the Gas Pipeline Access (Western Australia) Act 1998;

**Seasonal Service** means Capacity made available by Operator in relation to a particular Month out of incremental capacity (being Capacity over and above Tf Service Capacity) available due to seasonal factors;

**Service** means either a Reference Service or a Non-Reference Service;

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

**Spare Capacity** means:

- (a) the difference between the Capacity and the Contracted Capacity; plus
- (b) the difference between the Contracted Capacity and the Contracted Capacity which is being used;

**Spot Market Rules** means the rules published by Operator from time to time under to apply to Spot Capacity Service which Operator will make available on its website;

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

***Spot Transaction Terms and Conditions*** means the terms and conditions for the Spot Capacity Service as ~~varied by Operator from time to time and~~ made available on Operator's website;

***Tf Service*** means the Service described in section 6.2;

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

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

- (a) the meaning given above in this section 14;
- (b) if no meaning is given above in this section 14, the meaning given in the Access Contract Terms and Conditions; and
- (c) if no meaning is given above in this section 14 or in the Access Contract Terms and Conditions, the meaning given in the Code.

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

**Amended Proposed Revised Access Arrangement**  
**~~21-24 June~~January 2005**

**Annexure A : Access Contract Terms and Conditions**

# **DAMPIER TO BUNBURY NATURAL GAS PIPELINE**

**DBNGP (WA) Transmission Pty Ltd**

**ACN 061 609 190**

**Level 7/ 239 Adelaide Terrace, Perth WA 6000**

**Contact: Manager, Commercial**

**Telephone: (08) ~~9492 3800~~9223 4300**

**IMPORTANT NOTE: This revised proposed Access Contract Terms and Conditions is provided in draft. It does not purport to be a definitive nor final statement of the Operator's position in respect to the Regulator's Draft Decision amendments and, accordingly, the Regulator should not rely upon it as such. Operator reserves its rights to make further changes to its proposed Access Contract Terms and Conditions.**

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## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definition of Terms**

In these Access Contract Terms and Conditions except where the context requires another meaning:

"Access Arrangement" means Operator's access arrangement for the DBNGP as approved, varied or substituted by the Regulator;

"Access Contract" means the contract formed between Operator and Shipper when Operator accepts an Access Request (by executing that Access Request), and comprises the Access Arrangement, that Access Request and these Access Contract Terms and Conditions;

"Access Guide" has the meaning given in sub-clause 5.1(a) of the Access Arrangement;

"Access Request" means the request for access to Tf Service in the form contained in the Access Guide;

"Access Request Form" means the Access Request form for lodging Access Requests for Reference Service in accordance with the Access Arrangement, or as the context requires, the Access Request Form forming part of the Access Contract;

"Actual Mass Flow Rate" means either a directly measured variable or a derived variable computed by multiplying the instantaneous actual volume flow of gas (measured by the Metering Equipment) by the density of the gas (either measured as the instantaneous measured density of the gas or calculated in accordance with the American gas Association's NX 19 or AGA 8 standards or such other gas industry standards as the Parties may agree);

"Associated Delivery Point" means an associated delivery point specified from time to time in the System Description;

["Back Haul" means a gas transportation service on the DBNGP where the receipt point is downstream of the delivery point;](#)

"Bare Transfer" means a transfer or assignment by Shipper of its entitlement to capacity under the Access Contract in circumstances where:

- (a) Shipper's obligations to Operator under the Access Contract remain in full force and effect after the transfer or assignment; and
- (b) the terms of the Access Contract are not altered as a result of that transfer or assignment;

"Business Day" means any Day which is not a Saturday or Sunday or public holiday in Perth;

"Capacity" means the capacity in the DBNGP to transport gas from a Receipt Point to a Delivery Point;

"Capacity Charge" means the aggregate of the Shipper's Delivery Point MDQs multiplied by the Capacity Reservation Tariff;

"Capacity End Date" means 08:00 hours on the date specified in the Access Request Form as the Capacity End Date;

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"Capacity Reservation Tariff" means the tariff named as such set out in Schedule 1, as adjusted in accordance with clause 16.2;

"Capacity Service" means any capacity service offered by Operator on the DBNGP excluding Service for Spot Capacity;

"Charges" means the Capacity Charge, Commodity Charge, and any other fee or charge payable pursuant to the Access Contract;

"Commencement Date" means 08:00 hours on the date for commencement of the Service set out in the Access Request Form;

"Commodity Charge" means the aggregate of the quantity of gas delivered to the Shipper at a Delivery Point or Delivery Points multiplied by the Commodity Tariff;

"Commodity Tariff" means the tariff named as such as set out in Schedule 1, as adjusted in accordance with clause 16.2;

"Contracted Capacity" means that part of the capacity which has been reserved by a shipper or shippers pursuant to an Access Contract or any other contract for capacity with Operator;

"Contribution Agreement" has a meaning given in clause 6.7(b);

"CPI" means the Consumer Price Index (All Groups, Eight Capital City) as published from time to time by the Australian Bureau of Statistics for any Quarter and if that Index is discontinued or modified, an alternative equivalent index provided by the Australian Bureau of Statistics. If no equivalent alternative index is available, or agreed, then as determined as a financial matter by the Independent Expert;

"DBNGP" means the Dampier to Bunbury Natural gas Pipeline as defined in the Access Arrangement;

"Day" means the 24 hour period starting at 08:00 hours on a day and ending at 08:00 hours on the following day;

"Delivery Point" means the point specified in the Access Request (there may be more than one Delivery Point specified) as a point at which Shipper may require Operator to deliver gas, or any other point at which Shipper may require Operator to deliver gas in accordance with the Access Contract and includes a Notional Delivery Point;

"Delivery Point MDQ" means the maximum quantity of gas that Shipper may require Operator to deliver on a Day at a single Delivery Point as specified in the Access Contract;

"Delivery Point Facility" means the Metering Equipment site associated with a delivery point, and includes any facilities installed at the site, examples being overpressure protection, reverse flow protection, excessive flow protection, odourisation, gas quality monitoring, gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services;

"Direct Damage" means loss or damage which is not Indirect Damage;

"Dispute" means a dispute, controversy or claim in relation to the Access Contract;

"Event of Default" has the meaning given in clause 17.1;

"Excess Imbalance Charge" means the excess imbalance charge rate set out in Schedule 1;

"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 to be supplied to the customer at or immediately downstream of a delivery point, which was in existence as at the date of the relevant change in Law as contemplated in clause 2.8, and excluding any amendments to that contract having effect after such date;

"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 to be supplied to the shipper at or immediately upstream of a receipt point, which was in existence as at the date of the relevant change in Law as contemplated in clause 2.8, and excluding any amendments to that contract having effect after such date;

"Existing Station" means:

- (a) a Receipt Point Facility associated with a Receipt Point or a Delivery Point Facility associated with a Delivery Point that was installed and commissioned on or before 1 January 1995; or
- (b) a Receipt Point Facility associated with a Receipt Point or a Delivery Point Facility associated with a Delivery Point that is the subject of a Facility Agreement (which has the meaning given in clause 3.8) or similar agreement, as at the Commencement Date;

"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;

"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:

- (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) refusal or delay in obtaining any necessary consent or approval from any Commonwealth, State or local government or a Commonwealth or State statutory authority;
- (j) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the Party's operations;

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- (k) 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;
- (l) 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;
- (m) DBNGP ruptures;
- (n) collisions or accidents; and
- (o) any other matter reasonably beyond the control of the Party;

"Forward Haul" means a gas transportation service on the DBNGP where the receipt point is upstream of the delivery point;

"Full Haul" means a gas transportation service on the DBNGP where the delivery point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the receipt point, but does not include Back Haul;

"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;

"GJ" means gigajoule;

"Governmental Agency" means any government department or any statutory, public, municipal, local or other authority (other than Shipper) charged with the responsibility for administering any relevant legislation, regulation, ordinance or by law;

"Imbalance" means the situation where the total quantity of gas supplied by Shipper to Operator at Receipt Points on a Day (determined in accordance with clause 3.4) is greater than (which is a "Positive Imbalance") or less than (which is a "Negative Imbalance") the total quantity of gas delivered to Shipper by Operator at Delivery Points on that Day (determined in accordance with clause 3.5);

"Imbalance Limit" means 8% of Shipper's MDQ;

"Independent Expert" means an independent expert appointed under clause 18.2;

"Indirect Damage" means:

- (a) any indirect loss or damage 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) loss due to business interruption,whether or not the indirect loss or damage was foreseeable; and
- (b) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding;

"Insolvency Event" means in relation to any person:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the person and is not removed within 30 Days of appointment;
- (b) the person suspends payment of its debts generally;
- (c) the person is insolvent within the meaning of the Corporations Law;
- (d) the person enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the person or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the person otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 30 Days; or
- (f) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Law and, except in the case of an appointment by the person or its directors, is not withdrawn or removed within 14 Days;

"Interest Rate" means the corporate overdraft reference rate for overdrafts of greater than \$100,000 (monthly charging cycle) applied from time to time by the National Australia Bank;

"Law" means a statute, ordinance, code, clause, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgement or order and includes the terms and conditions of any licence, permit, consent, certificate, authority or approval issued thereunder or any assurance or bond or similar requirements including all applicable standards and obligations under the common law;

"Maintenance Charge" has the meaning given in clause 3.6;

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

- (a) cannot reasonably be scheduled at a time when it will not affect services; and
- (b) by its nature or magnitude, would require the Operator (acting reasonably) to wholly or partially reduce services;

"MDQ" means the aggregate of Shipper's Delivery Point MDQ's;

"Metering Equipment" means all equipment used to measure the physical quantity and quality of gas entering the DBNGP at a Receipt Point or exiting the DBNGP at Delivery Point, as the case may be, and all ancillary equipment required to compute derived variables and to produce printed reports at the Receipt Point or Delivery Point 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);

"Month" means a calendar month starting at 08:00 hours on the first day of the month and ending at 08:00 hours on the first day of the following month;

"MHQ" or maximum hourly quantity, has the meaning given in clause 7.1;

"Multi-shipper Agreement" means an agreement under clause 63.3(d);

"Multi-shipper Delivery Point" means a delivery point at which more than one shipper receives gas from Operator;

"Multi-shipper Receipt Point" means a receipt point at which more than one shipper delivers gas to Operator;

"Negative Imbalance" has the meaning given in the definition of Imbalance;

"Nomination Surcharge" means the charge set out in Schedule 1;

"Notional Delivery Point" means a notional delivery point specified from time to time in the System Description;

"Notional Gate Point" has the meaning given in clause 3.9(a);

"Operating Specification" means the gas quality specification specified in Item 1 of Schedule 2, and includes each component of the specification;

"Operational Grounds" includes but is not limited to physical pipeline constraints, lack of Capacity, scheduled and unscheduled maintenance, compressor failure and emergency;

"Operator Owned Point" means a receipt point or a delivery point described in clauses 3.7(a)(ii)(A) or (B);

"Other Shipper" means a person other than Shipper who has a contract with Operator for the transport of gas on the DBNGP;

"Out-Of-Specification gas" means gas which does not comply with one or more of the gas specifications specified in Item 1 or Item 2 of Schedule 2;

"Out Of Specification gas Charge" means the charge set out in Schedule 1;

"Overrun" has the meaning given in clause 5.1;

"Overrun Zone" means any of Overrun Zone 1, Overrun Zone 2 or Overrun Zone 3;

"Overrun Zone 1" means the part of the DBNGP upstream of the outlet flange to Compressor Station 10 other than Overrun Zone 2;

"Overrun Zone 2" means the part of the DBNGP known as the Kwinana West Lateral and the Rockingham Lateral, as described in the Access Arrangement Information;

"Overrun Zone 3" means the part of the DBNGP not within Overrun Zone 1 or Overrun Zone 2;

"Part Haul" means a gas transportation service on the DBNGP where the delivery point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the receipt point, but does not include Back Haul;

"Party" means Operator or Shipper as the context requires;

"Peaking Surcharge" means the charge set out in Schedule 1;

"Permissible Interruption" means an interruption of the kind described in clause 14.1;

"Permissible Limit" means 1% of Shipper's MDQ multiplied by the number of Days in the Year;

"Physical Gate Point" means a flange, joint or other point marked in the description of the DBNGP 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 a Delivery Point;

"Pipeline Licences" means the pipeline licences for the DBNGP as identified in section 3 of the Access Arrangement;

"Planned Maintenance" means maintenance on the DBNGP which is scheduled in advance of the maintenance activities being undertaken;

"Positive Imbalance" has the meaning given in the definition of Imbalance;

"Previous Verification" means the verification at which the Metering Equipment was last found to be measuring the quantity of gas in accordance with these Access Contract Terms and Conditions;

"Producers" means the producers or suppliers of gas with whom Shipper and (as the case may be) an Other Shipper has entered into a gas supply contract or contracts under which gas is to be delivered at the Receipt Point;

"Receipt Point" means a flange, joint, or other point, specified in the Access Contract as a point at which Operator receives gas from Shipper, or any other point at which Operator receives gas from Shipper in accordance with the Access Contract;

"Receipt Point Facility" means the Metering Equipment site associated with a receipt point, and includes any facilities installed at the site, examples being overpressure protection, reverse flow protection, excessive flow protection, odourisation, gas quality monitoring, gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services;

"Receipt Point MDQ" means the maximum quantity of gas that Shipper may supply for delivery to Operator at a Receipt Point on a Day as specified in the Access Contract;

"Related Body Corporate" means a related body corporate as defined in the Corporations Law;

"Retail Market Rules" means the retail market rules that govern the retail gas market in Western Australia;

"Secondary Market" means the system of trading capacity as described in clause 11.3 of the Access Arrangement and conducted by Operator in accordance with the Secondary Market Rules;

"Secondary Market Rules" means the rules published by Operator from time to time under which the Secondary Market operates;

"Secondary Market Service" means the service acquired by a Shipper from the Secondary Market which is subject to the Secondary Market Terms and Conditions;

"Secondary Market Terms and Conditions" means the terms and conditions published by Operator from time to time to apply to Secondary Market Service in accordance with the Secondary Market Rules and sub-clause 11.3(c) of the Access Arrangement;

"Service" in these Access Contract Terms and Conditions means Tf Service;

"Spot Capacity" has the meaning given in the Standard Shipper Contract published by Operator on its nominated website from time to time;

"System Description" means the description of the DBNGP contained in the Access Arrangement Information;

"Tf Service" has the meaning given in the Access Arrangement;

"TJ" means Terajoule which is equal to 1000 GJ;

"Technical Matter" means a matter involving issues relating to the receipt, transportation and delivery of gas under the Access Contract which is capable of determination by reference to engineering or scientific knowledge and practice;

"Total Current Physical Capacity" means the total physical gas throughput Capacity at the relevant time (having regard to all associated facilities) of a receipt point or a delivery point and operating within its technical design parameters, as the case may be, in Operator's opinion as a reasonable and prudent person;

"Unavailability Charge" means the charge set out in Schedule 1;

"Unavailability Notice" means a notice issued by Operator to Shipper (which may also have been issued to Other Shippers), stating that Overrun gas is unavailable to Shipper or is only available to a limited extent for one or more Days;

"Variance Notice" has the meaning given in clause 4.4(b);

"Verification" means the process of testing Metering Equipment and components of that Metering Equipment to establish that it is measuring and registering in accordance with these Access Contract Terms and Conditions;

"Week" means a period of seven (7) consecutive Days commencing at 08:00 hours Monday; and

"Year" means a period of 365 Days (except for a leap year in which case the period is 366 Days) commencing at 08:00 hours on the 1st of January and ending at 08:00 hours on the following 1st of January.

## 1.2 Interpretation

In the interpretation of these Access Contract Terms and Conditions, unless the context requires otherwise:

- (a) a reference to a clause number or Schedule is a reference to a clause or Schedule of these Access Contract Terms and Conditions;
- (b) words indicating the singular include the plural, and vice versa;
- (c) words indicating one gender include any other gender;
- (d) headings are for convenience only and do not affect interpretation;
- (e) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (f) a reference to any statutory law extends to and includes any modification of, or substitution for, that law;
- (g) 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;
- (h) a reference to dollars or \$ is a reference to Australian dollars;
- (i) where Shipper comprises two or more persons, an obligation, representation or warranty of Shipper binds, or is given by, those persons jointly and severally;

- (j) 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 is to be performed elsewhere; and
- (k) unless specified otherwise, a reference to a quantity of gas is a reference to that quantity of gas measured in GJ.

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**1A. TERM**

Subject to the terms and conditions of the Access Contract, the Access Contract commences on the date Operator executes the Access Request Form and ends on the Capacity End Date.

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## **2. GAS SPECIFICATIONS**

### **2.1 Gas Must Comply With Operating Specifications**

Gas supplied by Shipper at a Receipt Point or delivered to Shipper by Operator at a Delivery Point must comply with the relevant column in the Operating Specifications.

### **2.2 Gas To Be Free From Certain Substances**

Gas supplied by Shipper at a Receipt Point or delivered to Shipper by Operator at a Delivery Point must be free, by normal commercial standards, 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.

### **2.3 Gas To Be Free From Objectionable Odours**

Gas supplied by Shipper to Operator at a Receipt Point must be free, by normal commercial standards, from objectionable odours.

### **2.4 Gas Temperature and Pressure**

- (a) The minimum and maximum temperatures and the minimum and maximum pressures at which Shipper may supply gas to Operator at a Receipt Point, and Operator may deliver gas to Shipper at the Delivery Point, are those set out in Item 2 of Schedule 2.
- (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 2.
- (c) If Shipper supplies gas to Operator at a Receipt Point or Shipper receives gas from Operator at a Delivery Point at which the minimum and the maximum temperature and the minimum and maximum pressure are not as set out in Item 2 of Schedule 2, Shipper is entitled to supply gas to the Receipt Point or receive gas at the Delivery Point (as the case may be) under the Access Contract at the temperature and pressure at which Operator at the relevant Receipt Point or Delivery Point is otherwise receiving gas into the DBNGP or delivering gas out of the DBNGP at the time the gas is delivered or received by Shipper at that Delivery Point, or if Operator is otherwise not receiving gas into the DBNGP or delivering gas out of the DBNGP at that time, then at the temperature and pressure at which Operator was last entitled or obliged to receive gas into the DBNGP or deliver gas out of the DBNGP at that Receipt Point or Delivery Point under the terms of a contract with the relevant shipper.

### **2.5 Operator May Refuse To Receive Out-Of-Specification Gas**

Subject to any agreement under clause 2.6, Operator may at any time without penalty refuse to receive from Shipper at a Receipt Point any Out-Of-Specification gas.

**2.6 Operator May Receive Out-Of-Specification Gas**

Operator may agree to receive Out-Of-Specification gas from Shipper at a Receipt Point on whatever terms and conditions (including as to pricing) that Shipper and Operator may agree.

**2.7 Shipper's Liability For Out-Of-Specification Gas**

If any Out-Of-Specification gas supplied by or on behalf of Shipper enters the DBNGP without Operator's agreement under clause 2.6:

- (a) Shipper is to be liable to Operator for any loss or damage arising in respect of the Out-Of-Specification gas.
- (b) Without limitation on any of its other rights at law, Operator is, to the extent necessary to allow it to deal with that entry of Out-Of-Specification gas:
  - (i) entitled to vent the Out-Of-Specification gas, and Shipper shall be deemed not to have supplied a quantity of gas at the Receipt Point equivalent to the quantity of all gas necessarily vented by Operator; and
  - (ii) relieved of any obligation to deliver gas to Shipper by an amount no greater than the quantity of gas vented by Operator under clause 2.7(b)(i) on the basis that Shipper is deemed not to have delivered that quantity of gas at the Receipt Point.
- (c) The exclusion of Indirect Damage in clause 13.2 does not apply in relation to Shipper's liability under clause 2.7(a).

**2.8 Change of Law**

If:

- (a) at any time during the term of the Access Contract there is a change in Law which requires Operator to receive gas into the DBNGP 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 2.8) ("Permissible Specifications"); and
- (b) there is no shipper with an Inconsistent Existing Contractual Specification; and
- (c) Operator actually receives into the DBNGP 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 a Delivery Point as set out in Schedule 2,

then Operator may notify Shipper that:

- (d) the Receipt Point Operating Specifications (and Item 1 of Schedule 2) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Receipt Point Operating Specification, for the operating specification of that component of the Receipt Point Operating Specification; and

- (e) the Delivery Point Operating Specifications (and Item 1 of Schedule 2) are amended so as to broaden the specification for each component which has been amended in respect of the Receipt Point Operating Specification, by the same amount as the Receipt Point Operating Specification has been broadened by the operation of this clause.

In this clause, "Inconsistent Existing Contractual Specification" means:

- (f) in relation to a Receipt Point, if the amendments to the Receipt Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Producer Contract; or
- (g) in relation to a Delivery Point, if the amendments to the Delivery Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Gas Supply Contract.

## 2.9 Amendment Notice

The notice under clause 2.8 must:

- (a) contain details of the change in Law;
- (b) specify the amended operating specification for each component of the Receipt Point Operating Specification;
- (c) specify the amended operating specification for each component of the Delivery Point Operating Specification; and
- (d) specify the amendments to Item 1 of Schedule 2 which are made to give effect to the amended operating specifications for each component of the Receipt Point Operating Specification and the Delivery Point Operating Specification.

## 2.10 Shipper Changes of Gas Specification

- (a) Shipper may from time to time request Operator to vary the gas specification for a Receipt Point (with a corresponding change in respect of Delivery Points), and if each component of the proposed new specification is no less stringent than the corresponding component in the 'broadest specification' as specified in Item 3 of Schedule 2, then Operator must agree to the variation in the specification unless it can demonstrate to the standard of a reasonable and prudent person that there is a risk that its receiving gas in accordance with the varied specification would render it incapable of complying with a Delivery Point specification under a contract with any other shipper.
- (b) Any dispute under clauses 2.10(a) or 2.10(d) is a Technical Matter which can be referred to the Independent Expert.
- (c) To avoid doubt, nothing in this clause 2 is to be read as requiring Operator to install gas processing equipment to accommodate changes in Receipt Point gas specification agreed under this clause 2.10 or otherwise imposed by Law.
- (d) If receiving gas under the gas specification as varied under clause 2.10(a) will (compared with the position under the Operating Specification):

- (i) materially increase Operator's costs;
- (ii) materially adversely affect the capacity of the DBNGP (expressed in units of energy) to transport gas; or
- (iii) in the opinion of Operator, acting as a reasonable and prudent person, adversely affect the rights of any shipper (other than Shipper),

then Operator may refuse to receive gas under the varied gas specification until the Parties have agreed to reasonable compensation to be paid by Shipper to Operator.

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### **3. RECEIPT POINTS AND DELIVERY POINTS**

#### **3.1 Receipt Points and Delivery Points**

- (a) The Receipt Points for the Access Contract are set out in Item 1 of clause 5 of the Access Request Form; and
- (b) The Delivery Points for the Access Contract are set out in Item 2 of clause 5 of the Access Request Form.

#### **3.2 Multi-shipper Agreement**

Shipper must become a party to any Multi-shipper Agreement in respect of a receipt point or delivery point that the Operator advises exists at the Commencement Date.

#### **3.3 Multi-shipper Receipt Point and Multi-shipper Delivery Point**

- (a) The gas streams delivered to a Multi-shipper Receipt Point by or on behalf of Shipper are to be commingled at a point or points upstream of the receipt point with the gas streams delivered to that Multi-shipper Receipt Point by other shippers.
- (b) For any purpose under the Access Contract, Shipper's proportional share of the commingled inlet stream at a Multi-shipper Receipt Point is to be determined immediately upstream of the receipt point after all gas streams have been commingled, and Shipper's proportional share of the commingled outlet stream at a Multi-shipper Delivery Point is to be determined immediately downstream of the delivery point.
- (c) Subject to any contrary provisions in a Multi-shipper Agreement, Shipper's nominations, obligations and liabilities under the Access Contract in respect of any quantity, quality, temperature or pressure of gas at a Multi-shipper Receipt Point are to be determined solely in respect of Shipper's proportional share of the commingled inlet stream determined under clause 3.4, and not by reference to any quantity, quality, temperature or pressure of any gas delivered by or on behalf of Shipper into the commingled inlet stream.
- (d) All shippers using a receipt point or a delivery point (as the case may be) [in respect of which a Multi-shipper Agreement does not exist at the Commencement Date, may must](#) enter into (with or without other parties which are not shippers) a written agreement ("Multi-shipper Agreement") with Operator dealing with, amongst other things, the way in which gas delivered by them to a receipt point or received by them from a delivery point is to be allocated between them.
- (e) Operator must promptly enter into a Multi-shipper Agreement in respect of a receipt point or delivery point if:
  - (i)
    - (A) the agreement contains a formula or mechanism for allocating gas deliveries to the receipt point or delivery point (as the case may be) for each gas hour between the shippers in a manner which enables Operator to determine the allocation by applying

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- the formula or mechanism once it knows the total quantity of gas delivered at that receipt point or delivery point (as the case may be) during the relevant gas hour; or
- (B) the agreement relates to a receipt point, it provides that gas deliveries at the receipt point are allocated by a notice to Operator from the Producer that delivers gas into the receipt point on behalf of all shippers using that receipt point; or
  - (C) the agreement relates to a delivery point, it provides that gas deliveries at that delivery point are allocated by a notice provided to Operator from one of the shippers at that delivery point or from a third party nominated by one of the shippers at that delivery point;
- (ii) the agreement allocates deliveries to the receipt point or delivery point (as the case may be) between the shippers on a daily basis;
  - (iii) the agreement is between all shippers who use the receipt point or delivery point (as the case may be) and Operator;
  - (iv) the agreement provides that as between each shipper and Operator for the purposes of each shipper's gas transportation contract, Operator may rely upon the allocation of gas delivered by the shippers at a receipt point, or received by the shippers at a delivery point, determined in accordance with the agreement, as being the quantity of gas delivered by each of those shippers at the receipt point and the quantity of gas received by each of those shippers at the delivery point;
  - (v) the agreement provides that Operator may, in order to give effect to a curtailment of the Capacity of one or more of the shippers using the delivery point, physically reduce the Capacity of the delivery point by an amount up to the Contracted Capacity (or the equivalent under that shipper's contract) at that delivery point for the shipper to be curtailed;
  - (vi) Operator is reasonably satisfied with the metering arrangements for any meters being used for the purpose of allocating gas deliveries at the receipt point or delivery point (as the case may be);
  - (vii) the agreement provides that Operator is not liable to shippers where it acts in accordance with the provisions of the agreement;
  - (viii) the agreement does not impose any other obligations or liabilities upon Operator or confer any other rights or benefits upon a shipper (other than in relation to the provision of metering information of the type contemplated in clause 15.5) and does not directly or indirectly vary or amend the Access Contract or any other contract between a shipper and Operator other than as specifically contemplated above.
- (f) A Dispute in relation to clause 3.3(d) is to be referred to an Independent Expert under clause 18.2 as a Technical Matter.

3.4 Allocation of Gas at Receipt Points

- (a) On any Day when Shipper is the only shipper delivering gas to Operator at a receipt point, Shipper shall be deemed to have delivered all gas received by Operator at the receipt point for that Day and clause 3.4(b) shall not apply.
- (b) If Shipper and any other shipper delivers gas to Operator at a receipt point on a Day, then Shipper's proportional share of gas at the receipt point will be determined by the Multi-shipper Agreement for the receipt point.

3.5 Allocation of Gas at Delivery Points

- (a) On any Day when Shipper is the only person taking delivery of gas from Operator at a delivery point, Shipper shall be deemed to have taken delivery of all gas delivered by Operator at the delivery point for that Day and clause 3.5(b) shall not apply.
- (b) If Shipper and any other shipper take delivery of gas from Operator at the delivery point on a Day, then ~~if there is a Multi-shipper Agreement in relation to the delivery point~~ Shipper's proportional share of gas at the delivery point must be determined under the Multi-shipper Agreement for the delivery point.

3.6 Installation, Operation and Maintenance of Receipt Point Facilities and Delivery Point Facilities

- (a)
  - (i) Shipper shall install, operate and maintain or procure the design, installation, operation and maintenance of, Receipt Point Facilities at its own expense and when (if ever) Shipper and other shippers deliver gas to Operator at a receipt point on the DBNGP, Shipper and those other shippers must, at their joint expense, collectively install, operate and maintain the associated Receipt Point Facility.
  - (ii) Other than in respect of an Existing Station, and unless agreed otherwise, Operator shall install, operate and maintain Delivery Point Facilities that are not Gate Stations, at Shipper's request, and at Shipper's expense to be determined in accordance with clause 3.6(i).
  - (iii) Other than in respect of an Existing Station, Shipper must pay a proportion of the Maintenance Charge relating to a Delivery Point Facility associated with an Operator Owned Point (but not otherwise) that:
    - (A) in the case of a Delivery Point Facility related to a delivery point, is equal to the proportion that Shipper's Contracted Capacity at that delivery point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that delivery point, less any amount recovered under clause 3.6(a)(iii)(B); and
    - (B) in the case of a Delivery Point Facility related to a delivery point at which Shipper does not have Contracted Capacity, is equal to the proportion that the sum of Shipper's deliveries of gas at the delivery point, during the previous calendar month to which that Delivery Point Facility relates, bears to the sum

of all shippers' delivery of gas (across all Capacity Services) at such delivery point, during the previous calendar month.

- (iv) For the purposes of this clause 3.6, an obligation to install, operate and maintain must include (but not be limited to) an obligation to ensure that a Receipt Point Facility or Delivery Point Facility (as the case may be) meets the requirements set out in clauses 3.6(b) to (f), the technical requirements of Operator as advised from time to time and the requirements of any Law.
  - (v) Shipper must ensure that Operator is given access to a Delivery Point Facility which is not a Gate Station, to which Operator has no rights of access, for the purpose of maintaining and operating that Delivery Point Facility.
  - (vi) Other than in respect of an Existing Station, all Gate Stations associated with a distribution network are to be installed, operated and maintained by Operator at the collective expense of all shippers who receive gas from Operator at the Notional Gate Point for the distribution network, and Shipper must pay a proportion of the Maintenance Charge that is equal to the proportion that the sum of Shipper's Contracted Capacity at the Notional Gate Point, for the time being bears to the sum of all Shipper's and other shippers' Contracted Capacity (across all Capacity Services) at such Notional Gate Point, for the time being.
  - (vii) Without limiting the generality of clause 3.6(a)(vi), whenever a new Gate Station is installed, or a Gate Station is enhanced, the amounts referred to in clause 3.6(a)(vi) are to be included in the apportionments between all shippers who receive gas from Operator at the Notional Gate Point, including shippers with Access Contracts entered into before the date of installation or enhancement.
  - (viii) 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 a Gate Station, Operator may have regard to the likely impact of clause 3.6(a)(vi).
- (b) (i) The site for a Receipt Point Facility or Delivery Point Facility 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.
- (i) Telemetry, power supply and other sensitive equipment at a Receipt Point Facility or Delivery Point Facility must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.

- (c)
- (i) Every Receipt Point Facility or Delivery Point Facility 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 Receipt Point Facility or Delivery Point Facility; 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 Receipt Point Facility or Delivery Point Facility.
  - (ii) 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 utilize for that purpose any mechanism installed under clause 3.6(c)(i).
  - (iii) Operator may at any time, for, or in anticipation of, the purposes of clause 3.6(c)(i), make any necessary connections, modifications or additions to any mechanism installed under clause 3.6(c)(i), to enable it to be utilized for the purposes of clause 3.6(c)(ii).
  - (iv) Operator cannot charge Shipper for any mechanism installed under clause 3.6(c)(i) or clause 3.6(c)(iii).
- (d)
- (i) Every Receipt Point Facility must include filters or separators, or both, to a standard acceptable to a reasonable and prudent person.
  - (ii) A Delivery Point Facility must, whenever 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) Operator may make a determination under clause 3.6(d)(ii) at any time, including after a Delivery Point Facility is commissioned.
  - (iv) Neither filters nor separators are to be regarded as Metering Equipment.
- (e) All facilities upstream of a receipt point or downstream from a delivery point must be electrically isolated from the DBNGP by an isolating joint or flange located either:
- (i) at the receipt point or delivery point; or
  - (ii) sufficiently close to the receipt point or delivery point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 3.6(e)(i),
- which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.
- (f) All facilities at a Receipt Point Facility or Delivery Point Facility must be connected to an effective earthing system.

- (g) Any new equipment installed at a Receipt Point Facility or Delivery Point Facility must be compatible with existing equipment and systems.
- (h)
  - (i) The quantity of gas passing through a Notional Gate Point in any period of time is to be 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 3.6(h)(i) is to prevail over the deeming in clause 3.5 of the quantity of gas taken by a shipper or shippers at a Notional Gate Point.
- (i) For the purposes of this clause 3.6, "Maintenance Charge" means, with respect to a particular Delivery Point Facility, [Receipt Point Facility](#) or Gate Station associated with a distribution network, the charge determined by Operator for designing, installing (which is to be taken as including the capital cost of acquiring and installing all relevant components of a Delivery Point Facility, [Receipt Point Facility](#) or Gate Station), maintaining, operating and decommissioning such Delivery Point Facility, [Receipt Point Facility](#) or Gate Station (as the case may be) and which shall, in all cases, exceed the actual cost of such design, installation, maintenance, operation and decommissioning by a reasonable premium calculated to recognise Operator's management time and to allow Operator to realise a reasonable rate of return on the cost of such design, installation, maintenance, operation and decommissioning (as the case may be). Any disagreement as to the level of Maintenance Charge must be a Dispute for the purposes of clause 18 of these Access Contract Terms and Conditions.
- (j) Nothing in this clause 3.6 shall affect or derogate from charges payable under any other agreement between Operator and Shipper in respect to the installation, operation and maintenance of Receipt Point Facilities, Delivery Point Facilities and Gate Stations and any upgrades, modifications and expansions to Receipt Points or Delivery Points.
- (k) Operator agrees that it shall not be entitled to impose any charges under this clause 3.6 or otherwise under the Access 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 and which increased or increases the capacity of that Existing Station to receive or deliver gas into or from the DBNGP, and Operator is entitled to impose charges on Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs as determined in accordance with the provisions in clause 3.6(a)(iii).
- (l) Despite any other provisions of the Access Contract, each Existing Station and all facilities, ancillary equipment and services at each Existing Station and 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 to be taken to comply in all respects with the provisions of the Access Contract including this clause 3.6.

### 3.7 Contribution Agreement

- (a) Shipper may only deliver gas to a receipt point, or receive gas from a delivery point, to which it did not deliver gas or from which it did not receive gas, at the Commencement Date if:
- (i) the receipt point or delivery point is associated with an Existing Station;
  - (ii) the receipt point or delivery point is:
    - (A) owned by Operator, any of Operator's related bodies corporate or any entity controlled by any of the foregoing (other than related bodies corporate of Alcoa of Australia Limited or Alinta Limited); or
    - (B) leased by Operator, any of Operator's related bodies corporate or any entity controlled by any of the foregoing (other than related bodies corporate of Alcoa of Australia Limited or Alinta Limited) under an equipment lease,and Shipper has entered into a Contribution Agreement in respect of the receipt point or delivery point; or
  - (iii) the receipt point or delivery point is not of a type referred to in clauses 3.7(a)(i) or 3.7(a)(ii)(A) or (B) and Shipper has reached an agreement, arrangement or understanding, whether or not in writing to use that receipt point or delivery point with the owner of the receipt point or delivery point.
- (b) A Contribution Agreement in respect of a receipt point or a delivery point is an agreement between Operator and Shipper:
- (i) under which Shipper agrees to pay to Operator an amount in order to contribute to the Maintenance Charge for the receipt point or the delivery point, determined in accordance with clause 63.6(i);
  - (ii) under which Shipper's proportion of the Maintenance Charge is determined under clause 63.6(a)(iii) or is otherwise agreed in the Contribution Agreement; and
  - (iii) Shipper agrees that another shipper ("New Shipper") may deliver gas to the relevant receipt point or receive gas from the relevant delivery point, if:
    - (A) New Shipper agrees to pay to Operator an amount in order to contribute to the Maintenance Charge for the receipt point or the delivery point determined in a manner consistent with the principles in clause 3.6(a)(iii); and
    - (B) Operator agrees to rebate to Shipper the contributions it receives from New Shipper under clause 3.7(b)(iii)(A).
- (c) 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 3.7 requires Shipper to enter into an agreement with any person other than Operator.

### 3.8 Shipper Specific Facility Agreement

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 receipt point, delivery point, associated Receipt Point Facility or associated Delivery Point Facility, or related equipment ("Facility") which is or has been the subject of an agreement or arrangement ("Facility Agreement") under which Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility without ensuring that:

- (a) subject to clause 3.8(b), 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 3.7(b)(iii); and
- (b) Operator agrees to rebate to Shipper the contributions it receives from New Shipper under clause 3.8(a).

### 3.9 Notional Gate Point

- (a) There is a notional gate point for each distribution network at which all shippers' Contracted Capacity in respect of that distribution network is taken to be located ("Notional Gate Point").
- (b) All curtailments or interruptions of services to a shipper for delivery of gas into the distribution network are to be taken to occur at the Notional Gate Point.
- (c) Operator may in its absolute discretion manage whether, at what times, to what extent and in what manner gas deemed to be delivered at a Notional Gate Point is physically transported into the associated distribution network.

### 3.10 Relocation of Delivery Point MDQ

- ~~(a) Shipper may by notice in writing to Operator request a relocation of all or any part of its MDQ from an existing Delivery Point to a new delivery point ("Requested Relocation").~~
- ~~(b) After receiving the request under clause 3.10(a), Operator must assess whether the Requested Relocation is commercially and technically feasible (as reasonably determined by Operator).~~
- ~~(c) As soon as practicable after completing its assessment under clause 3.10(b), Operator must give notice in writing to Shipper advising whether the Requested Relocation is approved or not. Operator may make its approval subject to conditions if they are reasonable on commercial and technical grounds (including but not limited to Operational Grounds).~~
- ~~(d) Without limiting clause 3.10(b), Shipper's ability to relocate its Delivery Point MDQ to another delivery point is subject to the rights of Other Shippers with contracted Delivery Point MDQ at that delivery point.~~
- ~~(e) Without limiting clause 3.10(b), in the event Shipper wishes to relocate any part of its Delivery Point MDQ to a delivery point downstream of Shipper's contracted Delivery Point, Shipper acknowledges that the~~

~~equivalent downstream quantity may be less than the Delivery Point MDQ Shipper seeks to relocate.~~

~~(f) Operator may without liability to Shipper, curtail deliveries of gas to Shipper relocated under this clause 3.10, if Operator is required to deliver gas to an Other Shipper at the Delivery Point and that Other Shipper has Delivery Point MDQ at the Delivery Point.~~

### 3.11 Charges

~~If Shipper reaches agreement with Operator under clause 3.10(c) to relocate some or all of its Delivery Point MDQ to another delivery point (which may or may not be a Delivery Point) then the Charges payable by Shipper will be in accordance with the Tariff Schedule.~~

### 3.123.10 Receipt Point Flexibility

Subject to clause 3A:

- (a) Shipper may supply quantities of gas at any Receipt Point on a Day (not exceeding in aggregate across all Receipt Points Shipper's MDQ) provided it is operationally feasible; and
- (b) Shipper may supply quantities of gas at a Receipt Point on a Day (not exceeding in aggregate across all Receipt Points Shipper's MDQ) greater than those quantities specified in Shipper's Access Contract for the Receipt Point provided it is operationally feasible.

### 3.13 Relocation of Receipt Point MDQ

- ~~(a) Shipper may by notice in writing to Operator request a relocation of all or any part of its MDQ from an existing Receipt Point to a new receipt point ("Requested Relocation").~~
- ~~(b) After receiving the request under clause 3.13(a), Operator must assess whether the Requested Relocation is commercially and technically feasible (as reasonably determined by Operator).~~
- ~~(c) As soon as practicable after completing its assessment under clause 3.13(b), Operator must give notice in writing to Shipper advising whether the Requested Relocation is approved or not. Operator may make its approval subject to conditions if they are reasonable on commercial and technical grounds (including but not limited to Operational Grounds).~~
- ~~(d) Without limiting clause 3.13(b), Shipper's ability to relocate its Receipt Point MDQ to another receipt point is subject to the rights of Other Shippers with contracted Receipt Point MDQ at that receipt point.~~

### 3.143.11 Obligation to Accept and Deliver Gas

Subject to these Access Contract Terms and Conditions:

- (a) Operator must accept gas from Shipper up to Shipper's Receipt Point MDQ aggregated across all Receipt Points;

- (b) Operator must deliver gas to Shipper at nominated Delivery Points up to Shipper's Delivery Point MDQ aggregated across all Delivery Points; and
- (c) Shipper must make gas available at the Receipt Point(s), in accordance with Shipper's Access Contract.

**3.153.12** Operator May Refuse to Accept Gas

In addition to any other rights and remedies that may be available to it under any Law or under the Access Contract or otherwise, Operator may, subject to and in accordance with clause 17.2, refuse to accept gas from Shipper at a Receipt Point:

- (a) to the extent that Operator is entitled to refuse to accept gas under:
  - (i) clause 2 (Operator may refuse to accept Out-Of Specification gas);
  - (ii) clause 6.5 (Refusal to accept gas or deliver gas for Imbalance); or
  - (iii) clause 7.2 (Peaking);
- (b) if Shipper is in default as set out in clause 17 (Default by Shipper);
- (c) if Operator is relieved from so doing under clause 15 (Force Majeure); or
- (d) if Operator considers as a reasonable and prudent service provider that it would be unsafe to do so;
- (e) if Operator considers as a reasonable and prudent service provider that to accept such gas would interfere with other shippers' rights to their Contracted Capacity; or
- (f) if acceptance by Operator of that gas would cause the DBNGP to exceed its maximum allowable operating pressure.

**3.163.13** Refusal to Deliver Gas

In addition to any other rights and remedies that may be available to it under any Law or under the Access Contract, including without limitation clause 14 (Curtailment), Operator may refuse to deliver gas to Shipper at a Delivery Point:

- (a) to the extent that Operator is entitled to refuse to deliver gas under:
  - (i) clause 2.4 (Shipper's liability for Out-Of-Specification gas);
  - (ii) clause 6.5 (Refusal to accept gas or deliver gas for Imbalance);
  - (iii) clause 7.2 (Peaking);
  - (iv) clause 5.3(a) (Overrun); or
  - (v) clause 17.2 (Default and Termination);
- (b) if Operator considers as a reasonable and prudent service provider that it would be unsafe to do so;
- (c) if Operator is relieved from so doing under clause 15 (Force Majeure);

- (d) if Operator considers as a reasonable and prudent service provider that to deliver such gas would interfere with other shippers' rights to their Contracted Capacity; or
- (e) if delivery by Operator of that gas would cause the DBNGP to exceed its maximum allowable operating pressure.

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## **4.3A RELOCATION**

### **3A.1 Request for relocation of Contracted Capacity**

Shipper may by notice in writing to Operator request a relocation of all or any part of its Contracted Capacity from an existing Receipt Point to a new receipt point or from an existing Delivery Point to a new delivery point ("Requested Relocation").

### **3A.2 Assessment of Requested Relocation**

- (a) Operator must, as soon as reasonably practicable and in any event not later than 40 Business Days after receiving a notice under clause 3A.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 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 utilization of capacity).
- (b) For the purposes of clause 3A.2(a), a Requested Relocation will not be 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 receipt point across all of shippers' Capacity Services (including Tf Service and all other Capacity Services) at the new receipt point to exceed the new receipt point's Total Current Physical Capacity; or
    - (B) quantities referred to as Contracted Capacity for that delivery point across all shippers' Capacity Services (including Tf Service and all other Capacity Services) at the new delivery point to exceed the new delivery point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the new delivery point is located;
  - (ii) in the opinion of 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 Receipt Point would be downstream of the Delivery Point and it would change the normal direction of gas flow in the DBNGP.
- (c) For the purposes of clause 3A.2(a), a Requested Relocation to a new receipt point will be an Authorised Relocation if:
  - (i) the Requested Relocation would result in the new receipt point being downstream of the existing Receipt Point;
  - (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that receipt point across all of shippers' Capacity Services

(including Tf Service and all other Capacity Services) at the new receipt point to exceed the new receipt point's Total Current Physical Capacity; and

(iii) Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 3.7(a)(iii), in relation to that new receipt point.

(d) For the purposes of clause 3A.2(a), a Requested Relocation to a new delivery point will be an Authorised Relocation if:

(i) the Requested Relocation would result in the new delivery point being upstream, or within a proximity of 2 kilometres, whether upstream or downstream of the existing Delivery Point;

(ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that delivery point across all shippers' Capacity Services (including Tf Service and all other Capacity Services) at the new delivery point to exceed the new delivery point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the new delivery point is located; and

(iii) Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 3.7(a)(iii), in relation to that new delivery point .

### 3A.3 Operator to notify Shipper

As soon as practicable after completing its assessment under clause 3A.2(a), Operator must give notice in writing to Shipper advising either that the Requested Relocation is:

(a) not an Authorised Relocation; or

(b) an Authorised Relocation.

### 3A.4 Requested Relocation is an Authorised Relocation

If Operator gives notice that the Requested Relocation is an Authorised Relocation under clause 3A.3(b):

(a) Operator and Shipper must negotiate in good faith regarding the cost to Shipper (which in no case shall be less than Operator's out-of-pocket costs and shall include a reasonable charge for Operator's management time) in respect of any new facilities (including the new receipt point or new delivery point) which Shipper will be wholly or partially utilizing.

(b) If such agreement is not reached, the matter shall be regarded as a Dispute to be resolved as a Technical Matter and will be dealt with in accordance with clause 18.

(c) Shipper must pay the charges specified in clause 3A.7 in accordance with clause 16.

3A.5 Requested Relocation is not an Authorised Relocation

If Operator gives notice that the Requested Relocation is not an Authorised Relocation under clause 3A.3(a), Operator and 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 Shipper of the new receipt point or new delivery point which will enable the Parties to implement the Requested Relocation.

3A.6 Relocated Contracted Capacity to be on same terms and conditions

Subject to clauses 3A.7 and 3A.8 and unless the Parties agree in writing to the contrary, any Contracted Capacity relocated under this clause 3A is to be on the same terms and conditions as the Contracted Capacity at the existing Receipt Point or the existing Delivery Point (as the case may be).

3A.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract are to be reduced as a result of a relocation of Contracted Capacity under this clause 3A, 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 the Access Contract for Shipper from Forward Haul to Back Haul.
- (b) If a relocation of Capacity under this clause 3A results in gas being transported to Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), Shipper must pay the additional tariff required by Operator in respect to the increased distance beyond Clifton Road over which the gas is transported, in accordance with clause 16. Nothing in this clause 3A obliges Operator to accept a Requested Relocation to a receipt point or delivery point which is not located on the DBNGP.
- (c) If a relocation of Capacity under this clause 3A results in gas being transported to a delivery point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated is to:
  - (i) remain on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Charges and the Commodity Charges; and
  - (ii) be treated under the Access Contract as though it was Full Haul Capacity.

3A.8 Pressures at new receipt point and new delivery point

Operator may in its discretion as a reasonable and prudent person specify the range of pressures within which Shipper may deliver gas to Operator at a new receipt point and within which Operator may deliver gas to Shipper at a new delivery point, but in no case may the specified range of pressures be substantially different from the DBNGP operating pressure range at that point.

3A.9 Access Contract amended to reflect relocation

If the Parties reach agreement under clause 3A.4 or 3A.5, the Requested Relocation and the terms and conditions so agreed are to be given effect to by an amendment of the Access Request Form.

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## **4. NOMINATIONS**

### **4.1 Requests for Advance Information**

- (a) Operator may request and Shipper must provide good faith advance estimates (covering such periods and in such detail as Operator may determine) of Shipper's likely nominations at Shipper's Receipt Points and Delivery Points on a Day or Days. Operator will keep these estimates confidential.
- (b) The information provided under clause 4.1(a) is not binding on Shipper and Operator will have no action against Shipper if Shipper's nominations materially differ except where the information given under clause 4.1(a) is not given in good faith.

### **4.2 Weekly Nominations**

- (a) Shipper must nominate for each Day in the Week before the nominated Week, the quantity of gas that:
  - (i) Shipper will supply to Operator at a Receipt Point; and
  - (ii) Shipper requires Operator to deliver to Shipper at a Delivery Point, by notice to Operator not later than 17:00 hours on Wednesday in the Week before the nominated Week.
- (b) Subject to clause 3.10, Shipper may not nominate quantities of gas on a Day at a Delivery Point in excess of Shipper's Delivery Point MDQ and the sum of Shipper's nominations across all Shipper's Delivery Points must not exceed Shipper's MDQ.
- (c) Shipper's nominations across all Receipt Points on a Day must not (subject to clause 6.1) exceed Shipper's MDQ.

### **4.3 Daily Nominations**

- (a) Subject to clause 4.2(b) and clause 4.2(c), Shipper may by notice to Operator by not later than 14:00 hours on a Day, amend the nominations given under clause 4.2(a) for the following Day.
- (b) If Shipper does not make any amendments to the nomination for the Day under clause 4.3(a), then Shipper's nomination under clause 4.2(a) must be used for the Day.

### **4.4 Nominations Must Be Given In Good Faith**

- (a) Shipper's nominations provided to Operator pursuant to clause 4.2 and clause 4.3 must be made in good faith.
- (b) If Operator as a reasonable and prudent pipeline operator believes that Shipper is not making nominations pursuant to clause 4.2 and clause 4.3 in good faith, then Operator may give a notice to Shipper requiring Shipper to nominate in good faith ("Variance Notice").

- (c) Subject to clause 4.4(d), if at the expiry of 21 Days from receipt of a Variance Notice:
- (i) the quantity of gas supplied by Shipper at a Receipt Point on a Day; or
  - (ii) the quantity of gas delivered to Shipper by Operator at a Delivery Point on a Day,
- varies by more than 10% of Shipper's nomination at that Receipt Point or that Delivery Point on that Day, then Shipper must pay Operator the Nomination Surcharge for each GJ of gas:
- (iii) supplied by Shipper to Operator at a Receipt Point on a Day; or
  - (iv) delivered to Shipper by Operator at a Delivery Point on a Day,
- in excess of, or below, Shipper's nomination for that Day at that Receipt Point or that Delivery Point until such time as the Variance Notice is withdrawn.
- (d) Operator may only require Shipper to pay the Nomination Surcharge pursuant to clause 4.4(c) where:
- (i) the failure to nominate in good faith causes actual pecuniary loss or damage; or
  - (ii) in the reasonable opinion of the pipeline operator, the failure to nominate in good faith exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline.
- (e) If Operator has issued Shipper with a Variance Notice, Operator:
- (i) may withdraw that Variance Notice at any time in its discretion; and
  - (ii) shall withdraw that Variance Notice if a period of 3 consecutive Months has elapsed without Shipper incurring the Nomination Surcharge.

## **5. OVERRUN**

### **5.1 Overrun Quantities**

Any gas delivered to Shipper:

- (a) at a Delivery Point in excess of Shipper's Delivery Point MDQ; or
  - (b) at Delivery Points within an Overrun Zone which in aggregate exceeds Shipper's MDQ in that Overrun Zone,
- is Overrun.

### **5.2 Overrun Charge**

Subject to clauses 5.3 and 5.4, if the aggregate quantity of gas delivered to Shipper on a Day in an Overrun Zone is:

- (a) within Shipper's aggregate Delivery Point MDQ in that Overrun Zone, then no further Charges are payable by Shipper in respect of that Overrun; or
- (b) greater than Shipper's aggregate Delivery Point MDQ in that Overrun Zone, then Shipper must pay the greater of:
  - (i) 115% of the Base T1 Tariff as defined in the Standard Shipper Contract published by Operator on its nominated website [from](#) time to time; or
  - (ii) 110% of the highest price paid for Spot Capacity on that Day.

### **5.3 Interruptibility and Liability**

- (a) Shipper has no right or entitlement to Overrun and therefore Overrun is interruptible in the absolute discretion of Operator.
- (b) If Operator interrupts any Other Shipper, directly or indirectly as a result of Shipper taking Overrun, then Shipper is liable for all loss or damage (including Indirect Damage) suffered by Operator or the Other Shipper subject to Operator and the Other Shipper taking all reasonable steps possible to mitigate any losses occurring.

### **5.4 Unavailability Notice**

- (a) Subject to clause 5.4(b), if Operator issues an Unavailability Notice then, without limiting clause 5.3, Shipper must pay the Unavailability Charge for each GJ of gas delivered to Shipper at a Delivery Point, or in aggregate as the case may be, in excess of the quantity specified in the Unavailability Notice.
- (b) Operator shall only require Shipper to pay the Unavailability Charge pursuant to clause 5.4(a) where:
  - (i) the delivery to Shipper at a Delivery Point, or in aggregate as the case may be, in excess of the quantity specified in the Unavailability Notice causes actual pecuniary loss or damage; or

- (ii) in the reasonable opinion of the pipeline operator the delivery to Shipper at a Delivery Point, or in aggregate as the case may be, in excess of the quantity specified in the Unavailability Notice exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline.

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## **6. IMBALANCES**

### **6.1 Daily Balancing**

For the purposes of determining Shipper's Imbalance for a Day:

- (a) if there is a Positive Imbalance for a Day, then Shipper is deemed to have supplied the quantity of gas comprising the Positive Imbalance on the next Day in priority to other gas supplied by Shipper at a Receipt Point(s); and
- (b) if there is a Negative Imbalance for a Day, then Shipper is deemed not to have supplied any gas to Operator at a Receipt Point(s) on the next Day until the Negative Imbalance is cleared.

### **6.2 Shipper's Obligation to Balance**

It is Shipper's obligation to ensure that the absolute value of its Imbalance does not exceed Shipper's Imbalance Limit.

### **6.3 Provision of Notice**

Without limiting clause 6.2, Operator will use its reasonable endeavours to provide Shipper with notice if Shipper's Imbalance Limit is exceeded, as soon as possible after Operator becomes aware of such. This may be by way of posting on the Electronic Bulletin Board.

### **6.4 Excess Imbalance Charge**

- (a) Subject to clause 6.4(b), if the absolute value of Shipper's Imbalance at the end of a Day exceeds Shipper's Imbalance Limit, then Shipper must pay the Excess Imbalance Charge for each GJ of gas by which the absolute value of such Imbalance exceeds Shipper's Imbalance Limit, except where Shipper's Imbalance is caused by a Party other than Shipper.
- (b) Operator shall only require Shipper to pay the Excess Imbalance Charge pursuant to clause 6.4(a) where:
  - (i) Shipper's Imbalance causes actual pecuniary loss or damage; or
  - (ii) in the reasonable opinion of the pipeline operator Shipper's Imbalance exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline.

### **6.5 Refusal to Accept Gas or Deliver Gas**

If Operator acting as a reasonable and prudent pipeline operator determines that the quantum of Shipper's Imbalance is such that the operation or integrity of the DBNGP may be compromised, then Operator may without liability to Shipper:

- (a) refuse to accept gas from Shipper at a Receipt Point or deliver gas to Shipper at a Delivery Point;
- (b) take such action as it deems necessary to enforce its rights under this clause 6.5, including physically curtailing receipts and deliveries of gas; and

- (c) recover Direct Damages suffered by Operator which is caused by or arises out of Shipper's failure to ensure that the absolute value of its Imbalance does not exceed Shipper's Imbalance Limit.

#### 6.6 Trading Imbalances

Shipper may exchange all or part of its accumulated Imbalances with another Shipper, at any time and on terms they may agree, and must give notice in writing of any such exchange to Operator prior to the exchange occurring. On receipt of such written notice Operator shall calculate adjustments in Shipper's accumulated Imbalances to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Day.

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## **7. PEAKING**

### **7.1 Hourly Peaking**

- (a) Without limiting clause 6, Shipper may take hourly delivery of quantities of gas ("MHQ") at a Delivery Point on a Day not exceeding 120% of one twenty-fourth of Shippers Delivery Point MDQ at that Delivery Point.
- (b) Subject to clause 7.1(c), Operator may require Shipper to pay, and Shipper must if so required pay, the Peaking Surcharge for each GJ of gas by which Shipper has exceeded Shipper's MHQ in aggregate across all of that Shipper's Delivery Points:
  - (i) in any pipeline zone (where "pipeline zone" means the part of the DBNGP between any 2 compressor stations which are upstream of Kwinana Junction, or between the Domgas plant at Dampier and CS1, or between CS9 and Kwinana Junction); or
  - (ii) on any single lateral pipeline which is downstream of Kwinana Junction.
- (c) Operator shall only require Shipper to pay the Peaking Surcharge pursuant to clause 7.1(b) where:
  - (i) Shipper's Peaking causes actual pecuniary loss or damage; or
  - (ii) in the reasonable opinion of the pipeline operator Shipper's Peaking exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline.
- (d) Clause 7.1(a) does not alter or affect Shipper's MDQ.

### **7.2 Refusal to Deliver Gas**

Operator may, as a reasonable and prudent pipeline operator and without liability to Shipper:

- (a) refuse to deliver gas to Shipper at a Delivery Point at any time that Shipper exceeds Shipper's MHQ; and
- (b) recover Direct Damages suffered by Operator which is caused by or arises out of Shipper [exceeding Shipper's MHQ's Peaking](#).

## **8. INVOICING AND PAYMENT**

### **8.1 Monthly Invoicing**

Operator must, within 5 Business Days after the end of a Month, provide to Shipper an invoice or invoices for the Month just ended showing:

- (a) the quantity of gas received by Operator from Shipper at each Receipt Point and the quantity of gas delivered by Operator to Shipper at each Delivery Point on each Day for that Month;
- (b) the Capacity Charge payable in advance for the next Month;
- (c) all other amounts which under the Access Contract are payable or refundable for the Month including the Commodity Charge, the Maintenance Charge and any other charges in Schedule 1;
- (d) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous Months and the interest payable thereon and
- (e) such other information as may be agreed between the Parties.

### **8.2 Payment by Shipper**

Shipper must pay each invoice by direct payment to a bank account nominated by Operator within 10 Days of receipt of the invoice from Operator.

### **8.3 Shipper's Dispute**

If Shipper disputes part or all of an invoice:

- (a) Shipper must, within 10 Days after receipt of the invoice, notify Operator in writing specifying the amount in dispute and the reasons for the dispute;
- (b) Shipper must pay in accordance with clause 8.2 that part of the invoice (if any) not in dispute;
- (c) Shipper may, subject to clause 8.4, withhold that part of the invoice in dispute; and
- (d) each Party will appoint an officer to meet with the other Party's officer to try to resolve the dispute and if the officers are unable to resolve the dispute within 7 Days then either Party may refer the matter to an Independent Expert for determination in accordance with clause 18.

### **8.4 Interest on Disputed or Incorrect Amount**

If, as a result of the resolution of:

- (a) a dispute of the nature described in clause 8.3; or
- (b) an incorrect invoice as described in clause 8.5,

either Party has an obligation to pay an amount to the other Party, then the amount must be paid within 14 Days after the Day of resolution together with interest on that amount calculated on a daily basis at the Interest Rate from:

- (c) in the case of Shipper, the date the amount should have been paid in accordance with this clause 8; or
- (d) in the case of Operator, the date Operator received the payment from Shipper.

#### 8.5 Incorrect Invoices

(a) If Shipper:

- (i) has been overcharged or undercharged; and
- (ii) has paid the invoice(s) to which the overcharge(s) or undercharge(s) relate(s),

then, within 10 Days after the error has been discovered and the amount has either been agreed by the Parties or determined pursuant to clause 8.3, either:

- (iii) Operator will repay to Shipper the amount of the overcharge (together with interest in accordance with clause 8.4); or
  - (iv) Shipper will pay to Operator the amount of the undercharge (together with interest in accordance with clause 8.4).
- (b) A Party may not claim from the other any amount overcharged or undercharged if more than 18 Months have elapsed since the date of the invoice in question.

#### 8.6 Default Interest

If either Party fails, without lawful excuse, to pay any amount due then that Party will pay interest on the overdue amount, calculated on a daily basis at the Interest Rate plus 2% per annum, from the due date for payment until actual payment.

## **9. RIGHTS OF OPERATOR**

### **9.1 Commingling of Gas**

Operator will have the right to commingle gas supplied by Shipper with other gas in the DBNGP during transportation and is entitled to deliver different molecules to Shipper.

### **9.2 Processing**

Subject to its obligations under the Access Contract, Operator may compress, cool, heat, clean and apply other processes to gas during transportation, acting as a reasonable and prudent pipeline operator consistent with its operation of the DBNGP.

### **9.3 Operation of Pipeline System**

Subject to its obligations under the Access Contract including its obligations to use good gas industry practice, Operator reserves the right to decide the manner in which it will operate the DBNGP.

### **9.4 Delivery of Gas**

Operator may satisfy its obligation to deliver gas to Shipper by using a gas pipeline other than the DBNGP, provided that Operator meets its obligations under the Access Contract and there is no extra cost or risk to Shipper in doing so.

## **10. CONTROL, POSSESSION AND TITLE TO GAS**

### **10.1 Warranty of Title**

- (a) Shipper warrants that at the time it supplies gas to Operator at a Receipt Point, Shipper has good title to the gas free and clear of all liens, encumbrances and claims of any nature inconsistent with Operator's operation of the DBNGP.
- (b) Subject to clause 10.1(a) being true and accurate at all times, Operator warrants that at the time it supplies gas to Shipper at a Delivery Point, Operator has good title to the gas free and clear of all liens, encumbrances and claims of any nature whatsoever.

### **10.2 Control, Possession, Responsibility and Title of Shipper**

Shipper warrants to Operator at each relevant time that Shipper:

- (a) is in control and possession of the gas immediately prior to its supply at a Receipt Point and immediately after its delivery to Shipper at a Delivery Point; and
- (b) has legal responsibility and liability for gas while it is within the control and possession of Shipper.

### **10.3 Title, Custody, Control and Responsibility of Operator**

Operator will:

- (a) take title to and have control and possession of gas from the receipt of gas from Shipper at a Receipt Point until delivery of gas to Shipper at a Delivery Point; and
- (b) have legal responsibility and liability for gas only while it is within Operator's control and possession.

## **11. NOTIONAL DELIVERY POINTS**

### **11.1 Determination of Notional Delivery Points**

Operator may from time to time determine that there is a Notional Delivery Point between the DBNGP and a gas distribution system.

### **11.2 Aggregation of Associated Delivery Points**

Gas delivered at the Notional Delivery Point on a Day will be deemed to equal the aggregate of all gas delivered at Associated Delivery Points on that Day.

### **11.3 Amendment of Access Contract to Reflect Notional Delivery Point**

If Shipper has Delivery Point MDQ at a Delivery Point which subsequently becomes an Associated Delivery Point, then Shipper's Access Contract is amended to substitute the Notional Delivery Point associated with the Associated Delivery Point, for the Delivery Point.

### **11.4 Location of Delivery Point**

A Notional Delivery Point is deemed to be located at the most downstream Associated Delivery Point.

### **11.5 Multiple Transmission Systems**

Where gas is delivered to a distribution network (to which the DBNGP is connected) by a gas transmission system other than the DBNGP, the quantities of gas measured at a Notional Delivery Point will need to take into account arrangements between Operator, that other gas transmission system and the operator of that distribution network, any agreement reached between them from time to time and the Retail Market Rules. Operator will notify Shipper of any such arrangement or agreement prior to the time Shipper becomes subject to any contractual obligation that may be affected by those arrangements or agreement.

## **12. METERING**

### **12.1 Shippers Responsibility**

Shipper must, or must procure another party to:

- (a) supply, install, operate and maintain Metering Equipment immediately upstream of each Receipt Point at which it supplies gas to Operator, 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 Operator from Metering Equipment at each Receipt Point is electronically accessible by Operator.

### **12.2 Operator's Responsibility**

Operator must:

- (a) supply, install, operate and maintain Metering Equipment at each Delivery Point in good working order and condition and in accordance with the principles and standards of a reasonable and prudent pipeline operator;
- (b) calculate and record:
  - (i) the quantity of gas supplied to Operator by Shipper; and
  - (ii) the quantity of gas delivered to Shipper by Operator; and
- (c) provide the information referred to in clause 12.2(b) to Shipper and any other metering information as is available to Operator, which can reasonably be provided to Shipper and which Operator reasonably determines is necessary to enable Shipper to assess its potential liability for Charges.

### **12.3 Metering Design, Adjustment, Operation and Verification**

Subject to Operator agreeing otherwise, Metering Equipment shall be designed, adjusted, operated and verified in accordance with Schedule 3.

### **12.4 Approval of Receipt Point Metering Equipment**

- (a) Shipper must obtain, or must procure that a third party obtains:
  - (i) prior to commencing the construction, installation or modification of any Receipt Point Metering Equipment or any component thereof; and also
  - (ii) prior to the commissioning of any newly constructed, installed or modified Receipt Point Metering Equipment or any component thereof,

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) Operator will, after receipt of a valid notice of the anticipated date of commencement of the relevant construction, installation or modification, use

all reasonable endeavours, before that anticipated date, to consider and to give notice to Shipper of Operator's approval of or refusal to approve the Receipt Point Metering Equipment.

#### 12.5 Inaccurate Equipment

- (a) If the Verification of Metering Equipment in accordance with Schedule 3 reveals that it 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 Metering Equipment are by force of this clause to be taken to be correct.
- (b) If the Verification of Metering Equipment pursuant to Schedule 3 reveals that any Metering Equipment is measuring the quantity of gas with an inaccuracy of greater than the relevant limit prescribed by clauses 12.5(a)(i) or (ii), then (unless the Parties agree otherwise) all measurements affected or potentially affected by that inaccuracy are to be determined in accordance with clause 12.6.

#### 12.6 Correction of measurements

- (a) If, at any time, any of the Metering Equipment is found to be registering inaccurately, it will be adjusted as soon as reasonably possible to its specification. The reading of such Metering Equipment will be corrected for any period of inaccuracy ("Correction Period") which is definitely known or agreed upon. If the Correction Period is not known or cannot be agreed by the Parties, the Correction Period will not extend beyond one half of the time elapsed since the date of the Previous Verification.
- (b) Measurement during the Correction Period will be determined by Operator on the basis of the best data available, using the first of the following methods which, when considered in the following order, is feasible:
  - (i) recordings by any other measuring equipment acceptable to Operator and Shipper; or
  - (ii) trend data recorded by Operator or Shipper, where this data can be proven to represent a reasonable estimate of the actual measurement; or
  - (iii) by making the appropriate correction if the deviation from the accurate reading is ascertainable by calibration test or mathematical calculation; or
  - (iv) by estimation acceptable to Operator and Shipper based upon receipts or deliveries of gas under similar conditions during a period when the Metering Equipment was registering accurately.

12.7 Metering records

- (a) Any record produced by Metering Equipment (including check metering equipment) in paper form is to be retained for 2 years, and in electronic form is to 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) Each Party must, within 20 Business Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by, and any calculations and other information derived from, its Metering Equipment (including check metering equipment), for inspection and verification by that other Party, and the other Party may make and retain any copies of those records, calculations and other information and must return the originals within 10 Business Days of receipt.

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### **13. LIABILITY**

#### **13.1 Liability Limited to Direct Damage**

Subject to these Access Contract Terms and Conditions, a Party who:

- (a) is negligent; or
- (b) defaults in respect of its obligations to the other Party under the Access Contract,

is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and is to 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.

#### **13.2 No Liability for Indirect Damage**

Except as specifically provided elsewhere in these Access Contract Terms and Conditions, neither Party is in any circumstances liable to the other Party under any circumstances for Indirect Damage howsoever caused.

#### **13.3 Liability For Fraud**

A Party who is fraudulent in respect of its obligations to the other Party under the Access Contract is to be liable to the other Party for, and is to indemnify the other Party against all loss or damage (including Indirect Damage) caused by, consequential upon or arising out of the fraud.

#### **13.4 No Liability Arising Out Of Any Approval By Operator**

Subject to clauses 13.1 and 13.2, Operator is not in any circumstances to be liable to Shipper for any Direct Damage or Indirect Damage arising out of any approval by 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.

#### **13.5 Shipper Responsible For Its and Its Contractors' Personnel and Property**

- (a) Subject to clause 13.1, Shipper alone is liable for any:
  - (i) injury to or death of any person employed by Shipper or by any person (except Operator) contracting with Shipper; and
  - (ii) loss of or damage to any property of Shipper or of any person (except Operator) contracting with or employed by Shipper,however caused, which occurs during the duration of the Access Contract, in or about, or incidental to activities in or about, any Receipt Point, any Delivery Point, the DBNGP, or any other premises, facilities or places used for the storage, transportation or delivery of gas received from or delivered to Shipper, or where Operator's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) Shipper indemnifies Operator and any person (except Shipper) contracting with 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 13.5(a).

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## **14. CURTAILMENT AND INTERRUPTION**

### **14.1 Permissible Interruption**

Operator may curtail or interrupt Shipper without liability to Shipper:

- (a) where the duration of the curtailment together with the aggregate duration of all other curtailments of the Tf Service during the Year (other than curtailments or interruptions permitted under clause 14.1(b)) does not cause the Permissible Limit to be exceeded; and
- (b) in any of the following circumstances:
  - (i) in such circumstances as Operator considers necessary as a reasonable and prudent pipeline operator, including for Planned Maintenance and Major Works;
  - (ii) in order to comply with obligations under any prior contract or any contract which is subject to curtailment or interruption only after the curtailment or interruption of the Tf Service;
  - (iii) if there is an event of Force Majeure where Operator is the affected party;
  - (iv) in the circumstances described in clause 3.10(d); or
  - (v) by reason of, or in response to a reduction in Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper.

14.2 Operator must provide Shipper with reasonable, and in any event not less than 3 Days, prior written notice of all Planned Maintenance that may reasonably be considered likely to interrupt normal gas transmission.

### **14.3 Non Permissible Interruption**

Operator may curtail or interrupt Shipper in circumstances which are not a Permissible Interruption provided that in that case, Operator shall:

- (a) compensate Shipper for any Direct Damage suffered by Shipper; and
- (b) credit Shipper in the next invoice issued by Operator to Shipper, with the Capacity Charge applicable to that capacity so interrupted or curtailed.

## **15. FORCE MAJEURE**

- (a) A Party is excused from performance of, and is not liable for any failure in carrying out, any of its obligations under the Access Contract if it is prevented from doing so by Force Majeure.
- (b) 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 the Access Contract as soon as reasonably practicable.
- (c) Without limiting the generality of clause 15(a), a refusal by Operator due to Force Majeure to accept gas from or deliver gas to Shipper is not a curtailment or interruption of Shipper's capacity.
- (d) Shipper is relieved of its obligation to pay the Capacity Charges where an event of Force Majeure is claimed by Operator in respect of an interruption or curtailment of the Service to that Shipper.

## 16. CHARGES

### 16.1 Obligation To Pay

Shipper must pay the Charges, in the manner and at the times set out in the Access Contract, that relate to the Service in accordance with the Access Contract.

### 16.2 CPI Adjustment of Reference Tariff and Charges

With effect from 08:00 hours on 1 January 2006 the Capacity Reservation Tariff, the Commodity Tariff and the Unavailability Charge shall each be adjusted each year with effect from 08:00 hours on 1 January of each year on the following basis:

$$Tariff_n = Tariff_b \times \left( \frac{CPI_n}{CPI_b} \right)$$

where:

$Tariff_n$	=	Capacity Reservation Tariff, Commodity Tariff or Unavailability Charge (as the case may be) in year $n$ , where year $n$ is each of the years 2006, 2007, 2008, 2009;
$Tariff_b$	=	Capacity Reservation Tariff, Commodity Tariff or Unavailability Charge (as the case may be) set out in Schedule 1;
$CPI_n$	=	CPI for the quarter ending on 30 September of the year before the year for which the Reference Tariff is being adjusted; and
$CPI_b$	=	CPI for the quarter ending on 30 September 2004.

## **17. DEFAULT AND TERMINATION**

### **17.1 Default by Shipper**

An Event of Default by Shipper occurs when Shipper:

- (a) suffers an Insolvency Event and the event has not been remedied within 5 Business Days from the date of a notice from Operator requiring the default to be remedied;
- (b) defaults in performance of a material obligation and, where the default is capable of being remedied, does not remedy the default within a period of 40 Business Days from the date of a notice from Operator requiring the default to be remedied;
- (c) fails to pay any amount due to Operator and that amount, plus any Interest, is still outstanding 5 Business Days after the date of a notice of demand from Operator;
- (d) without Operator's prior consent, sells, parts with possession of, or attempts to sell or part with possession of, the whole or a substantial part of its undertaking, and this default is not remedied within a period of 40 Business Days from the date of a notice from Operator requiring the default to be remedied; or
- (e) suffers an adverse change in its business or financial condition or any event occurs which could, in the reasonable opinion of Operator, in any way jeopardise the ability of Shipper to meet its obligations to Operator under the Access Contract, and this default is not remedied within a period of 5 Business Days from the date of a notice from Operator requiring the default to be remedied.

### **17.2 Rights of Service Provider**

If an Event of Default by Shipper occurs, Operator may, at its discretion, take any one or more of the following actions:

- (a) suspend the Service to Shipper (including any rights of Shipper to trade capacity on the Secondary Market) whilst the Event of Default continues and, if Operator wishes to do so, provide access to a third Party to that amount of the Capacity in the DBNGP contracted to Shipper under the Access Contract, until (as the case may be):
  - (i) the Insolvency Event has been removed or rectified; or
  - (ii) the default has been remedied; and/or
- (b) terminate the Access Contract by notice in writing to Shipper.

### **17.3 Continuation of Payment Obligations**

If Operator elects to suspend the Service under clause 17.2(a), Shipper will not be relieved of any of its obligations to make payments under the Access Contract.

**17.4 Default by Operator**

- (a) Operator is in default under the Access Contract, and Shipper may terminate the Access Contract, if Operator:
  - (i) defaults in providing the Service to Shipper for 21 consecutive Days and does not remedy that default within 48 hours of receipt of a notice from Shipper requiring that default to be remedied; or
  - (ii) otherwise defaults in the performance of a material obligation and does not remedy that default within a period of 40 Days from the date of a notice from Shipper requiring the default to be remedied or if the default is not capable of being remedied, adequate compensation paid.
- (b) A Permissible Interruption by Operator is not an Event of Default, nor a default for the purpose of clause 17.4(a).

**17.5 Other Rights and Remedies**

The rights and remedies described in clauses 17.2 and 17.4 are in addition to any other rights and remedies available to the Parties whether in law, in equity or otherwise.

**17.6 Prior Rights**

Termination of the Access Contract will not prejudice the rights or remedies of either Party that have accrued at the date of termination.

## **18. DISPUTE RESOLUTION AND INDEPENDENT EXPERTS**

### **18.1 Dispute Resolution**

- (a) If any Dispute arises between the Parties, either Party may give the other written notice of the Dispute and, within 5 Business Days of receipt of the notice, each Party will appoint a senior manager or executive to meet within 5 Business Days in an attempt to resolve the Dispute.
- (b) The senior managers or executives will use their best endeavours to resolve the Dispute within a period of 20 Business Days from receipt of the notice referred to in clause 18.1(a).
- (c) If the Parties believe that it would be beneficial, and they agree, they may retain the non-binding mediation services of an agreed mediator.
- (d) If the Dispute remains unresolved at the end of the period referred to in clause 18.1(b), and the Dispute is a Technical Matter or a Financial Matter, then either Party may require that the Dispute be determined by an Independent Expert under clause 18.2.

### **18.2 Resolution of Technical and Financial Matter**

#### **(a) Appointment of Independent Expert**

The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party specifying the nature of the Dispute. 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 Business Days of the notice, then either Party may refer the matter:

- (i) if it is a Technical Matter, to the President for the time being of the Institution of Engineers, Australia;
- (ii) if it is a Financial Matter, to the President for the time being of the Institute of Chartered Accountants in Australia; or
- (iii) in either case, if the relevant body referred to in clause 18.2(a)(i) or clause 18.2(a)(ii) no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the relevant body,

who will nominate a suitably qualified person to act as the Independent Expert to determine the Dispute.

#### **(b) Expert Not an Arbitrator**

Unless the Parties agree otherwise, the Independent Expert appointed under clause 18.2(a):

- (i) will act as an expert and not as an arbitrator;
- (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;

- (iii) will not be a former or current employee or representative of Shipper or Operator or of a Related Body Corporate of either of them; and 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.

(c) Representation and Evidence

Each Party:

- (i) may be legally represented at any hearing before the Independent Expert;
- (ii) will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute; and
- (iii) 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) Rules of Evidence

The Independent Expert will not be bound by the rules of evidence.

(e) Confidentiality

Subject to any privileges under law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination will be kept confidential.

(f) Powers

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.

(g) Determination

The Independent Expert will make a determination on the Dispute and will determine what, if any, adjustments may be necessary between the Parties. The determination of the Independent Expert will be final and binding upon the Parties so far as the Law allows, except where a Party has been denied natural justice.

(h) Costs

The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:

- (i) the remuneration of the Independent Expert will, unless the Parties otherwise agree before the reference of the Dispute to the Independent Expert, or if there is a disagreement over the amount of that remuneration, be finally determined by the President for the time being of the appropriate body referred to in clause 18.2(a);
- (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of the determination 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; and

- (iii) unless the Parties otherwise agree, the Independent Expert will determine whether the Parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert.

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## **19. ASSIGNMENT**

### **19.1 Assignment by Operator**

- (a) Subject to clause 19.1(b), Operator may not assign its rights and interests under the Access Contract without obtaining the consent of Shipper, which consent must not be unreasonably withheld.
- (b) Operator may assign its rights and interests under the Access Contract without obtaining the consent of Shipper where that assignment is to:
  - (i) a Related Body Corporate; or
  - (ii) a person holding an interest in the DBNGP, provided that such assignment does not release Operator from liability, and that upon the assignee ceasing to be a Related Body Corporate of Operator, the assignee must immediately transfer all of its rights and interests under the Access Contract to Operator.
- (c) Without limitation, Shipper may withhold its consent to an assignment of Operator's rights and interests under the Access Contract if Shipper reasonably considers that the proposed assignee does not have:
  - (i) contractual or ownership rights to access the DBNGP for the purposes of performing all of Operator's obligations under the Access 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 the Access Contract.

### **19.2 Assignment by Shipper**

- (a) Shipper may undertake a Bare Transfer for any period without Operator's consent. Shipper is not required to supply Operator with any information in relation to a Bare Transfer.
- (b) Subject to Shipper's rights to trade capacity in accordance with the Access Contract, Shipper must not otherwise assign or encumber its right and interest under the Access Contract without obtaining the prior written consent of Operator, which consent shall not be unreasonably withheld.
- (c) Without limitation, Operator may withhold its consent to an assignment by Shipper if Operator reasonably considers that the proposed assignee is not in a position to meet Shipper's obligations under the Access Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to Operator, acting reasonably.
- ~~(c)~~(d) Without limiting clause 19.2(b), Shipper may assign its rights and interests under the Access Contract without obtaining the consent of Operator where that assignment is to a Related Body Corporate, provided that such assignment does not release Shipper from liability, and that upon the assignee ceasing to be a Related Body Corporate of Shipper, the assignee

must immediately transfer all of its rights and interests under the Access Contract to Shipper.

19.3 Assignment: deed of assumption

- (a) A Party (in this clause 19.3 called the "Assignor") shall not assign all or part of its rights and interests under the Access Contract 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 the Access Contract.
- (b) Upon the fulfilment of the relevant conditions specified in clauses 19.1 and 19.2 (as applicable) and the entry into of a deed of assumption contemplated by clause 19.3(a), the Assignor shall be released from all future liability and obligations under the Access Contract to the extent that the assignee has agreed to perform them under the deed of assumption, but this release shall not apply to an assignment to a Related Body Corporate under clauses 19.1(b) or 19.2(d) (as applicable) without the written consent of the other Party.

## **20. CONFIDENTIALITY**

### **20.1 Confidential Information**

Subject to clauses 20.2 and 20.3, each Party shall keep the terms and conditions of the Access Contract, and all information provided pursuant to or in accordance with the Access Contract, confidential ("Confidential Information").

### **20.2 Exceptions to Confidentiality**

Either Party may disclose Confidential Information which:

- (a) at the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the Party, is publicly known;
- (b) at the time when it is disclosed, is already known to the Party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 20.1;
- (c) after the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the Party, comes into the public domain otherwise, than as a result of any breach of the confidentiality undertaking owed pursuant to clause 20.1;
- (d) that Party is required by the ASX, court order, Law or 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
- (e) disclosure is in accordance with the consent of the other Party and subject to any conditions of that consent.

### **20.3 Permitted Disclosure**

Either Party may disclose Confidential Information to:

- (a) its employees; and
- (b) consultants, lawyers, bankers and financial advisers,

to the extent those persons have a need to know the Confidential Information provided that the disclosing Party is responsible for ensuring those persons keep the Confidential Information confidential.

## **21. REPRESENTATIONS AND WARRANTIES**

### **21.1 Operator's Representations and Warranties**

Operator represents and warrants to Shipper that:

- (a) it has duly complied, and will up to the termination of the Access 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 the Access Contract;
- (b) its obligations under the Access Contract are valid and binding and are enforceable against it in accordance with their terms;
- (c) 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);
- (d) it is the operator of the DBNGP; and
- (e) the Access Contract does not contravene 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.

The representations and warranties in this clause 21.1 are made on and from the Commencement Date, and are to be taken to be made anew on each Day thereafter for the duration of the Access Contract.

### **21.2 Shipper's Representations and Warranties**

Shipper, by making an Access Request and by entering into the Access Contract, represents and warrants to Operator that:

- (a) it has duly complied, and will up to the termination of the Access Contract continuously comply, with all environmental and safety laws with respect to any of its obligations connected with the Access Contract;
- (b) it has in full force and effect all necessary leases, licences or easements to construct, operate and maintain all facilities for which it is responsible under the Access Contract;
- (c) it has in full force and effect all necessary approvals, licences and authorities required to use the gas delivered by Operator under the Access Contract in any facilities which use gas, and will throughout the term of the Access Contract comply with all legal requirements pertaining to those facilities;
- (d) its obligations under the Access Contract are valid and binding and are enforceable against it in accordance with their terms;
- (e) the Access Contract and any transaction under it does not contravene 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;

- (f) its obligations to make payments under the Access Contract rank at least equally with all unsecured and unsubordinated indebtedness of Shipper except debts mandatorily preferred by Law;
- (g) neither 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;
- (h) there is no pending or threatened action or proceeding affecting Shipper or any of its Related Bodies Corporate or any of their respective assets before a court, referee, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under the Access Contract;
- (i) neither 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
- (j) Shipper is not an agent or trustee (except if and to the extent that it is disclosed as such in its Access Request) in relation to the Access Contract or the gas to be received or delivered under the Access Contract.

The representations and warranties in this clause 21.2 are made on and from the Commencement Date, and are by force of this clause to be taken to be made anew on each Day thereafter for the duration of the Access Contract.

#### 21.3 Creditworthiness of Shipper

Operator may from time to time seek confirmation from Shipper (including but not limited to provision of the most recent audited financial accounts of Shipper) that Shipper is in a position to meet its obligations under an Access Contract.

#### 21.4 Failure to Satisfy Operator of Creditworthiness

If Operator is not (acting reasonably) satisfied that Shipper is in a position to meet or continue to meet its obligations under an Access Contract, Operator may require, and Shipper must provide, security for those obligations to Operator's reasonable satisfaction.

## **22. RECORDS AND INFORMATION**

Except where otherwise provided in the Access Contract, both Operator and Shipper must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to the Access Contract, and shall retain those books, accounts, records and inventories for at least 7 years.

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## **23. INSURANCES**

- (a) Subject to clause 23(d), Shipper must procure and maintain at its own expense throughout the duration of the Access Contract the following insurances with insurers having a reputation satisfactory to a reasonable and prudent person:
  - (i) worker's compensation insurance in accordance with the Workers' Compensation and Rehabilitation Act 1981, and for Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of Shipper's plant and equipment at the Receipt Point or Delivery Point; and
  - (iii) liability insurance for such amount as Operator may reasonably require (not exceeding \$100 million indexed for CPI) against risk of loss, damage, death or injury to property or personnel of Operator, Shipper or the public in connection with, related to or arising out of the Access Contract, caused by negligence.
- (b) Subject to clause 23(d), Shipper must arrange for Operator's interest to be noted on the policies referred to in clauses 23(a)(ii) and 23(a)(iii) to the reasonable satisfaction of Operator so that Operator is covered under those policies, and must use reasonable endeavours to arrange for the insurers to waive rights of subrogation against Operator.
- (c) Subject to clause 23(d), Shipper must, prior to the commencement of the Access Contract and prior to the commencement of each Year thereafter, provide Operator with certificates of currency of the insurances and endorsements required by this clause.
- (d) Operator may waive compliance:
  - (i) by Shipper; or
  - (ii) if Shipper is a joint venture, by a joint venture participant, with any or all of the requirements of clauses 23(a), 23(b) and 23(c) if Operator:
    - (iii) is satisfied that Shipper or the joint venture participant, as the case may be, has adequate alternative arrangements;
    - (iv) accepts Shipper or the joint venture participant, as the case may be, as a self-insurer; or
    - (v) determines that there is other sufficient reason to do so.

**24. NO WAIVER**

No failure or delay by a Party in exercising any of its rights under the Access 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 the Access Contract.

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**25. ENTIRE AGREEMENT**

The Access Contract constitutes the entire agreement between the Parties on the subject matter of the Access Contract and supersedes all prior negotiations, representations and agreements between the Parties.

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## **26. SEVERABILITY**

If any clause or provision of the Access Contract is held illegal or unenforceable by any judgment of a referee, court, arbitrator or tribunal having competent jurisdiction, the judgment does not affect the remaining provisions of the Access 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 the Access Contract.

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## **27. 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 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 Operator, the DBNGP); and
  - (iii) for any other purpose connected with or arising out of the Access Contract.
- (b) Any entry under clause 27(a) is made in all respects at the expense and risk of the entering Party, who must 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 27, 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 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.

**28. OWNERSHIP, CONTROL, MAINTENANCE AND RISK**

- (a) In the absence of any agreement between the Parties to the contrary, the Receipt Point and the Delivery 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, Shipper is to be presumed to own any relevant thing upstream of the Receipt Point and downstream of a Delivery Point, and Operator is to be presumed to own any relevant thing between the Receipt Point and the Delivery 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.

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**29. NO COMMON CARRIAGE**

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

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**30. OPERATOR NOT A SUPPLIER OF GAS**

Nothing in the Access Contract requires Operator to supply gas to Shipper.

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**31. STAMP DUTY**

Shipper must pay all stamp duty which may be payable in respect of the Access Contract.

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**32. NO THIRD PARTY BENEFIT**

No person other than Operator or Shipper is to obtain any benefit or entitlement under the Access Contract, despite that person being referred to in the Access Contract or belonging to a class of persons which is referred to in the Access Contract.

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Schedule 1

**Reference Tariff and Charges**

Capacity Reservation Tariff	\$0.9847/GJ
Commodity Tariff	\$0.1077/GJ
Unavailability Charge	\$15/GJ
Nominations Surcharge	350% of the relevant 100% load factor Reference Tariff
Excess Imbalance Charge	350% of the relevant 100% load factor Reference Tariff
Out Of Specification gas Charge	350% of the relevant 100% load factor Reference Tariff
Peaking Surcharge	350% of the relevant 100% load factor Reference Tariff

Schedule 2

**Gas Quality, Pressure and Temperature**

<b>Item 1. Gas Quality</b>		
<b>Component</b>	<b>Receipt Points</b>	<b>Delivery Points</b>
Maximum carbon dioxide (mol %)	3.6	4.0
Maximum inert gases (mol %)	5.5	6.0
Minimum higher heating value (MJ/m <sup>3</sup> )	37.3	37.3
Maximum higher heating value (MJ/m <sup>3</sup> )	42.3	42.3
Minimum Wobbe Index	47.3	47.3
Maximum Wobbe Index	51.0	51.0
Maximum total sulphur (mg/m <sup>3</sup> )	Unodorised	10
	Odorised	20
Maximum Hydrogen Sulphide (mg/m <sup>3</sup> )	2	2
Maximum Oxygen (mol %)	0.2	0.2
Maximum Water (mg/m <sup>3</sup> )	48	48
Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute	Below 0 °C	Below 0 °C
Maximum radioactive components (Bq/m <sup>3</sup> )	600	600

**DAMPIER TO BUNBURY NATURAL GAS PIPELINE**  
**Access Contract Terms & Conditions**

**Item 2. Gas Temperature and Pressure**

Receipt Point or Delivery Point	Pressure		Temperature	
	Min (kPag)	Max (kPag)	Min (°C)	Max (°C)
Receipt Point I1-01	Line pressure	8480	0	60
Receipt Points other than I1-01	Line pressure	MAOP permitted by the Pipeline Licences	0	50
Delivery Point	Line pressure	MAOP permitted by the Pipeline Licences	0	50

**Item 3 – Broadest Specification**

Component		
Maximum carbon dioxide (mol%)		4.0
Maximum inert gases (mol%)		6.0
Minimum higher heating value (MJ/m <sup>3</sup> )		37.3
Maximum higher heating value (MJ/m <sup>3</sup> )		42.3
Minimum Wobbe Index		47.3
Maximum Wobbe Index		51.0
Maximum total sulphur (mg/m <sup>3</sup> )	Unodorised Gas	10
	Odorised Gas	20
Maximum Hydrogen Sulphide (mg/m <sup>3</sup> )		2
Maximum Oxygen (mol %)		0.2
Maximum Water (mg/m <sup>3</sup> )		48
Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute		Below 0°C
Maximum radioactive component (Bq/m <sup>3</sup> )		600
Minimum extractable LPGs (t/TJ)		n/a

## Schedule 3

### Metering Requirements

#### 1. Design, Adjustment and Operation

- (a) Metering Equipment shall be designed, adjusted and operated so as to achieve:
  - (i) subject to clauses 1(a)(ii) and (iii) and clause 1(b) below, the best accuracy of measurement which is technically and economically feasible consistent with standard gas industry practices;
  - (ii) measurement to within a maximum uncertainty of:
    - (A) subject to clause 1(b) below, plus or minus 1% 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
  - (iii) 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) Alternative Metering Equipment referred to in clause 2(b)(i) below need not comply with clause 1(a)(ii)(A) above if:
  - (i) it is designed, adjusted and operated so as to achieve measurement to within a maximum uncertainty of plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level; and
  - (ii) it is not used or likely to be used for more than 72 hours in any gas year.
- (c) Subject to clauses 1(a) and 1(b) above, each component of Metering Equipment may be designed, adjusted and operated within limits of uncertainty agreed between the Parties.
- (d) In this clause, "95% confidence level" has the meaning given to that expression by ISO 5168 as amended varied or replaced.

#### 2. Metering Requirements

- (a) Metering Equipment shall:
  - (i) continuously compute and record:
    - (A) (in the case of Receipt Point Metering Equipment) the quantity and quality of gas delivered by Shipper to Operator under the Access Contract; and
    - (B) (in the case of Delivery Point Metering Equipment) the quantity of gas delivered by Operator to Shipper under the Access Contract;
  - (ii) be of a standard of manufacture acceptable to Operator in its discretion as a reasonable and prudent pipeline operator;

- (iii) comply with AS 2885 and any Australian or international standards required from time to time by Operator;
  - (iv) subject to clauses 2(a)(ii) and 2(a)(iii) above, 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 Operator's electronic data collection system.
- (b) Metering Equipment with a design maximum flow rate of 5 TJ/d or more shall include:
- (i) alternative Metering Equipment capable of measuring gas quantity and (for Receipt Point 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 sub-clause (i); and
  - (iii) a means for manually switching metering from duty equipment to the alternative Metering Equipment referred to in clause 2(b)(i) above.
- (c) Metering Equipment at a Receipt Point shall provide digital signals associated with valve or other equipment status, and shall include components for signalling the following primary measurements and derived variables associated with gas quality and quantity:
- (i) delivery temperature;
  - (ii) delivery pressure;
  - (iii) instantaneous energy flow rate in terajoules per day;
  - (iv) totalised energy flow in gigajoules;
  - (v) relative density;
  - (vi) higher heating value in megajoules per kilogram;
  - (vii) nitrogen content in mole percent;
  - (viii) carbon dioxide content in mole percent;
  - (ix) LPG content in tonnes per terajoule of gas;
  - (x) moisture level in milligrams per cubic metre;
  - (xi) instantaneous hydrocarbon dew point in degrees Celsius; and
  - (xii) all primary measurements and derived variables used in any computation required by sub-clauses (i) to (xi).
- (d) Unless Operator and Shipper as reasonable and prudent persons agree to the contrary, Delivery Point Metering Equipment may utilise gas quality data (the

"remote data") from equipment which is not located at the Delivery Point station in question, in which case:

- (i) Operator may as a reasonable and prudent person adopt procedures relating to that utilisation, including without limitation relating to the use of preset gas quality values when the remote data is unavailable for any reason; and
    - (ii) clauses 4 and 7 below apply, with appropriate modifications, to any procedures adopted under clause 2(d)(i) above.
  - (e) Delivery Point Metering Equipment shall provide digital signals associated with valve or other equipment status, and shall 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 gigajoules; and
    - (v) all primary measures and derived variables used in any computation required by clauses 2(e) (i) to (iv) above; and
    - (vi) higher heating value in megajoules per cubic metre.
  - (f) The Receipt Point Metering Equipment, and any building erected for such equipment, is the property of Shipper, and the Delivery Point Metering Equipment, and any building erected for such equipment, is the property of Operator.
3. Changes to Requirements for Metering Equipment
- Operator may modify, or may by notice in writing require Shipper to modify, existing Metering Equipment to comply with requirements or standards specified by Operator after that equipment was installed, and if the modification is necessary to comply with safety laws of general application, or to comply with an amendment to the Access Arrangement implementing such laws, the modification is to be made at Shipper's expense, and otherwise the modification is to be made at Operator's expense.
4. Preservation of Accuracy
- (a) All Metering Equipment is to be installed in a manner which permits an accurate measurement of the quantity, and (for Receipt Point Metering Equipment) the quality, of gas delivered, and a ready Verification of the accuracy of measurement.
  - (b) Each Party shall, 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 the Access Contract.
5. Presumptions of Accuracy

- (a) Subject to clause 12.5 of these Access Contract Terms and Conditions, a measurement of the quantity or quality of gas from any Metering Equipment is to be 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 to be presumed to have been operating within the prescribed limits of uncertainty throughout the intervening period.
- (c) The presumptions in clauses 5(a) and 5(b) are to apply until the contrary is shown.
- (d) If either or both of the presumptions in clauses 5(a) and 5(b) above is, or are, shown to be incorrect in respect of any period or periods, clause 12.5 and clause 12.6 of the Access Contract apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

6. Verification of Metering Equipment

- (a) Operator:
  - (i) shall, subject to clause 6(b), at least once each 3 months during the duration of the Access Contract; and
  - (ii) may at such greater frequency or on any occasion that either Party may request,verify the accuracy of any Metering Equipment in accordance with a procedure described in clause 6(c).
- (b) Either Party may from time to time, by at least 3 months' advance notice in writing to the other Party, vary the interval between verifications under clause 6(a)(i) of any Metering Equipment, provided that the established performance of the Metering Equipment is such that a reasonable and prudent person would be satisfied that the interval can be so varied without materially detrimentally affecting the accuracy of measurements provided by the Metering Equipment and without materially increasing the risk of the Metering Equipment operating outside the prescribed limits of uncertainty.
- (c) The Verification procedure is to consist of:
  - (i) a comparison between simultaneous independent measurements of gas flows;
  - (ii) the physical substitution of the 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.
- (d) Each Party may have representatives present at the time of any Verification of the accuracy of any Metering Equipment (unless the number of persons present shall be restricted for safety or logistical reasons, in which case the Parties are to agree on which representatives are to be present), and Operator shall give Shipper sufficient notice of an intended Verification to enable Shipper's representative to be present.

- (e) The results of any Verification are binding on both Parties unless within 7 Business 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 dispute resolution provisions of clause 18; and
    - (ii) any reference to accuracy figures produced by a Verification means the accuracy figures finally determined for that verification under a dispute resolution process adopted in accordance clause 18.
  - (f) Subject to clause 6(g) below, any Verification under clause 6(a) above is to be made at Shipper's expense, provided that Operator is to bear the cost of attendance of Operator's representatives.
  - (g) If a Verification requested by Operator under clause 6(a)(ii) above reveals that the accuracy of the Metering Equipment is within the prescribed limits of uncertainty, the Verification is to be at Operator's expense and Operator shall pay Shipper's reasonable expenses of that Verification.
7. Adjustment or Replacement of Defective Equipment
- (a) If any component of Metering Equipment is at any time found to be defective or otherwise out of service or operating outside the prescribed limits of uncertainty, Operator shall at a Delivery Point station and Shipper shall at a receipt point station (in either case at Shipper's expense) forthwith either:
    - (i) adjust it to read accurately within the prescribed limits of uncertainty; or
    - (ii) if such adjustment is not possible, replace it with a serviceable component.
  - (b) Without limiting the generality of clause 7(a), if Metering Equipment with a design maximum flow rate of less than 5 TJ/d is at any time found to be for any reason operating outside the prescribed limits of uncertainty, Operator shall at a Delivery Point and Shipper shall at any Receipt Point (in either case at Shipper's expense) within 48 hours cause the Metering Equipment to operate within the prescribed limits of uncertainty.