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## Access Contract Terms and Conditions

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## 1. INTERPRETATION

### 1.1 Definition of Terms

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

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

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

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

**"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;

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

- (a) the Shipper's obligations to Epic Energy 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 Charges"** means the Pipeline Capacity Charge and the Compression Capacity Charge;

**"Category A gas"** means gas which meets the specification for category A gas set out in Schedule 2, as may be varied from time to time by Epic Energy with the approval of the Coordinator of the Office of Energy;

**"Category B gas"** means gas which meets the specification for category B gas set out in Schedule 2, as may be varied from time to time by Epic Energy with the approval of the Coordinator of the Office of Energy;

**"Charges"** means the Gas Receipt Charge, Pipeline Capacity Charge, Compression Capacity Charge, Compressor Fuel Charge, Delivery Point Charge and any other fee or charge payable pursuant to the Access Contract;

**"Clause"** means a Clause of these Access Contract Terms and Conditions;

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

**"Compression Capacity Charge"** means the compression capacity charge calculated in accordance with the Tariff Schedule;

**"Compressor Fuel Charge"** means the compressor fuel charge calculated in accordance with the Tariff Schedule;

**"CPI"** means the Consumer Price Index (All Groups Perth) 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 Contract (there may be more than one Delivery Point specified) as a point at which the Shipper may require Epic Energy to deliver gas, or any other point at which the Shipper may require Epic Energy to deliver gas in accordance with the Access Contract and includes a Notional Delivery Point;

**"Delivery Point Charge"** means the delivery point charge calculated in accordance with the Tariff Schedule;

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

**"Delivery Point Facilities"** 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 Loss"** means loss or damage which is not Indirect Loss;

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

**"Event of Default"** has the meaning given in Clause 15.1;

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

**"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;

**"Firm Service"** has the meaning given in the Access Arrangement;

**"Force Majeure"** means any event or circumstance not within the control of a Party and which by the exercise of due diligence, that Party is not able to prevent or overcome.

The following will not constitute (directly or indirectly) events or circumstances of Force Majeure:

- (a) changes in market structure, operations or conditions for:
  - (i) supply, purchase or sale of gas; or
  - (ii) any good or service manufactured or provided by the Shipper;
- (b) lack of, or reduction in, gas reserves, water supply or raw materials;
- (c) commercial failure, expiration or termination for whatever reason of a contract;
- (d) lack of funds/inability to pay money; or
- (e) strikes or industrial disputes.

**"GJ"** means gigajoule;

**"Gas Receipt Charge"** means the gas receipt charge calculated in accordance with the Tariff Schedule;

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

**"GST"** means goods and services tax;

**"Imbalance"** means the situation where the total quantity of gas supplied by the Shipper to Epic Energy at Receipt Points on a Day (determined in accordance with Clause 3.6) is greater than (which is a **"Positive Imbalance"**) or less than (which is a **"Negative Imbalance"**) the total quantity of gas delivered to the Shipper by Epic Energy at Delivery Points on that Day (determined in accordance with Clause 3.7);

**"Imbalance Limit"** means 2% of the Shippers MDQ;

**"Independent Expert"** means an independent expert appointed under Clause 16.2;

**"Indirect Loss"** means —

- (a) any consequential loss or damage however caused, including without limitation any —
    - (i) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
    - (ii) loss due to business interruption; or
    - (iii) loss or liability under a contract with a third party,
- whether or not the consequential 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;

**"MDQ"** means the aggregate of the 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;

**"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;

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

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

**"Out-of-Specification gas"** means gas which does not comply with one or more of the specifications for Category A gas at a Receipt Point or Category B gas at a Delivery Point;

**"Out of Specification Gas Charge"** means the charge set out in Schedule 1;

**"Overrun"** has the meaning given in Clause 5.1;

**"Party"** means Epic Energy or the 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 the Shipper's MDQ multiplied by the number of Days in the Year;

**"Pipeline Licence"** means the pipeline licences for the DBNGP being PL 40 and the pipeline licence to be issued in respect of CS10 as may be amended, varied, substituted or added to from time to time;

**"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 the 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;

**"Rebate Sharing Contract"** means an access contract which states that Rebate Sharing Revenue may be payable to the Shipper;

**"Receipt Point"** means a flange, joint, or other point in Zone 1, specified in the Access Contract as a point at which Epic Energy receives gas from the Shipper, or any other point at which Epic Energy receives gas from the Shipper in accordance with the Access Contract;

**"Receipt Point Facility"** means a flange or joint connecting the DBNGP to the Shipper's facilities but does not include metering equipment, which the Shipper is responsible to supply and install;

**"Receipt Point MDQ"** means the maximum quantity of gas that the Shipper may supply for delivery to Epic Energy 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*;

**"Schedule"** means a schedule to these Access Contract Terms and Conditions;

**"Secondary Market"** means the system of trading capacity as described in Paragraph 11.3 of the Access Arrangement and conducted by Epic Energy in accordance with the Secondary Market Rules;

**"Secondary Market Rules"** means the rules published by Epic Energy 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 Epic Energy from time to time to apply to Secondary Market Service in accordance with the Secondary Market Rules and Paragraph 11.3(c) of the Access Arrangement;

**"Service"** in these Access Contract Terms and Conditions means Firm Service;

**"Spot Basis"** means in relation to the relocation of Delivery Point MDQ, the relocation of that capacity to another Delivery Point for no longer than a Day;

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

**"TJ"** means Terrajoule which is equal to 1000 GJ;

**"Tariff Schedule"** means the tariff schedule annexed to the Access Arrangement;

**"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;

**"Termination Date"** means 08:00 hours on the date for termination of the Firm Service set out in the Access Contract;

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

**"Unavailability Notice"** means a notice issued by Epic Energy to the Shipper (which may also have been issued to Other Shippers), stating that Epic Energy can only deliver a quantity of gas to the Shipper at a Delivery Point set out in the notice;

**"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;

**"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 1<sup>st</sup> of January and ending at 08:00 hours on the following 1<sup>st</sup> of January; and

**"Zone"** means any one or more of zones 1a through 10 as more fully described in the Access Arrangement Information.

## 1.2 Construction

In the construction 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 number include the plural number 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) references to dollars or \$ are references to Australian dollars;
- (i) where the Shipper comprises two or more persons, an obligation, representation or warranty of the 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, reference to a quantity of gas is a reference to that quantity of gas measured in GJ.



## **2. GAS SPECIFICATIONS**

### **2.1 Gas to be Free From Certain Substances**

Gas supplied by the Shipper at a Receipt Point or delivered to the Shipper by Epic Energy at a Delivery Point shall 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.

### **2.2 Gas Shall Comply with Operating Specifications**

- (a) Gas supplied by the Shipper for delivery to Epic Energy at a Receipt Point shall comply with the operating specification for Category A gas, and gas delivered to the Shipper by Epic Energy at a Delivery Point shall comply with the operating specification for Category B gas.
- (b) Subject to Clause 2.2(c), the minimum and maximum temperatures and the minimum and maximum pressures at which the Shipper may supply gas to Epic Energy at a Receipt Point, and Epic Energy may deliver gas to the Shipper at the Delivery Point are those set out in Schedule 2 to these Access Contract Terms and Conditions.
- (c) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Schedule 2 to these Access Contract Terms and Conditions.

### **2.3 Epic Energy May Accept Out-of-Specification Gas**

Epic Energy may agree with the Shipper to accept Out-of-Specification gas from the Shipper prior to that gas entering the DBNGP, on terms and conditions acceptable to Epic Energy.

### **2.4 Shipper's Liability for Out of Specification Gas**

If any Out-of-Specification gas supplied by the Shipper enters the DBNGP without Epic Energy's prior written consent (which consent is in Epic Energy's sole discretion), then despite any other provision of these Access Contract Terms and Conditions —

- (a) the Shipper shall be liable to Epic Energy for any and all loss and damage arising from that delivery, including Indirect Damage; and
- (b) Epic Energy is, to the extent necessary to allow it to deal with that entry of gas:
  - (i) entitled to vent the Out of Specification Gas and the 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 Epic Energy; and
  - (ii) is relieved of any obligation to deliver gas to the Shipper by an amount no greater than the quantity of gas necessarily vented by Epic Energy pursuant to Clause 2.5(b)(i);and

- (c) the Shipper shall pay Epic Energy a surcharge calculated by multiplying each GJ of that Out of Specification gas by the Out of Specification Gas Charge (which is payable in addition to the Charges).

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

#### **3.1 Supply and Installation**

Epic Energy will supply and install all Receipt Point Facilities and Delivery Point Facilities for the DBNGP in accordance with the principles and standards of a reasonable and prudent pipeline operator.

#### **3.2 Delivery Point Charge**

- (a) The Shipper shall pay the Delivery Point Charge at each Delivery Point at which Epic Energy delivers gas to the Shipper.
- (b) Where Epic Energy delivers gas to the Shipper and Other Shippers at the same Delivery Point on a Day, then the Shipper's share of the Delivery Point Charge shall be the proportion that the gas delivered to the Shipper at the Delivery Point on that Day bears to the total quantity of gas delivered at that Delivery Point on that Day.
- (c) Where no gas is delivered at a Delivery Point on a Day and the Shipper is the only person with Delivery Point MDQ at that Delivery Point, then the Shipper shall pay Epic Energy the entire Delivery Point Charge in respect of that Delivery Point for that Day.
- (d) Where no gas is delivered at a Delivery Point on a Day and the Shipper and Other Shippers have Delivery Point MDQ at the Delivery Point, then the Shipper shall pay the Delivery Point Charge in the proportion that the Shipper's Delivery Point MDQ bears to the total of the Shipper's and the Other Shipper's Delivery Point MDQ's at that Delivery Point.

#### **3.3 Relocation of Delivery Point MDQ**

- (a) The Shipper may (subject to Clause 3.7) elect to relocate any part of its Delivery Point MDQ on a Spot Basis to a delivery point upstream of its contracted Delivery Point without the need to obtain the prior consent of Epic Energy, but the Shipper must notify Epic Energy of that relocation as soon as possible after the Shipper becomes aware of the need to relocate, but in any event not later than 08:00 hours on the Day.
- (b) The Shipper's ability to relocate its Delivery Point MDQ to an upstream delivery point is subject to the rights of Other Shippers with contracted Delivery Point MDQ at that delivery point.
- (c) The Shipper may not relocate any part of its Delivery Point MDQ to a delivery point downstream of the Shipper's contracted Delivery Point MDQ without the prior written agreement of Epic Energy, which agreement will not be unreasonably withheld other than on Operational Grounds, and the Shipper acknowledges that the equivalent downstream quantity may be less than the Delivery Point MDQ the Shipper seeks to relocate.
- (d) Epic Energy may without liability to the Shipper, curtail deliveries of gas to the Shipper relocated under Clause 3.3(a), if Epic Energy 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.

### **3.4 Charges**

- (a) If the Shipper elects under Clause 3.3(a) 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 the Shipper shall not change.
- (b) If the Shipper reaches agreement with Epic Energy under clause 3.3(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 the Shipper will be in accordance with the Tariff Schedule.

### **3.5 Receipt Point Flexibility**

Subject to Clause 3.6:

- (a) The Shipper may supply quantities gas at any receipt point in Zone 1 on a Day (not exceeding in aggregate across all receipt points the Shipper's MDQ) provided it is operationally feasible; and
- (b) The Shipper may supply quantities of gas at a Receipt Point on a Day (not exceeding in aggregate across all Receipt Points the Shipper's MDQ) greater than those quantities specified in the Shipper's Access Contract for the Receipt Point provided it is operationally feasible.

### **3.6 Allocation of Gas at Receipt Points**

- (a) Where the Shipper is the only person supplying gas to Epic Energy at a Receipt Point on a Day, the Shipper is deemed to have supplied all gas at that Receipt Point for that Day.
- (b) Subject to Epic Energy agreeing otherwise, if the Shipper and any Other Shipper supply gas to Epic Energy at a Receipt Point on a Day, then the Shipper must provide written confirmation from the Producers by not later than 0830 hours on the following Day, of the amount of gas supplied by the Producers to the Shipper at that Receipt Point, and that confirmation shall be deemed to be the quantity of gas supplied by the Shipper to Epic Energy at that Receipt Point.
- (c) If the Shipper fails to provide written confirmation from the Producers by the time specified in clause 3.6(b), the Shipper will be deemed to have supplied no gas to Epic Energy at that Receipt Point.

### **3.7 Allocation of Gas at Delivery Points**

- (a) Where the Shipper is the only person to take delivery of gas from Epic Energy at a Delivery Point on a Day, then the Shipper is deemed to have taken delivery of all gas delivered at that Delivery Point.
- (b) If the Shipper and any Other Shippers take delivery of gas from Epic Energy at Delivery Point on a Day, then the Shipper's proportional share of the gas stream at that Delivery Point may be determined by agreement between the Shipper and Other Shippers who take delivery of gas at that Delivery Point.
- (c) If the Shipper fails to reach agreement with Other Shippers under Clause 3.7(b) or fails to provide Epic Energy with a copy any agreement under clause 3.7(b) or Epic Energy is not notified by 08:00 hours on the following Day of the Shipper's proportional share of gas at the Delivery Point then Epic Energy may determine

the proportion of gas to be attributed to the Shipper and each Other Shipper by reference to:

- (i) their respective nominations at the Delivery Point; or
  - (ii) any other information to which a reasonable and prudent pipeline operator would have regard.
- (d) The Shipper shall promptly deliver to Epic Energy a copy of any agreement reached under Clause 3.7(b).

## 4. NOMINATIONS

### 4.1 Requests for Advance Information

- (a) Epic Energy may request and the Shipper shall provide good faith advance estimates (covering such periods and in such detail as Epic Energy may determine) of the Shipper's likely nominations at the Shipper's Receipt Points and Delivery Points on a Day or Days. Epic Energy will keep these estimates confidential.
- (b) The information provided under Clause 4.1(a) is not binding on the Shipper and Epic Energy will have no action against the Shipper if the 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) The Shipper shall nominate for each Day in the Week before the nominated Week, the quantity of gas that:
  - (i) the Shipper will supply to Epic Energy at a Receipt Point; and
  - (ii) the Shipper requires Epic Energy to deliver to the Shipper at a Delivery Point,by notice to Epic Energy not later than 17:00 hours on Wednesday in the Week before the nominated Week.
- (b) Subject to Clause 3.3, the Shipper may not nominate quantities of gas on a Day at a Delivery Point in excess of the Shipper's Delivery Point MDQ and the sum of the Shipper's nominations across all the Shipper's Delivery Points shall not exceed the Shipper's MDQ.
- (c) The Shipper's nominations across all Receipt Points on a Day shall not (subject to Clause 6.1) exceed the Shipper's MDQ.

### 4.3 Daily Nominations

- (a) Subject to Clause 4.2 (b) and Clause 4.2(c), the Shipper may by notice to Epic Energy 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 the Shipper does not make any amendments to the nomination for the Day under Clause 4.3(a), then the Shipper's nomination under Clause 4.2(a) shall be used for the Day.

### 4.4 Nominations Shall be Given in Good Faith

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

- (c) If at the expiry of 21 Days from receipt of a Variance Notice:
- (i) the quantity of gas supplied by the Shipper at a Receipt Point on a Day;  
or
  - (ii) the quantity of gas delivered to the Shipper by Epic Energy at a Delivery Point on a Day,
- varies by more than 10% of the Shipper's nomination at that Receipt Point or that Delivery Point on that Day, then the Shipper shall pay Epic Energy the Nomination Surcharge for each GJ of gas:
- (iii) supplied by the Shipper to Epic Energy at a Receipt Point on a Day; or
  - (iv) delivered to the Shipper by Epic Energy at a Delivery Point on a Day,
- in excess of, or below, the Shipper's nomination for that Day at that Receipt Point or that Delivery Point until such time as the Variance Notice is withdrawn.
- (d) If Epic Energy has issued the Shipper with a Variance Notice, Epic Energy:
- (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 the Shipper incurring the Nomination Surcharge.

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## 5. OVERRUN

### 5.1 Overrun Quantities

Any gas delivered to the Shipper:

- (a) at a Delivery Point in excess of the Shipper's Delivery Point MDQ; or
- (b) at Delivery Points which in aggregate exceeds the Shipper's MDQ,

is Overrun.

### 5.2 Overrun Charge

- (a) Subject to Clause 5.3 and 5.4, if the aggregate quantity of gas delivered to the Shipper on a Day is within the Shipper's MDQ, then the Shipper shall pay for Overrun as follows:
  - (i) if the Overrun occurs within a zone in which the Shipper has more than one Delivery Point MDQ, and the aggregate quantity of gas delivered to the Shipper in that zone is within the Shipper's aggregate Delivery Point MDQ in that zone, then no further Charges are payable by the Shipper in respect of that Overrun;

*Example: The Shipper has two Delivery Point MDQ's for separate Delivery Points within zone 9. First Delivery Point MDQ is 5TJ and second delivery point MDQ is 10TJ. If 15TJ is delivered to first Delivery Point and 0TJ to second Delivery Point, the Shipper pays no additional Charges.*

- (ii) if the Overrun occurs within a zone in which the Shipper has only one Delivery Point MDQ, and the Shipper has a Delivery Point MDQ or Delivery Point MDQ's in a zone upstream of the zone in which the Overrun occurs, then the Shipper shall pay additional Capacity Charges as if the capacity had been relocated downstream from the unutilised Delivery Point MDQ, calculated at 110% of the Capacity Charges otherwise payable.

*Example: The Shipper has Delivery Point MDQ of 10TJ/Day in zone 8 and Delivery Point MDQ of 5TJ/Day in zone 9. Epic Energy delivers to the Shipper 5 TJ in zone 8 and 10TJ in zone 9. The Shipper pays 110% of the additional zone 9 Capacity Charges for the 5 TJ delivered to zone 9.*

- (b) Subject to Clause 5.3 and 5.4, if the aggregate quantity of gas delivered to the Shipper on a Day exceeds the Shipper's MDQ, then the Shipper shall pay the greater of:
  - (i) 110% of the Capacity Charges and Gas Receipt Charges which would otherwise be payable for each GJ of gas delivered to the Shipper at the Delivery Point in excess of the Shipper's Delivery Point MDQ at that Delivery Point if that quantity had been part of the Shipper's Delivery Point MDQ for that Delivery Point; or
  - (ii) 110% of the highest price (or its equivalent based on the location of the Delivery Point) paid on the Secondary Market on that Day.



*Example: the Shipper delivers 20TJ in a Day to a Delivery Point in zone 8 at which the Shipper's Delivery Point MDQ is 15TJ/Day and the Shipper has no other Delivery Point MDQ's or if the Shipper has other Delivery Points the Shipper has delivered to those Delivery Point MDQ's. The Shipper pays 110% of the Capacity Charges and full Compressor Fuel Charge for the delivery of 5TJ to zone 8 unless the Secondary Market price for that Day is higher, in which case the Secondary Market Price applies instead. The Compressor Fuel Charge is charged as normal ie on the 20TJ delivered to the Delivery Point.*

- (c) Nothing in Clause 5.2(a) or clause 5.2(b) affects the liability of the Shipper to pay the Compressor Fuel Charge of the Delivery Point Charge in accordance with the Tariff Schedule.

### **5.3 Interruptibility and Liability**

- (a) The Shipper has no right or entitlement to Overrun and therefore Overrun is interruptible in the absolute discretion of Epic Energy;
- (b) If Epic Energy interrupts any Other Shipper, directly or indirectly as a result of the Shipper taking Overrun, then the Shipper is liable for:
  - (i) all loss or damage (including Indirect Loss) suffered by Epic Energy or the Other Shipper; and
  - (ii) the Capacity Charges and Receipt Charges which Epic Energy is required to credit to that Other Shipper pursuant to Clause 14.1(b);

### **5.4 Unavailability Notice**

If Epic Energy issues an Unavailability Notice, then without limiting Clause 5.3, the Shipper shall pay the Unavailability Charge for each GJ of gas delivered to the Shipper at a Delivery Point, or in aggregate as the case may be, in excess of the quantity specified in the Unavailability Notice.

## **6. IMBALANCES**

### **6.1 Daily Balancing**

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

- (a) If there is a Positive Imbalance for a Day then the 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 the Shipper at a Receipt Point/s; and
- (b) If there is a Negative Imbalance for a Day then the Shipper is deemed not to have supplied any gas to Epic Energy at a Receipt Point/s on the next Day until the Negative Imbalance is cleared.

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

It is the Shipper's obligation to ensure that the absolute value of its Imbalance does not exceed the Shipper's Imbalance Limit. Epic Energy is entitled to charge the Shipper in accordance with Clause 6.4 irrespective of whether or not Epic Energy has given the Shipper notice that the Shipper's Imbalance Limit has been exceeded.

### **6.3 Provision of Notice**

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

### **6.4 Excess Imbalance Charge**

If the absolute value of the Shipper's Imbalance at the end of a Day exceeds the Shipper's Imbalance Limit, then the Shipper shall pay the Excess Imbalance Charge for each GJ of gas by which the absolute value of such Imbalance exceeds the Shipper's Imbalance Limit.

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

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

- (a) refuse to accept gas from the Shipper at a Receipt Point or deliver gas to the Shipper at a Delivery Point; and
- (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.

## **7. PEAKING**

### **7.1 Hourly Peaking**

- (a) Without limiting Clause 6, the 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 the Shippers Delivery Point MDQ at that Delivery Point.
- (b) If the Shipper exceeds its MHQ, Epic Energy may require the Shipper to pay, and the Shipper shall if so required pay, the Peaking Surcharge for each GJ of gas by which the Shipper has exceeded the Shipper's MHQ.
- (c) Clause 7.1(a) does not alter or affect the Shipper's MDQ.

### **7.2 Refusal to Accept Gas**

Epic Energy may, as a reasonable and prudent pipeline operator and without liability to the Shipper, refuse to deliver gas to the Shipper at a Delivery Point, at any time that the Shipper exceeds the Shipper's MHQ.

## **8. INVOICING AND PAYMENT**

### **8.1 Monthly Invoicing**

Epic Energy will provide to the Shipper an invoice or invoices for the Month just ended showing —

- (a) the quantity of gas received by Epic Energy from the Shipper at each Receipt Point and the quantity of gas delivered by Epic Energy to the Shipper at each Delivery Point on each Day for that Month;
- (b) the Gas Receipt Charge, the Pipeline Capacity Charge and the Compression Capacity Charge payable in advance for the next Month;
- (c) the Compressor Fuel Charge and the Delivery Point Charge for that Month;
- (d) all other amounts which under the Access Contract are payable in arrears or refundable for the Month including any charges in schedule 1; and
- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous Months and the interest payable thereon.

### **8.2 Payment by the Shipper**

The Shipper will pay each invoice by direct payment to a bank account nominated by Epic Energy within 14 Days of receipt of the invoice from Epic Energy.

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

If the Shipper disputes part or all of an Invoice:

- (a) the Shipper shall, within 7 Days after receipt of the Invoice, notify Epic Energy in writing specifying the amount in dispute and the reasons for the dispute; and
- (b) the Shipper shall pay in accordance with Clause 8.2 that part of the Invoice not in dispute; and
- (c) the 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 shall 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 the Shipper, the date the amount should have been paid in accordance with this Clause 7; or
- (d) in the case of Epic Energy, the date Epic Energy received the payment from the Shipper.

## **8.5 Incorrect Invoices**

- (a) If the 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 14 Days after the error has been discovered and the amount has either been agreed by the Parties or determined pursuant to Clause 8.2, either:
  - (iii) Epic Energy will repay to Shipper the amount of the overcharge (together with interest in accordance with Clause 8.4); or, as the case may be;
  - (iv) the Shipper will pay to Epic Energy 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 EPIC ENERGY**

### **9.1 Commingling of Gas**

Epic Energy will have the right to commingle gas supplied by the Shipper with other gas in the DBNGP.

### **9.2 Processing**

Epic Energy may compress, cool, heat, clean and apply other processes to gas consistent with its operation of the DBNGP.

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

Subject to its obligations under the Access Contract, Epic Energy reserves the right to decide the manner in which it will operate the DBNGP.

### **9.4 Delivery of Gas**

Epic Energy may satisfy its obligation to deliver gas to the Shipper by using a gas pipeline other than the DBNGP.

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

### **10.1 Warranty of Title**

The Shipper warrants that at the time it supplies gas to Epic Energy at a Receipt Point, the Shipper has good title to the gas free and clear of all liens, encumbrances and claims of any nature inconsistent with Epic Energy's operation of the DBNGP.

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

The Shipper warrants to Epic Energy at each relevant time that the 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 the Shipper at a Delivery Point; and
- (b) has legal responsibility and liability for gas while it is within the control and possession of the Shipper.

### **10.3 Title, Custody, Control and Responsibility of Epic Energy**

Epic Energy will:

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

## **11. NOTIONAL DELIVERY POINTS**

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

Epic Energy 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 the Shipper has Delivery Point MDQ at a Delivery Point which subsequently becomes an Associated Delivery Point, then the 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 Epic Energy, that other gas transmission system and the operator of that distribution network.



## **12. METERING**

### **12.1 Shippers Responsibility**

The Shipper shall:

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

### **12.2 Epic Energy's Responsibility**

Epic Energy shall:

- (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; and
- (b) calculate and record —
  - (i) the quantity of gas supplied to Epic Energy by the Shipper; and
  - (ii) the quantity of gas delivered to the Shipper by Epic Energy.

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

Subject to Epic Energy 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) The Shipper shall —
  - (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,obtain Epic Energy's written approval 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) Epic Energy will, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to the Shipper of Epic Energy'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 Clause 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, provided that 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 Epic Energy 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 Epic Energy and the Shipper; or
  - (ii) trend data recorded by Epic Energy or the 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 Epic Energy and the 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 shall, within 10 working 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 shall return the originals within 10 working days of receipt.

## **13. LIABILITY**

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

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

### **13.2 Liability for Fraud**

A Party who is fraudulent or who shows wilful disregard 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 or wilful disregard.

### **13.3 No liability arising out of any approval by Epic Energy**

Subject to Clause 13.2, Epic Energy is not in any circumstances to be liable to the Shipper for any loss, injury, or damage, arising out of any approval by Epic Energy 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.

### **13.4 Shipper Responsible for its and its Contractors' Personnel and Property**

- (a) Except to the extent caused by the negligence of Epic Energy, the Shipper is liable for any loss or damage 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 the Shipper.
- (b) The Shipper indemnifies Epic Energy and any person (except the Shipper) contracting with Epic Energy, 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 13.4(a).

## **14. CURTAILMENT AND INTERRUPTION**

### **14.1 Permissible Interruption**

Epic Energy may curtail or interrupt the Shipper without liability to the Shipper:

- (a) in such circumstances as Epic Energy considers necessary as a reasonable and prudent pipeline operator PROVIDED THAT the interruption or curtailment is within the Permissible Limit; or
- (b) for Force Majeure; or
- (c) in the circumstances described in Clause 3.3(d).

### **14.2 Interruption**

Epic Energy may curtail or interrupt the Shipper in circumstances which are not a Permissible Interruption PROVIDED THAT in that case, Epic Energy shall:

- (a) compensate the Shipper for any Direct Loss suffered by the Shipper; and
- (b) credit the Shipper in the next invoice issued by Epic Energy to the Shipper, with the Receipt Charge and Capacity Charges 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 this contract if it is prevented from doing so by Force Majeure.
- (b) If a Party claims the benefit of Force Majeure, it shall —
  - (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 Epic Energy due to Force Majeure to accept gas from or deliver gas to the Shipper is not a curtailment or interruption of the Shipper's capacity.
- (d) The Shipper is not relieved of its obligation to pay the Capacity Charges by the occurrence of an event of Force Majeure (whether claimed by Epic Energy or the Shipper).

## 16. CHARGES

### 16.1 Obligation to Pay

The Shipper shall 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

On each 1 January (commencing in 2001) all of the Charges will be adjusted by 67% of the variation (expressed as a percentage) in the CPI for the 12 month period ending on the previous 30 September.

### 16.3 Imposts and Goods and Services Tax

- (a) The Shipper will pay to Epic Energy a monthly amount equal to the cost of —
- (i) changes to, or to the method of imposition of, any Supply Tax which was applicable and in effect at the date of this contract; and
  - (ii) any new Supply Tax,

which are imposed on Epic Energy during that month. If a Supply Tax is a GST the provisions set out in Clauses 16.3(b) to 16.3(f) shall apply.

In this clause, "**Supply Tax**" means any tax, charge, levy, duty, fee or impost imposed by any level of government relating to the construction, operation and maintenance of the DBNGP and the provision of the Service to the Shipper.

(b) **Definitions**

In this Clause 16.3, the following terms will have the following meanings:

"**GST**" means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Commencement Date, which pursuant to the GST Act or any other statute, is or may be levied or become payable in connection with the supply of any goods, services or other things under this contract.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* and any legislation substituted for, replacing or amending that Act.

"**GST rate**" means the rate of tax imposed on the introduction of GST into Australia.

"**GST adjustment rate**" means the amount of any increase in the rate of tax imposed under a GST which is above the GST rate.

"**basic consideration**" means the consideration (whether in money or otherwise) to be paid or provided to the Provider for any supply or use of any goods, services or other things under this contract (other than tax payable pursuant to this clause).

"**cost savings**" shall mean in respect of the supply of any goods or services under this contract, the cost savings made by the Provider as a result of new tax system changes other than the imposition of GST on any such supply, in so far as they are

properly allocated to those supplies, or any amount of any input credits available to the Provider in respect of such costs.

**"new tax system changes"** has the meaning which it bears in the TPA.

**"Provider"** means any party who provides goods or renders services under this contract.

**"Recipient"** means any party who receives a supply of goods or services under this contract.

**"tax invoice"** has the meaning which it bears in section 195-1 of the GST Act.

**"TPA"** means *New Tax System (Trade Practices Amendment) Act 1999* and any legislation substituted for, replacing or amending that Act.

(c) **Registration**

Epic Energy and the Shipper agree that each of them, or their duly appointed agent, will register under the GST Act as and when it becomes possible to do so.

(d) **Recipient Must Pay**

(i) If, upon the introduction of GST, GST is payable on the basic consideration or any part thereof or if the Provider is liable to pay GST in connection with any goods, services or other things supplied under this contract then, as from the date of any such introduction or application:

(A) the Provider may increase the basic consideration or the relevant part thereof by an amount which is equal to the GST rate; and

(B) the Recipient shall pay the increased basic consideration on the due date for payment by the Recipient of the basic consideration.

(ii) If, at any time, the GST rate is increased, the Provider may, in addition to the GST rate, increase the basic consideration by the GST adjustment rate and such amount shall be payable in accordance with Clause 16.3(d)(i)(A)

(e) **GST Invoice**

Where the basic consideration is to be increased to account for GST pursuant to Clause 16.3(d), the Provider shall issue a tax invoice to the Recipient at the time the payment is made.

(f) **Variation to Basic Consideration**

(i) If, as a result of the new tax system changes, there is an abolition (in whole or part) of, or a reduction in the level of, wholesale sales taxes or other indirect taxes ("**the relevant taxes**") which apply to goods which are sold or supplied by the Provider, then, as from the date of any such abolition or reduction (and upon any subsequent abolition or reduction) of the relevant taxes the provisions of this contract dealing with the calculation of the basic consideration shall be amended as necessary to



ensure that, as far as reasonably practicable, the cost savings are passed on to the Recipient.

- (ii) Epic Energy and the Shipper agree that, in order to give effect to Clause 16.3(f)(i), at least 21 days before the introduction of the new tax changes, they shall meet and negotiate in good faith and, if possible, agree upon the specific amendments to be made to the contract to apply from the relevant date.

If Epic Energy and the Shipper are unable to agree upon the calculation of any cost savings, either party may by written notice to the other, require the calculation of the cost savings to be referred to an independent expert appointed pursuant to clause 18.

#### **16.4 Change in Regulatory Environment**

- (a) If there is a change in the regulatory environment which causes Epic Energy to incur additional costs during the Access Period, Epic Energy may apply to the Regulator for an adjustment of the Charges.
- (b) Any adjustment to the Charges approved by the Regulator pursuant to Clause 16.5 will apply from the date determined by the Regulator.

## 17. DEFAULT AND TERMINATION

### 17.1 Default by Shipper

An Event of Default by the Shipper occurs when the Shipper:

- (a) suffers an Insolvency Event;
- (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 21 Days from the date of a notice from Epic Energy requiring the Default to be remedied; or
- (c) fails to pay any amount due to Epic Energy and that amount, plus any Interest, is still outstanding 7 Days after the date of a notice of demand from Epic Energy.

### 17.2 Rights of Service Provider

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

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

### 17.3 Continuation of Payment Obligations

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

### 17.4 Default by Epic Energy

- (a) The Shipper may terminate the Access Contract if Epic Energy:
  - (i) defaults in providing the Service to the Shipper for 21 consecutive Days and does not remedy that default within 48 hours of receipt of a notice from the Shipper requiring that default to be remedied; or **WHAT IF FORCE MAJEURE**
  - (ii) otherwise defaults in the performance of a material obligation and does not remedy that default within a period of 21 Days from the date of a notice from the 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 Epic Energy 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 of either Party that have accrued prior to the date of termination.

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## 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 a Dispute and each Party will appoint a senior manager or executive to meet 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 20 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) will:

- (i) act as an expert and not as an arbitrator;
- (ii) will 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 the Shipper or Epic Energy or of a Related Body Corporate of either of them; and

- (iv) shall disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which may conflict with his or her position.

(d) **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.

(e) **Rules of Evidence**

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

(f) **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.

(g) **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.

(h) **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.

(i) **Costs**

The 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

Epic Energy and the Shipper will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert.

## **19. ASSIGNMENT**

### **19.1 Assignment by Epic Energy**

Epic Energy may assign its right and interest under the Access Contract without obtaining the consent of the Shipper where that assignment is to:

- (a) a Related Body Corporate; or
- (b) a person holding an interest in the DBNGP;

but otherwise with the consent of the Shipper, which consent shall not be unreasonably withheld.

### **19.2 Assignment by Shipper**

- (a) The Shipper may undertake a Bare Transfer for any period without Epic Energy's consent. The Shipper is not required to supply Epic Energy with any information in relation to a Bare Transfer.
- (b) Subject to the Shipper's rights to trade capacity in the Secondary Market, the Shipper shall not otherwise assign or encumber its right and interest under the Access Contract without obtaining the prior written consent of Epic Energy, which consent shall not be unreasonably withheld.

## 20. CONFIDENTIALITY

### 20.1 Confidential Information

Subject to Clause 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; or
- (d) that party is required by court order, law or the Regulator to disclose and in that case, the disclosing party shall promptly notify the other party of that requirement.

### 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 Epic Energy's Representations and Warranties**

Epic Energy represents and warrants to the 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) Epic Energy 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 controls the DBNGP; and
- (e) the Access Contract does not contravene Epic Energy'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**

- (a) The Shipper, by making an Access Request and by entering into the Access Contract, represents and warrants to Epic Energy that —
  - (i) 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;
  - (ii) 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;
  - (iii) it has in full force and effect all necessary approvals, licences and authorities required to use the gas delivered by Epic Energy 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;
  - (iv) its obligations under the Access Contract are valid and binding and are enforceable against it in accordance with their terms;
  - (v) the Access Contract and any transaction under it does not contravene the Shipper's constituent documents or any law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;

- (vi) its obligations to make payments under the Access Contract rank at least equally with all unsecured and unsubordinated indebtedness of the Shipper except debts mandatorily preferred by law;
  - (vii) neither the Shipper nor any of its related bodies corporate is in default under a law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound;
  - (viii) there is no pending or threatened action or proceeding affecting the Shipper or any of its related bodies corporate or any of their respective assets before a court, 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;
  - (ix) neither the Shipper nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
  - (x) the Shipper is not an agent or trustee (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.
- (b) The representations and warranties in Clause 21.2(a) 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**

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

### **21.4 Failure to Satisfy Epic Energy of Creditworthiness**

If Epic Energy is not satisfied that the Shipper is in a position to meet or continue to meet its obligations under an Access Contract, Epic Energy may require, and the Shipper shall provide, security for those obligations to Epic Energy's reasonable satisfaction.

## **22. RECORDS AND INFORMATION**

Except where otherwise provided in the Access Contract, both Epic Energy and the Shipper shall 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 5 years.

## 23. INSURANCES

- (a) Subject to Clause 23(d), the Shipper shall 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 the Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment at the Receipt Point or Delivery Point; and
  - (iii) liability insurance for such amount as Epic Energy may reasonably require (not exceeding \$100 million indexed for CPI) against risk of loss, damage, death or injury to property or personnel (however caused) of Epic Energy, the Shipper or the public in connection with, related to or arising out of the Access Contract.
- (b) the Shipper shall arrange for Epic Energy's interest to be noted on those policies to the satisfaction of Epic Energy so that Epic Energy is covered under those policies and for the insurers to waive rights of subrogation against Epic Energy.
- (c) the Shipper shall, prior to the commencement of the Access Contract and prior to the commencement of each Year thereafter, provide Epic Energy with certificates of currency of the insurances and endorsements required by this Clause.
- (d) Epic Energy may waive compliance —
  - (i) by the Shipper; or
  - (ii) if the 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 Epic Energy —
  - (iii) is satisfied that the Shipper or the joint venture participant, as the case may be, has adequate alternative arrangements;
  - (iv) accepts the 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.

## **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

## **26. SEVERABILTY**

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.

## 27. ENTRY AND INSPECTION

- (a) Each Party shall 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 Epic Energy, 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 Epic Energy, the DBNGP); andfor 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 shall make good any damage occasioned by or resulting from the entry.
- (c) Except in the case of emergency, a Party shall —
  - (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 shall 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 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, the Shipper is to be presumed to own any relevant thing upstream of the Receipt Point and downstream of a Delivery Point, and Epic Energy 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.

## **29. REBATE SHARING CONTRACT**

- (a) The Access Contract is a Rebate Sharing Contract;
- (b) Clause 29(a) does not apply to and is not a term of a contract for Secondary Market Service or Seasonal Service.

### **30. NO COMMON CARRIAGE**

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

### **31. EPIC ENERGY NOT A SUPPLIER OF GAS**

Nothing in the Access Contract requires Epic Energy to supply gas to the Shipper.

## **32. STAMP DUTY**

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

### **33. NO THIRD PARTY BENEFIT**

No person other than Epic Energy or the Shipper is to obtain any benefit or entitlement under this contract, despite that person being referred to in this contract or belonging to a class of persons which is referred to in this contract.

**SCHEDULE 1**  
**RATES AND CHARGES**

Unavailability Charge	\$15/GJ
Nominations Surcharge	\$15/GJ
Excess Imbalance Charge	\$15/GJ
Out of Specification Gas Charge	\$15/GJ
Peaking Surcharge	\$15/GJ

## Schedule 2

### Gas Quality, Pressure and Temperature

#### 1. Gas Quality

Component		Category A Gas	Category B Gas
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 gas	10	10
	Odorised gas	n/a	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
Minimum extractable LPGs (t/TJ)		1.45	n/a

#### 2. Gas Temperature and Pressure

Receipt Point or Delivery Point	Pressure		Temperature	
	Min (kPag)	Max (kPag)	Min (°C)	Max (°C)
Receipt Point	Line pressure	MAOP permitted by the Pipeline Licence	0	50
Delivery Point	Line pressure	MAOP permitted by the Pipeline Licence	0	50



## 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 for more than 72 hours in any gas year.
- (c) Each component of Metering Equipment may be designed, adjusted and operated within limits of uncertainty agreed between the parties.

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 the Shipper to Epic Energy under the Access Contract; and
    - (B) (in the case of Delivery Point Metering Equipment) the quantity of gas delivered by Epic Energy to the Shipper under the Access Contract;

- (ii) be of a standard of manufacture acceptable to Epic Energy 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 Epic Energy;
  - (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 Epic Energy'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 paragraph (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; instantaneous energy flow rate in terajoules per day; instantaneous energy flow rate in terajoules per day; 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 paragraphs (i) to (xi).
- (d) Unless Epic Energy and the 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) Epic Energy 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;
  - (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.
- (f) The Receipt Point Metering Equipment, and any building erected for such equipment, is the property of the Shipper, and the Delivery Point Metering Equipment, and any building erected for such equipment, is the property of Epic Energy.

### 3. Changes to Requirements for Metering Equipment

Epic Energy may modify, or may by notice in writing require the Shipper to modify, existing Metering Equipment to comply with requirements or standards specified by Epic Energy 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 the Shipper's expense, and otherwise the modification is to be made at Epic Energy'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 11.5, 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 11.5 and Clause 11.6 apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

**6. Verification of metering equipment**

- (a) Epic Energy —
  - (i) shall, subject to clause 6(b), at least once each month 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 Epic Energy shall give the Shipper sufficient notice of an intended Verification to enable the Shipper's representative to be present.
- (e) The results of any Verification are binding on both parties unless within 7 working days after a Verification either Party gives notice to the other Party that it disputes the conduct of the Verification, in which case —
  - (i) the dispute resolution provisions of Clause 17; 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 17.
- (f) Subject to Clause 6(g) below, any Verification under clause 6(a) above is to be made at the Shipper's expense.
- (g) If a Verification requested by Epic Energy 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 Epic Energy's expense and Epic Energy shall pay the 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, Epic Energy shall at a Delivery Point station and the Shipper shall at a Receipt Point station (in either case at the 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, Epic Energy shall at a Delivery Point and the Shipper shall at any Receipt Point (in either case at the Shipper's expense) within 48 hours cause the Metering Equipment to operate within the prescribed limits of uncertainty.



# **DAMPIER TO BUNBURY NATURAL GAS PIPELINE**

## **ANNEXURE “B”**

### **PROPOSED ACCESS CONTRACT TERMS AND CONDITONS UNDER THE NATIONAL ACCESS CODE**

**Submission Version  
15 December 1999**

**Epic Energy (WA) Transmission Pty Ltd  
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