

2004

MINISTER FOR STATE DEVELOPMENT

and

DBNGP HOLDINGS PTY LIMITED
as trustee of the DBNGP Trust

and

EPIC ENERGY (WA) NOMINEES PTY LTD (IN RECEIVERSHIP)
as trustee of the Epic Energy WA Pipeline Trust

and

EPIC ENERGY (WA) TRANSMISSION PTY LTD (IN RECEIVERSHIP)

Financial Assistance Agreement

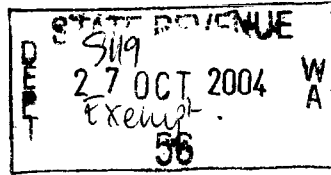
State Solicitor's Office
Commercial
141 St Georges Terrace
Perth WA 6000
Telephone : (08) 9264 1888
Ref: SSO 2465-04

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	2
1.1 DEFINITIONS.....	2
1.2 INTERPRETATION	5
2. TERM.....	6
3. LOAN	6
3.1 CONDITION PRECEDENT	6
3.2 OBLIGATION TO MAKE LOAN AVAILABLE	6
3.3 REQUEST FOR ADVANCE.....	6
3.4 CONTENTS OF PAYMENT REQUEST	7
3.5 CONDITIONS PRECEDENT TO ADVANCE OF LOAN.....	7
3.6 METHOD OF PAYMENT OF ADVANCE	7
3.7 PURPOSE OF LOAN	7
3.8 NO INTEREST.....	7
3.9 UNUSED FUNDS	7
3.10 DUTIES, TAXES AND CHARGES	8
4. SECURITY	8
5. REPAYMENT	8
5.1 OBLIGATION TO REPAY.....	8
5.2 EARLY REPAYMENT	9
5.3 MANNER IN WHICH REPAYMENTS TO BE MADE.....	9
5.4 VARIATION OF TERM OF LOAN	9
6. EXPANSION OF DBNGP	9
6.1 EXPANSION COMMITMENTS	9
6.2 REPORTS.....	9
7. GENERAL UNDERTAKINGS	10
7.1 GENERAL WARRANTIES	10
7.2 GENERAL WARRANTIES MADE CONTINUOUSLY	11
7.3 CONTRACTOR'S UNDERTAKINGS	11
7.4 CONFLICT OF INTEREST.....	11
7.5 PERSONNEL.....	11
8. ACCESS AND CONFIDENTIALITY	11
8.1 ACCESS AND RECORDS	11
8.2 AGREEMENT DISCLOSURE.....	12
8.3 PUBLICITY.....	12
9. AUDITOR GENERAL.....	13
10. APPLICATION OF CIVIL LIABILITY ACT 2002.....	13
11. DEFAULT.....	13
11.1 CONSEQUENCES OF DEFAULT	13
11.2 LIMITED LIABILITY	15
12. MINISTER'S REPRESENTATIVE.....	15

13.	RELEASE OF RECEIVERS.....	15
14.	NOTICE.....	16
14.1	NOTICE REQUIREMENTS AND RECEIPT	16
14.2	ADDRESSES FOR NOTICES	16
15.	MISCELLANEOUS.....	17
15.1	FURTHER ASSURANCE	17
15.2	RELATIONSHIPS – NO PARTNERSHIP	17
15.3	RIGHTS AND REMEDIES.....	18
15.4	ENTIRE AGREEMENT	18
15.5	VARIATIONS	18
15.6	WAIVER.....	18
15.7	COSTS.....	18
15.8	GOVERNING LAW	18
	SCHEDULE 1.....	19
	SCHEDULE 2.....	22

(G:\2004\Legal\Felicity Gregory\Documents\DBNGP FAA\2465-04 FAA Execution.doc)



THIS AGREEMENT is made the 27 day of October 2004

BETWEEN

MINISTER FOR STATE DEVELOPMENT, the body corporate referred to in section 5 of the *Industry and Technology Development Act 1998*, of 197 St Georges Terrace, Perth, Western Australia (“**Minister**”)

and

DBNGP HOLDINGS PTY LIMITED (ACN 110 721 081), an Australian proprietary company limited by shares, having its registered office at Level 29, 530 Collins Street, Melbourne, Victoria, as trustee of the DBNGP Trust (“**DBNGP Holdings**”)

and

EPIC ENERGY (WA) NOMINEES PTY LTD (IN RECEIVERSHIP) (ACN 081 609 289), an Australian proprietary company limited by shares, having its registered office at Level 7 GHD House, 239 Adelaide Terrace, Perth, Western Australia as trustee of the Epic Energy WA Pipeline Trust (“**DBNGP Owner**”)

and

EPIC ENERGY (WA) TRANSMISSION PTY LTD (IN RECEIVERSHIP) (ACN 081 609 190), an Australian proprietary company limited by shares, having its registered office at Level 7 GHD House, 239 Adelaide Terrace, Perth, Western Australia (“**DBNGP Operator**”)

Recitals

- A. The DBNGP Owner owns the DBNGP.
- B. The DBNGP Owner is wholly owned by DBNGP Holdings.
- C. The DBNGP Owner has been granted Petroleum Pipelines Licence No. 40 to operate the DBNGP.
- D. The DBNGP Operator has been granted Petroleum Pipelines Licence Nos. 41 and 47.
- E. The DBNGP Operator operates the DBNGP.
- F. In order to assist the DBNGP Owner and the DBNGP Operator to perform the Expansion Commitments, the Minister has agreed to provide the Loan to DBNGP Holdings on the terms and conditions set out in this Agreement.

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Advance means the principal amount of the Loan provided, or to be provided, under this Agreement.

Agreement means this agreement.

Business Day means any day except a Saturday, Sunday or a public holiday in Western Australia.

Condition Precedent means the condition precedent contained in clause 3.1.

Consortium means the consortium formed to bid for the acquisition of the DBNGP, comprising Alinta Limited, Alcoa of Australia Limited, APCMI Macquarie Infrastructure Management No. 1 Limited and AMPCI Macquarie Infrastructure Management No. 2 Limited.

DBNGP means the Dampier to Bunbury Natural Gas Pipeline and associated equipment as described in Petroleum Pipeline Licence Nos. 40, 41 and 47.

Event of Default means the occurrence of any one of the following events:

- (a) DBNGP Holdings, the DBNGP Owner or the DBNGP Operator fails to perform the Expansion Commitments in a material respect and that failure is not remedied within the period (being a period which the Minister considers reasonable having regard to the nature of the failure and the prevailing circumstances at the relevant time and in any event being not less than 40 Business Days) specified in a notice given by the Minister to DBNGP Holdings, the DBNGP Owner or the DBNGP Operator (as applicable) requiring the failure to be remedied;
- (b) DBNGP Holdings, the DBNGP Owner or the DBNGP Operator breaches any other obligation under this Agreement and that breach is not remedied within 40 Business Days after the Minister gives a notice to DBNGP Holdings, the DBNGP Owner or the DBNGP Operator (as applicable) requiring the breach to be remedied;
- (c) a representation or warranty made by DBNGP Holdings, the DBNGP Owner or the DBNGP Operator under this Agreement becomes untrue in a material respect or is breached in a material respect and has a material adverse effect on the ability of the DBNGP Owner or the DBNGP Operator to perform the Expansion Commitments;
- (d) an Insolvency Event occurs in respect of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator;
- (e) the DBNGP Operator ceases, or threatens to cease, to carry on business;
- (f) if DBNGP Holdings, the DBNGP Owner or the DBNGP Operator is a body corporate, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator is

convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000 and which has a material adverse effect on the ability of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator to perform the Expansion Commitments; or

- (g) the appointment of the Receivers is not withdrawn, or does not otherwise terminate, within 48 hours of the Minister executing this Agreement.

Expansion Commitments means the expansion commitments described in Schedule 1.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and (where the context permits) includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

Insolvency Event means the happening of any of these events:

- (a) an application is made to a court for an order and that application is not withdrawn or dismissed within 14 days, or an order is made, that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate and that application is not withdrawn or dismissed within 14 days, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (e) a body corporate is or states that it is unable to pay its debts when they fall due; or
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)*, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate, is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or

- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001 (Cth)* or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Loan means \$88,067,138.80, that is provided, or to be provided, under this Agreement.

Payment Request means a written request by DBNGP Holdings for the Advance containing the information specified in clause 3.4.

Personnel means all employees, agents and subcontractors engaged by DBNGP Holdings, the DBNGP Owner and the DBNGP Operator in relation to the Expansion Commitments.

Purpose means to assist the DBNGP Owner and the DBNGP Operator to implement the Expansion Commitments.

Receivers means Martin Madden and Brian McMaster, in their capacity as the receivers and managers of property of the DBNGP Owner and the DBNGP Operator.

Records means records and information of any kind, including originals and copies, however held, stored or recorded of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the Expansion Commitments and created by DBNGP Holdings, the DBNGP Owner or the DBNGP Operator.

Repayment Date means the 99th anniversary of the date of the Advance.

Schedule means a schedule to this Agreement.

Secured Creditor has the same meaning as in the Security Trust Deed.

Securities has the same meaning as in the Security Trust Deed.

Security Trust Deed means the Security Trust Deed between DBNGP Holdings, the DBNGP Owner, the DBNGP Operator, DBNGP Finance Co Pty Limited, DBNGP Compressor Co Pty Limited and Citisecurities Limited dated on or about the same date at this Agreement.

Security Trustee has the same meaning as in the Security Trust Deed.

Senior Secured Creditors has the same meaning as in the Security Trust Deed.

Taxable Supply has the same meaning as in the *GST Act*.

Tax Invoice has the same meaning as in the *GST Act*.

Term means the period which commences on the date of this Agreement and ends on the Repayment Date or such earlier date when all amounts owing under, or in connection with, this Agreement have been repaid or are no longer repayable.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public body, company, or association or body of persons, corporate or unincorporate;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (f) an agreement, representation or warranty on the part of or in favour of 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (g) a reference to this Agreement or another instrument includes any variation or replacement of either of them despite any change of, or any change in the identity of, the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to this Agreement;
- (i) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and bind the Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) no rule of interpretation is to be applied to disadvantage the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator on the basis that it was responsible for preparing this Agreement;
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (o) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (p) a reference to a liability includes any obligation to pay money and any other loss, cost or expense of any kind;
- (q) a reference to a month is to a calendar month and a reference to a year is to a calendar year;

- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (s) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made or the act must be done on the next Business Day; and
- (t) a reference to a monetary amount means that amount in Australian currency.

2. TERM

This Agreement is for the Term.

3. LOAN

3.1 Condition Precedent

The Minister's obligation to provide the Loan in accordance with clause 3.2 is subject to, and conditional upon:

- (a) DBNGP Holdings providing written evidence, to the satisfaction of the Minister, that it wholly owns the DBNGP Owner and the DBNGP Operator; and
- (b) the Minister receiving the following in form and substance satisfactory to the Minister:
 - (i) if required by the Minister, a copy of an extract of the minutes of meeting of the board of directors of each of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator which evidences the resolutions authorising the signing and delivery of, and observance of obligations under, this Agreement and which acknowledges that this Agreement will benefit DBNGP Holdings, the DBNGP Owner and the DBNGP Operator;
 - (ii) a copy of each authorisation necessary to enter into, observe obligations under and enforce this Agreement;
 - (iii) this Agreement after it has been duly executed by the Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator; and
 - (iv) the instruments of security and other documents required under clause 4 duly executed.

3.2 Obligation to make Loan available

Subject to the satisfaction of the Condition Precedent, the Minister agrees, on the terms and subject to the provisions of this Agreement, to provide the Loan to DBNGP Holdings.

3.3 Request for Advance

- (a) DBNGP Holdings may request the Advance at any time by delivering a Payment Request to the Minister.
- (b) Subject to clause 3.5, the Minister must provide the Advance immediately upon receipt of a Payment Request.

3.4 Contents of Payment Request

The Payment Request must:

- (a) be given in writing signed by an authorised signatory of DBNGP Holdings and be unconditional and irrevocable;
- (b) contain a confirmation that the representations and warranties made under clause 7 are true and correct;
- (c) contain a confirmation that no Event of Default has occurred and continues to subsist;
- (d) contain a confirmation that all conditions precedent relevant to the Advance have been satisfied; and
- (e) if the supply of the Loan is a Taxable Supply, constitute a Tax Invoice.

3.5 Conditions Precedent to Advance of Loan

The Minister is not obliged to make the Advance to DBNGP Holdings unless and until:

- (a) the Minister has received from DBNGP Holdings a Payment Request completed in accordance with clause 3.4; and
- (b) at the time when the Minister is obliged to make the Advance:
 - (i) the representations and warranties made under clause 7 are correct and not misleading; and
 - (ii) the Minister is satisfied (acting reasonably) that no Event of Default has occurred and continues to subsist.

3.6 Method of Payment of Advance

The Minister will provide the Advance requested in a Payment Request to DBNGP Holdings:

- (a) by cheque payable to DBNGP Holdings or as DBNGP Holdings directs in writing;
- (b) by electronic funds transfer to the bank account nominated by DBNGP Holdings;
or
- (c) to or at the written direction of DBNGP Holdings.

3.7 Purpose of Loan

DBNGP Holdings must use the Loan directly or indirectly for the Purpose.

3.8 No interest

The Loan does not accrue interest.

3.9 Unused Funds

If DBNGP Holdings does not use the whole or part of the Advance for the Purpose by 1 January 2016, then DBNGP Holdings must return the unused portion of the Advance to the Minister.

3.10 Duties, Taxes and Charges

- (a) All duties, taxes and charges imposed or levied in Australia or overseas in connection with the Loan are payable by DBNGP Holdings.
- (b) If the supply of the Loan constitutes a Taxable Supply under the GST Act, the Loan is exclusive of all applicable GST.
- (c) Subject to clause 3.4(e), the Minister must pay to DBNGP Holdings the amount of any GST that DBNGP Holdings pays or is liable to pay on a Taxable Supply made under this Agreement in addition to, and at the same time and in the same manner as the Minister pays the price for that Taxable Supply.

4. SECURITY

- (a) DBNGP Holdings must grant, or procure to be granted, to the Minister:
 - (i) the benefit of the Securities, which is to be effected by the State becoming a Secured Creditor (as defined in the Security Trust Deed) under the Security Trust Deed; and
 - (ii) a performance undertaking from each of Alinta Limited and Alcoa of Australia Limited, in form and substance satisfactory to the Minister.
- (b) The Minister agrees that it will, pursuant to the Security Trust Deed, cease to be a Secured Creditor and cease to have the benefit of the security described in clause 4(a)(i) when:
 - (i) the Minister is reasonably satisfied that the DBNGP Owner and the DBNGP Operator have performed the Expansion Commitments described in items 9 and 10 of Schedule 1; or
 - (ii) the Loan is converted into a grant under clause 5.4,whichever occurs first.

5. REPAYMENT

5.1 Obligation to repay

Subject to clause 5.4, DBNGP Holdings must repay and finally discharge the Loan:

- (a) on the Repayment Date;
 - (b) if DBNGP Holdings gives a notice to the Minister under clause 5.2(a);
 - (c) if the Minister gives a notice to DBNGP Holdings under clause 11.1(c)(i) and the Senior Secured Creditors subsequently instruct the Security Trustee to enforce the Securities under the Security Trust Deed; or
 - (d) if the Minister gives a notice to DBNGP Holdings under clause 11.1(c)(ii),
- but not otherwise.

5.2 Early repayment

- (a) DBNGP Holdings may repay the Loan at any time before the Repayment Date if:
 - (i) the DBNGP Owner and the DBNGP Operator have implemented the Expansion Commitments; and
 - (ii) DBNGP Holdings notifies the Minister in writing that it wishes to repay the Loan before the Repayment Date.
- (b) If DBNGP Holdings gives a notice under clause 5.2(a), then DBNGP Holdings must make the repayment within 20 Business Days of the date of the notice.

5.3 Manner in which repayments to be made

DBNGP Holdings must make repayments to the Minister under this Agreement in immediately available funds in Australian dollars and without set-off or counterclaim and free and clear of any withholding or deduction for any duties, taxes or charges unless prohibited by law.

5.4 Variation of term of Loan

- (a) DBNGP Holdings may, at its absolute discretion, apply to the Minister for the Loan to be converted into a grant and hence no longer repayable provided that DBNGP Holdings has provided written evidence, to the satisfaction of the Minister, that the DBNGP Owner and the DBNGP Operator have implemented the Expansion Commitments. The Minister will be under no obligation to convert the Loan to a grant even if the Expansion Commitments have been implemented.
- (b) If DBNGP Holdings has lodged an application under clause 5.4(a) and the Minister notifies DBNGP Holdings in writing that it is satisfied that the Expansion Commitments have been implemented, then the Loan will:
 - (i) convert to a grant; and
 - (ii) be no longer repayable,from the date of the Minister's notice.

6. EXPANSION OF DBNGP

6.1 Expansion Commitments

The DBNGP Owner and the DBNGP Operator agree to perform the Expansion Commitments within the timeframes specified in the Expansion Commitments.

6.2 Reports

- (a) Within 5 Business Days of:
 - (i) each 31 March, 30 June, 30 September and 31 December within the period commencing on the Commencement Date and ending on the 5th anniversary of the Commencement Date; and
 - (ii) 30 June and 31 December in each year commencing on the day after the expiry of the period specified in clause 6.2(a)(i) and ending on 30 June 2016,

the DBNGP Owner and the DBNGP Operator must provide to the Minister:

- (iii) schedules and records in a form reasonably directed by the Minister; and
- (iv) any information, documents or any other thing reasonably requested by the Minister,

which set out information in relation to the performance of the Expansion Commitments.

- (b) The DBNGP Owner and the DBNGP Operator must provide to the Minister any other information, document, supporting evidence or thing in connection with the Expansion Commitments that the Minister requests.
- (c) If:
 - (i) the Minister receives information from the DBNGP Owner or the DBNGP Operator under clause 6.2(a) or clause 6.2(b) and the DBNGP Owner or the DBNGP Operator (as the case may be) advised the Minister that the information is commercially sensitive or confidential; and
 - (ii) the Minister receives an application for access to such information under the *Freedom of Information Act 1992*,

then the Minister will consult with the DBNGP Owner or the DBNGP Operator (as the case may be) prior to making any such disclosure, if reasonably practical, and will use its best endeavours to limit the extent of any disclosure as far as possible.

7. GENERAL UNDERTAKINGS

7.1 General Warranties

Each of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator warrant in favour of the Minister that, to the best of its knowledge and belief:

- (a) it has no conflict of interest arising out of this Agreement, other than as disclosed to, and approved by, the Minister;
- (b) it is properly authorised and has the power to enter into this Agreement and perform its obligations under this Agreement;
- (c) its obligations under this Agreement are valid and binding and are enforceable against it;
- (d) on and from the date of this Agreement, all information provided by it to the Minister in connection with this Agreement is true and correct;
- (e) on and from the date of this Agreement, there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against it which could have a materially adverse effect on its ability to undertake its obligations under this Agreement;
- (f) on and from the date of this Agreement, it has not been convicted of a criminal offence that is punishable by a fine or penalty of, or exceeding, \$10,000; and
- (g) on and from the date of this Agreement, there is nothing which prevents it complying with any obligation under this Agreement.

7.2 General Warranties Made Continuously

The warranties made by DBNGP Holdings, the DBNGP Owner and the DBNGP Operator under clause 7.1 are taken to be made continuously until 1 January 2016.

7.3 Contractor's Undertakings

Each of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must:

- (a) employ reasonably prudent measures to provide for the care, safety, security and protection of all Records;
- (b) promptly notify the Minister if any warranty under clause 7.1 is breached or becomes untrue;
- (c) always act ethically in connection with this Agreement and in accordance with good corporate governance practices;
- (d) comply with all relevant State and Commonwealth laws; and
- (e) cooperate fully with the Minister in respect of the administration of this Agreement provided that this undertaking will not require any of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator to incur any liability or assume any obligation inconsistent with this Agreement.

7.4 Conflict of Interest

If a conflict of interest arises in respect of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator in connection with its obligations under this Agreement and its obligations to any other person, that party must:

- (a) promptly notify the Minister that the conflict has arisen; and
- (b) take reasonable steps in consultation with the Minister to remove the conflict or ensure that the conflict of interest does not interfere with the performance by that party of its obligations under this Agreement.

7.5 Personnel

- (a) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must use reasonable endeavours to ensure that all Personnel:
 - (i) are properly qualified and suitable for the tasks that they are to do; and
 - (ii) hold all necessary permits, licences and authorities required by law.
- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must use reasonable endeavours to ensure that all Personnel act, in relation to the Expansion Commitments, in a fit and proper manner.

8. ACCESS AND CONFIDENTIALITY

8.1 Access and Records

- (a) Each of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must allow the Minister:

- (i) to have reasonable access to its premises used or occupied in order to undertake its obligations under this Agreement; and
 - (ii) to have reasonable access to all Records.
- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must comply with the reasonable and lawful directions of the Minister in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.
- (c) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must keep all Records for at least 7 years after the expiry of the Term. DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must allow the Minister to examine, audit or copy Records. This clause survives termination or expiry of this Agreement.
- (d) If this Agreement is completely or partially terminated before the end of the Term, the Records must be kept for at least 7 years after the date of termination. This clause survives termination.
- (e) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must take all reasonable steps to obtain any third party consents which are required to enable the Minister to have access to Records under this clause 8.1.
- (f) This clause 8.1 does not require DBNGP Holdings, the DBNGP Owner or the DBNGP Operator to create or keep any Records that they do not create or keep in the ordinary course of business or that would not be created or kept by a reasonable person undertaking their respective businesses.

8.2 Agreement Disclosure

- (a) The Minister may publicly disclose this Agreement.
- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator acknowledge that:
- (i) this Agreement; and
 - (ii) information compiled under, or held in relation to, this Agreement,
- are subject to the *Freedom of Information Act 1992*.

8.3 Publicity

- (a) Subject to clause 8.3(c), unless the Minister consents in writing, and subject to clause 8.3(b), DBNGP Holdings, the DBNGP Owner and the DBNGP Operator may not:
- (i) use this Agreement or the Minister's name or logo for publicity purposes; or
 - (ii) refer to its association with the Government of Western Australia which results from this Agreement; or
 - (iii) make any public statement concerning this Agreement.

- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator may only use this Agreement, names and logos and make any public statement referred to in clause 8.3(a) in the form, manner and place as approved in writing by the Minister.
- (c) Nothing in this clause 8.3 prevents any of DBNGP Holdings, the DBNGP Owner, the DBNGP Operator or any member of the Consortium from disclosing such information in connection with this Agreement as that party may be required to disclose by operation of any relevant law or as may be reasonably necessary to enable any such person to raise any finance (including by way of debt or equity) in connection with the acquisition of the DBNGP or the funding of the Expansion Commitments or otherwise.
- (d) The Minister may use:
 - (i) this Agreement; and
 - (ii) the respective names and logos of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator,

for reasonable promotional or publicity purposes at the Minister's discretion, but if the Minister uses this Agreement or a name or logo for such purposes, then the Minister must acknowledge the role of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator (as applicable) to the extent that is reasonable in the circumstances.

9. AUDITOR GENERAL

- (a) The powers and duties of the Auditor General for the State of Western Australia are not limited or otherwise affected by the terms of this Agreement.
- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must allow the Auditor General for the State of Western Australia, or an authorised representative of the Auditor General, to have access to and examine any Records.

10. APPLICATION OF CIVIL LIABILITY ACT 2002

The Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator agree that, if and when it is proclaimed, Part 1F of the *Civil Liability Act 2002* does not apply to this Agreement.

11. DEFAULT

11.1 Consequences of Default

- (a) The Minister agrees that the rights and remedies specified in this clause 11 are the only rights and remedies available to the Minister upon the occurrence of an Event of Default.
- (b) The occurrence of an Event of Default does not affect any rights which the Minister has against DBNGP Holdings, the DBNGP Owner or the DBNGP Operator or all of them as a result of anything occurring before the Event of Default.

- (c) If:
- (i) an Event of Default (other than an Event of Default as described in paragraph (g) of the definition of “Event of Default” in clause 1.1) occurs before the DBNGP Owner and the DBNGP Operator have performed the Expansion Commitments described in items 9 and 10 of Schedule 1 to the Minister’s reasonable satisfaction and before the Senior Secured Creditors have instructed the Security Trustee to enforce the Securities under the Security Trust Deed, then the Minister:
 - A. may notify DBNGP Holdings that all amounts owing by DBNGP Holdings under this Agreement are immediately due, but not payable; and
 - B. has no right to instruct the Security Trustee (as defined in the Security Trust Deed) to enforce the Securities.
 - (ii) an Event of Default (other than an Event of Default as described in paragraph (g) of the definition of “Event of Default” in clause 1.1) occurs before the DBNGP Owner and the DBNGP Operator have performed the Expansion Commitments described in items 9 and 10 of Schedule 1 to the Minister’s reasonable satisfaction but after the Senior Secured Creditors have instructed the Security Trustee to enforce the Securities under the Security Trust Deed, then the Minister may:
 - A. notify DBNGP Holdings that all amounts owing by DBNGP Holdings under this Agreement are immediately due and payable; and
 - B. instruct the Security Trustee (as defined in the Security Trust Deed) to enforce the Securities, to the extent that the Minister is able to do so under the terms of the Security Trust Deed;
 - (iii) an Event of Default occurs as described in paragraph (g) of the definition of “Event of Default” in clause 1.1, then:
 - A. the Minister may notify DBNGP Holdings that all amounts owing by DBNGP Holdings under this Agreement are immediately due and payable; and
 - B. if the Minister notifies DBNGP Holdings under clause 11.1(c)(iii)(A), DBNGP Holdings must immediately repay and finally discharge the Loan;
 - (iv) an Event of Default occurs, the Minister has the right at any time to seek an order for specific performance and a mandatory injunction in respect of the Event of Default against DBNGP Holdings, the DBNGP Owner and the DBNGP Operator (as applicable) and DBNGP Holdings, the DBNGP Owner and the DBNGP Operator acknowledge that monetary damages alone would not be adequate compensation to the Minister for an Event of Default and that specific performance and a mandatory injunction are appropriate remedies in respect of the Event of Default; and

- (v) an Event of Default occurs, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator will cooperate with the Minister as reasonably required by the Minister in order to minimise any loss, damage or inconvenience to the Minister resulting from the Event of Default.
- (d) Without limiting the Minister's rights under clause 11.1(c), if an Event of Default occurs as described in paragraph (a) of the definition of "Event of Default" in clause 1.1, then the Minister may enforce one or both of the undertakings described in clause 4(a)(ii).
- (e) If the Minister seeks an order for specific performance and a mandatory injunction in respect of an Event of Default under clause 11.1(c)(iv), each of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator indemnifies the Minister against all costs and expenses, including professional fees and expenses and all other expenditure whatsoever, incurred or suffered by the Minister in seeking such an order and an injunction.

11.2 Limited Liability

If the Minister breaches this Agreement, the remedies of DBNGP Holdings, the DBNGP Owner and the DBNGP Operator are limited to damages.

12. MINISTER'S REPRESENTATIVE

- (a) The chief executive officer of the department responsible for the administration of the *Industry and Technology Development Act 1998* may act as the representative of the Minister in relation to this Agreement.
- (b) DBNGP Holdings, the DBNGP Owner and the DBNGP Operator agree and acknowledge that the Minister's representative may administer this Agreement and any such administration by the Minister's representative will be deemed to be administration by the Minister for the purposes of this Agreement.
- (c) The Minister may by notice to DBNGP Holdings at any time:
 - (i) vary or terminate the appointment of the Minister's representative; and
 - (ii) appoint any other person to act as the Minister's representative in relation to this Agreement.

13. RELEASE OF RECEIVERS

The Minister acknowledges that:

- (a) the obligations imposed on the DBNGP Owner and the DBNGP Operator under this Agreement do not come into effect unless and until the appointment of the Receivers is withdrawn or otherwise terminates;
- (b) the Receivers are not responsible for any obligation imposed on the DBNGP Owner or the DBNGP Operator under this Agreement;
- (c) the Minister releases the Receivers from all actions, proceedings, claims, suits, applications and demands whatsoever which the Minister has or may have against the Receivers in relation to this Agreement;

- (d) if the DBNGP Owner or the DBNGP Operator breach any obligation under this Agreement, then the Minister has no cause of action against the Receivers in respect of that breach; and
- (e) the acknowledgments in this clause 13 enures for the benefit of the Receivers pursuant to section 11 of the *Property Law Act 1969 (WA)*.

14. NOTICE

14.1 Notice requirements and receipt

Any notice or other communication given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer or solicitor of the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator (as applicable);
- (c) must be:
 - (i) hand delivered or sent by prepaid post to the address of the recipient specified in clause 14.2; or
 - (ii) sent by facsimile to the facsimile number of the recipient specified in clause 14.2;
- (d) subject to clause 14.1(e), is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

14.2 Addresses for notices

The address and facsimile number of each party are specified below, or as otherwise notified in writing by a party from time to time:

Minister	Minister for State Development 7 th Floor 168 St Georges Terrace Perth WA 6000 Attention: Director General of the Department of Industry and Resources Facsimile: (08) 9222 3862
----------	--

DBNGP Holdings	<p>DBNGP Holdings Pty Limited c/o Allens Arthur Robinson Level 8 40 The Esplanade Perth WA 6000</p> <p>Attention: Andrew Pascoe</p> <p>Facsimile: (08) 9488 3701</p>
DBNGP Owner	<p>Epic Energy (WA) Nominees Pty Ltd c/o Allens Arthur Robinson Level 8 40 The Esplanade Perth WA 6000</p> <p>Attention: Andrew Pascoe</p> <p>Facsimile: (08) 9488 3701</p>
DBNGP Operator	<p>Epic Energy (WA) Transmission Pty Ltd c/o Allens Arthur Robinson Level 8 40 The Esplanade Perth WA 6000</p> <p>Attention: Andrew Pascoe</p> <p>Facsimile: (08) 9488 3701</p>

15. MISCELLANEOUS

15.1 Further Assurance

The Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

15.2 Relationships – No Partnership

- (a) Nothing in this Agreement may be construed to make DBNGP Holdings, the DBNGP Owner or the DBNGP Operator a partner, agent, employee or joint venturer of the Minister.
- (b) None of DBNGP Holdings, the DBNGP Owner or the DBNGP Operator must represent that it or any of its Personnel are the employees, agents, partners or joint venturers of the Minister.

15.3 Rights and Remedies

Subject to the express provisions of this Agreement, the rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

15.4 Entire Agreement

This Agreement supersedes all prior negotiations, understandings and agreements between the Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator relating to the matters covered by this Agreement and constitutes the full and complete agreement between the Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator relating to the matters covered by this Agreement.

15.5 Variations

This Agreement can only be varied if the variation is in writing and executed by the Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator.

15.6 Waiver

- (a) Any waiver by the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator must be in writing and signed by the party waiving the right.
- (b) Any waiver by the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator does not affect its rights in respect of any subsequent breach of this Agreement by another party.
- (c) Subject to clause 15.6(a), any failure by the Minister, DBNGP Holdings, the DBNGP Owner or the DBNGP Operator to enforce any right under this Agreement will not be construed as a waiver of their respective rights under this Agreement.

15.7 Costs

- (a) Unless otherwise stated:
 - (i) DBNGP Holdings must comply with all obligations of DBNGP Holdings at DBNGP Holding's cost;
 - (ii) the DBNGP Owner must comply with all obligations of the DBNGP Owner at the DBNGP Owner's cost; and
 - (iii) the DBNGP Operator must comply with all obligations of the DBNGP Operator at the DBNGP Operator's cost.
- (b) The Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator must pay their own legal and other costs in connection with the preparation and signing of this Agreement.
- (c) DBNGP Holdings must pay all stamp duty on this Agreement.

15.8 Governing Law

This Agreement is governed by the laws of the State of Western Australia. The Minister, DBNGP Holdings, the DBNGP Owner and the DBNGP Operator irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

SCHEDULE 1

Definitions

1. In this Schedule:

“**Alcoa Exempt Contract**” has the same meaning as in clause 1 of the Standard Shipper Contract.

“**Alternate Gas Transmission Capacity**” means Gas Transmission Capacity that is not T1 Capacity and ranks:

- (a) directly behind T1 Capacity and firm capacity under the Alcoa Exempt Contract; and
- (b) above all other Capacity Services (as defined in clause 1 of the Standard Shipper Contract).

“**Contract Commencement Date**” has the same meaning as in clause 1 of the Standard Shipper Contract.

“**Expansion**” has the same meaning as in clause 1 of the Standard Shipper Contract and “**Expand**” has a corresponding meaning.

“**Gas Pipelines Access Law**” has the same meaning as in clause 1 of the Standard Shipper Contract.

“**Gas Transmission Capacity**” has the same meaning as in clause 1 of the Standard Shipper Contract.

“**Major Shippers**” means Alcoa of Australia Ltd, Alinta Ltd and Western Power Corporation.

“**Prospective Shipper**” means a person who seeks, or is reasonably likely to seek, to enter into a contract with the DBNGP Operator for access to Gas Transmission Capacity.

“**Requested T1 Capacity**” has the same meaning as in clause 16.3(a)(v) of the Standard Shipper Contract.

“**Shipper**” means a person who, from time to time, has a contract with the DBNGP Operator for access to Gas Transmission Capacity.

“**Standard Shipper Contract**” means a contract having the same terms, conditions and price as the form of contract set out in Schedule 2.

“**T1 Capacity**” has the same meaning as in clause 1 of the Standard Shipper Contract.

“**WPC Execution Date**” means the date that Western Power Corporation executes its Standard Shipper Contract.

Standard Shipper Contract

2. The DBNGP Operator will offer all Shippers and Prospective Shippers access to Gas Transmission Capacity on a non-discriminatory basis on the terms and conditions of, and at the price, specified in the Standard Shipper Contract.
3. Subject to item 6, the terms, conditions and price of each Standard Shipper Contract will be no less favourable to Shippers or Prospective Shippers than the terms, conditions and price specified in the Standard Shipper Contracts offered by the DBNGP Operator to the Major Shippers (other than the Alcoa Exempt Contract) in accordance with clause 45 of the Standard Shipper Contract.
4. The Standard Shipper Contract will specify the terms and conditions under which the DBNGP Operator will fund the Expansion in order to provide the Requested T1 Capacity.
5. The DBNGP Operator must use reasonable endeavours to enter into a Standard Shipper Contract (with or without variations) with a Shipper or Prospective Shipper that has submitted a request for access to Gas Transmission Capacity within a reasonable time after receiving the request from the Shipper or Prospective Shipper (as the case may be).
6. Each Shipper and Prospective Shipper may agree to enter into a contract with the DBNGP Operator which varies from the terms and conditions of, and price specified in, the Standard Shipper Contract.
7. The DBNGP Operator must publish the Standard Shipper Contract on a publicly accessible website.
8. Nothing in this Schedule 1 or a Standard Shipper Contract prevents a Shipper or a Prospective Shipper from seeking access to Gas Transmission Capacity under the Gas Pipelines Access Law or any other applicable regulatory regime.

Initial Expansion Commitments

9. Subject to the relevant Shipper or Prospective Shipper entering into a Standard Shipper Contract (with or without variations):
 - (a) the DBNGP Operator will provide Western Power Corporation with an additional 23 TJ/day of T1 Capacity as soon as reasonably possible, and in any event by no later than 24 months from the WPC Execution Date;
 - (b) to the extent that the provision of the 23 TJ/day of T1 Capacity as described in item 9(a) is unavailable from the WPC Execution Date, the DBNGP Operator will provide Western Power Corporation with an additional 23 TJ/day of Alternate Gas Transmission Capacity from the WPC Execution Date until the T1 Capacity is provided under item 9(a);
 - (c) the DBNGP Operator will provide Western Power Corporation with a further additional 42 TJ/d of T1 Capacity as soon as reasonably possible but no later than 30 months from the WPC Execution Date; and
 - (d) the DBNGP Operator will provide T1 Capacity to any other Shipper or Prospective Shipper which has requested that T1 Capacity prior to 13 January 2004 within the timeframe agreed between the DBNGP Operator and the Shipper or Prospective Shipper (as applicable), which timeframe is to be consistent with clause 16 of the Standard Shipper Contract.

Initial Expansion Capital

10. The DBNGP Owner and the DBNGP Operator will, within 5 years of acquisition of the DBNGP:
- (a) expand the Gas Transmission Capacity of the DBNGP by not less than 100 TJ/day in aggregate; and
 - (b) invest up to \$400 million in connection with the Expansion,
- provided that Shippers that require the expanded Gas Transmission Capacity have entered into Standard Shipper Contracts (with or without variations).

Future Expansion Commitments

11. Where the DBNGP Operator:
- (a) receives a valid request for T1 Capacity under clause 16 of the Standard Shipper Contract; and
 - (b) is not able to provide the Requested T1 Capacity from Capacity available to it (whether by virtue of relinquishments or otherwise),
- then the DBNGP Operator must undertake an Expansion so as to be able to provide the Requested T1 Capacity to the Shipper or Prospective Shipper at the times, and to the extent, required by the Shipper or Prospective Shipper (as the case may be) in accordance with clause 16 of the Standard Shipper Contract.

Future Expansion Capital

12. Each of the DBNGP Owner and the DBNGP Operator must use reasonable endeavours to fund the design, engineering, procurement, construction and commissioning of all Requested T1 Capacity on the DBNGP.
13. Where funding is available to DBNGP Holdings, the DBNGP Owner or the DBNGP Operator on reasonable commercial terms and conditions (without limiting any enquiry as to what else may be reasonable, which will be taken to be reasonable if the terms and conditions are similar to the funding made available to the DBNGP Operator or any or all of the Operator Entities (as defined in clause 1 of the Standard Shipper Contract) for the funding of the first expansion of Gas Transmission Capacity of the DBNGP following the Contract Commencement Date, allowing for changes in financial market conditions since the Contract Commencement Date), the DBNGP Owner or the DBNGP Operator (as the case may be) will fund the design, engineering, procurement, construction and commissioning of all Requested T1 Capacity on the DBNGP.

Duration of Expansion Commitments

14. Unless otherwise indicated, the Expansion Commitments in this Schedule expire on 1 January 2016.

SCHEDULE 2

[Standard Shipper Contract commences on next page]

CONFIDENTIAL

Dampier to Bunbury Natural Gas Pipeline Shipper Contract

Epic Energy (WA) Transmission Pty Ltd

ABN 69 081 609 190

Operator

Epic Energy (WA) Nominees Pty Ltd

ABN 78 081 609 289

Pipeline Trustee

DBNGP Holdings Pty Ltd

ACN 110 721 081

DBNGP Trustee

[Shipper]

TABLE OF CONTENTS

1.	Interpretation	1
2.	General	21
2.1	Construction generally	22
2.2	Headings	22
2.3	Rounding to a certain number	22
2.4	Other contracts	22
2.5	System Operator	22
3.	Capacity Service	23
3.1	Operator to provide T1 Service to Shipper	23
3.2	Capacity Service	23
3.3	Contracted Capacity	24
3.4	Operator must deliver Gas up to Contracted Capacity	24
3.5	Spot Capacity	24
4.	Duration of the Contract	26
4.1	Term	26
4.2	Capacity Start Date	26
4.3	Option to renew Contract	26
4.4	Conditions to be satisfied before exercising an Option	26
4.5	Notice exercising an Option	26
4.6	First Option Period	26
4.7	Second Option Period	26
5.	Receiving and Delivering Gas	27
5.1	Delivery of Gas	27
5.2	Operator must Receive and Deliver Gas	27
5.3	Operator may refuse to Receive Gas	27
5.4	Notification of refusal to Receive Gas	28
5.5	Refusal to Receive Gas is a Curtailment in limited circumstances	28
5.6	No liability for refusal to Receive Gas	28
5.7	Refusal to Deliver Gas	28
5.8	Notification of refusal to Deliver Gas	29
5.9	Refusal to Deliver Gas is a Curtailment in limited circumstances	29
5.10	No liability for refusal to Deliver Gas	29
5.11	System Use Gas	30
5.12	Provision of System Use Gas by Shipper	30
5.13	System Use Gas – Generally	31
5.14	Additional Rights to Refuse to Receive or Deliver Gas	33
6.	Inlet Points and Outlet Points	34
6.1	Inlet Points and Outlet Points	34
6.2	Multi-shipper Agreement	34
6.3	Multi-shipper Inlet Point and Multi-shipper Outlet Point	34
6.4	Allocation of Gas at Inlet Points	36
6.5	Allocation of Gas at Outlet Points	37
6.6	Installation, operation and maintenance of inlet stations and outlet stations	37
6.7	Contribution Agreement	41
6.8	Shipper Specific Facility Agreement	42
6.9	Total Physical Capacity	42

6.10	Notional Gate Point	42	10.1	Hourly Peaking Limits	57
7.	Operating Specifications	42	10.2	Shipper to stay within Hourly Peaking Limit	57
7.1	Gas must comply with Gas specifications	42	10.3	Consequences of exceeding Hourly Peaking Limit	59
7.2	Gas to be free from certain substances	42	10.4	Outer Hourly Peaking Limit	59
7.3	Gas to be free from objectionable odours	43	10.5	Charges do not affect Daily Delivery	60
7.4	Gas temperature and pressure	43	10.6	Remedies for breach of peaking limits	60
7.5	Notice of Out-Of-Specification Gas	43	10.7	Permissible Peaking Excursion	60
7.6	Operator and Shipper may refuse to Receive Out-Of-Specification Gas	44	11.	Overrun	60
7.7	Operator may Receive Out-Of-Specification Gas	44	11.1	Overrun Charge	60
7.8	Shipper's Liability for Out of Specification Gas	44	11.2	Unavailability Notice	61
7.9	Shipper may Receive Out-Of-Specification Gas	44	11.3	Content of an Unavailability Notice	61
7.10	Change of Law	44	11.4	Compliance with Unavailability Notice	62
7.11	Amendment Notice	45	11.5	Operator may refuse to Deliver Overrun Gas	62
7.12	Odourisation	45	11.6	Unavailable Overrun Charge	62
7.13	Weighted average gas flows	45	11.7	Saving and damages	62
7.14	Shipper Changes of Gas Specification	46	12.	Additional Rights and Obligations of Operator	62
8.	Nominations	46	12.1	Commingling of Gas	62
8.1	Shipper may delegate to a Producer	46	12.2	Processing	63
8.2	Requests for advance information	47	12.3	Operation of Pipeline System	63
8.3	Shipper's Daily Nominations do not affect Contracted Capacities	47	12.4	Delivery of Gas	63
8.4	Nominations and Renominations must be in good faith	47	13.	Control, Possession and Title to Gas	63
8.5	Operator to make available bulletins of available Capacity	47	13.1	Warranty of Title	63
8.6	Shipper's Initial Nomination	48	13.2	Control, Possession, Responsibility and Title of Shipper	63
8.7	Allocation of Daily Nominations	48	13.3	Title, Custody, Control and Responsibility of Operator	63
8.8	Default provision for Daily Nomination	49	13.4	Entitlements to Receive Gas	64
8.9	Nominations priority	50	13.5	Title at outlet points	64
8.10	Shipper may give Renomination notice	50	14.	Relocation	65
8.11	Times for Renomination and allocation of revised Daily Nominations	50	14.1	Request for relocation of Contracted Capacity	65
8.12	Renominations reducing Daily Nomination	50	14.2	Assessment of Requested Relocation	65
8.13	Renominations increasing Daily Nomination	50	14.3	Operator to notify Shipper	66
8.14	Default provision for Renomination process	51	14.4	Requested Relocation is an Authorised Relocation	66
8.15	Aggregated T1 Service	51	14.5	Requested Relocation is not an Authorised Relocation	66
8.16	Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity	51	14.6	Relocated Contracted Capacity to be on same terms and conditions	67
8.17	Shipper's Advance Nomination	52	14.7	Charges for relocation	67
8.18	Use of Full Haut capacity upstream of CS9	52	14.8	Pressures at New Inlet Point and New Outlet Point	67
9.	Imbalances	52	14.9	This Contract amended to reflect relocation	67
9.1	Operator to maintain balance	52	15.	Metering	67
9.2	Shipper to maintain balance	53	15.1	Shipper's responsibility	67
9.3	Shipper's Accumulated Imbalance	53	15.2	Operator's responsibility	68
9.4	Notice of Shipper's imbalances	53	15.3	Metering uncertainty	68
9.5	Accumulated Imbalance Limit	53	15.4	Primary Metering Equipment	68
9.6	Excess Imbalance Charge	54	15.5	Provision of information to Shipper	70
9.7	Balancing in particular circumstances	55	15.6	Changes to requirements for Metering Equipment	72
9.8	Remedies for breach of imbalance limits	55	15.7	Approval of Inlet Metering Equipment	72
9.9	Trading in imbalances	56	15.8	Check Metering Equipment	72
9.10	Cashing out imbalances at end of Contract	56	15.9	Preservation of accuracy	73
9.11	Charges do not affect Daily Delivery	56	15.10	Presumptions of accuracy	73
10.	Peaking	57	15.11	Verification of Primary Metering Equipment	73

15.12	Adjustment or replacement of defective equipment	74
15.13	Inaccurate equipment	74
15.14	Correction of measurements	75
15.15	Metering records	75
15.16	Unused outlet points	76
16.	Additional T1 Capacity and Capacity Expansion Options	76
16.1	No additional T1 Capacity except by this clause	76
16.2	Operator must issue Capacity Expansion Option	77
16.3	Additional T1 Capacity Notice	77
16.4	General Conditions for grant of Requested T1 Capacity	78
16.5	Amendments to this Contract	80
16.6	Failure to give Final Capacity Requirement Notice	81
16.7	Assignment of Capacity	82
16.8	Operation of this clause	82
16.9	Shipper and Operator to discuss funding	83
16.10	Shipper funding contribution	83
16.11	Extension of Requested T1 Capacity Start Date	85
16.12	Provisions of information	86
17.	Curtailment	86
17.1	Operator's obligations and Curtailment principles	86
17.2	Curtailment Generally	86
17.3	Curtailment without liability	87
17.4	Refund of Capacity Reservation Charge	87
17.5	Operator's rights to refuse to Receive or deliver Gas	88
17.6	Curtailment Notice	88
17.7	Content of a Curtailment Notice	88
17.8	Compliance with Curtailment Notice	90
17.9	Priority of Curtailment	93
17.10	Apportionment of Shipper's Curtailments	94
17.11	Curtailment of Alcoa	94
18.	Maintenance and Major Works	95
19.	Force Majeure	96
20.	Charges	96
20.1	Obligation to pay Charges	96
20.2	Capacity Reservation Charge	96
20.3	Commodity Charge	97
20.4	Other Charges	97
20.5	Adjustment to Base T1 Tariff	100
20.6	Goods and Services Tax	101
20.7	Other Taxes	101
20.8	Capacity expansion tariff adjustment	101
21.	Invoicing and Payment	106
21.1	Monthly payment of Capacity Reservation Charge	106
21.2	Monthly invoicing	106
21.3	Payment within 10 Working Days	107
21.4	Default in payment	107
21.5	Disputed Tax Invoices	107
21.6	Correction of payment errors	108
21.7	Set off	108
22.	Default and Termination	108
22.1	Default by Shipper	108
22.2	Notice of Shipper's default	109
22.3	When Operator may exercise remedy	109
22.4	Remedies for Shipper's default	109
22.5	Default by Operator	110
22.6	Notice of Operator's default	110
22.7	When Shipper may exercise remedy	110
22.8	Remedies for Operator's default	110
22.9	Operator's Liability for a failure to expand	111
22.10	No General Damages	111
22.11	Saving of other remedies	111
22.12	Effect of termination	111
22.13	Maximum amount of Liquidated Damages	112
23.	Liability	113
23.1	Liability for negligence and default limited to Direct Damage	113
23.2	Liability for fraud	113
23.3	No liability for Indirect Damage	113
23.4	No liability arising out of any approval by Operator	114
23.5	Saving of contractual payments	114
23.6	Shipper is responsible for its and its contractors' personnel and property	114
23.7	Operator is responsible for its and its contractors' personnel and property	114
23.8	Each limitation separate	115
24.	Dispute Resolution and Independent Experts	115
24.1	Method of Resolution	115
24.2	Acknowledgment	115
24.3	Service of Notice	115
24.4	Meeting	115
24.5	Senior Officers	115
24.6	Failure to Resolve Dispute	115
24.7	Technical and Financial Matters	116
24.8	Appointment of Independent Expert	116
24.9	Expert not an Arbitrator	116
24.10	Representation, Evidence, Confidentiality, Powers and Costs	117
24.11	Urgent Relief Condition Precedent to litigation	118
25.	Assignment	119
25.1	No assignment except under this clause	119
25.2	Charges	119
25.3	Assignment	119
25.4	Assignment: deed of assumption	120
25.5	Pipeline Trustee's Acknowledgments and Undertakings	120
25.6	DBNGP Trustee undertakings	122
25.7	Non complying assignment	123
25.8	Utilising other shippers' Daily Nominations	123
26.	General Right of Relinquishment	123
26.1	Shipper may make Relinquishment Offer	123
26.2	Withdrawal of Relinquishment Offer	124

26.3	Operator may accept Relinquishment Offer	124
26.4	Effect of Relinquishment Acceptance	125
26.5	Notification of relinquishment of capacity by other shippers	125
26.6	Administrative expenses	125
26.7	Relinquishment right from 2016	126
26.8	Relinquishment right prior to expansion	126
27.	Trading or Transferring Contracted Capacity	127
27.1	No transfer of Shipper's Contracted Capacity other than by this clause	127
27.2	Replacement Shipper must be a shipper or Approved Prospective Shipper	128
27.3	Transfer of Capacity by Shipper - Approval of transfer terms	128
27.4	Posting of Tradeable Capacity	129
27.5	Notification of traded capacity	129
27.6	Replacement Contract	129
27.7	Shipper's Contract	129
27.8	Resumption of Traded Capacity by Shipper	130
27.9	Administrative expenses	130
27.10	Further marketing service	130
27.11	Relinquishment	130
28.	Confidentiality	131
28.1	Confidential Information	131
28.2	Exceptions to Confidentiality	131
28.3	Permitted Disclosure	132
28.4	Disclosure by recipient of Confidential Information	134
28.5	Use of Confidential Information	134
28.6	Information received by Operator	134
28.7	Breach by Operator	135
28.8	Publicity	137
28.9	No disclosure of terms of this Contract	137
28.10	Audit	137
28.11	Remedies	137
28.12	Survival	137
29.	Notices	137
29.1	Notices for nominations, Curtailment, unavailability, balancing, Out-Of-Specification Gas and capacity trading	137
29.2	The CRS	138
29.3	Notices generally	138
29.4	Receipt of notices	138
30.	Representations and Warranties	139
30.1	Operator's Representations and Warranties	139
30.2	Shipper's Representations and Warranties	140
30.3	Pipeline Trustee's Representations and Warranties	141
30.4	DBNGP Trustee's Representations and Warranties	142
30.5	Creditworthiness of Shipper	143
30.6	Failure to Satisfy Operator of Creditworthiness	143
31.	Records and Information	143
32.	Insurances	143
33.	No Waiver	145

34.	Entire Agreement	145
35.	Severability	145
36.	Entry and Inspection	145
37.	Ownership, Control, Maintenance and Risk	146
38.	Revocation, Substitution and Amendment	146
39.	No Common Carriage	146
40.	Operator Not a Supplier of Gas	146
41.	Stamp duty	147
42.	No Third Party Benefit	147
43.	Governing Law	147
44.	General	147
44.1	Operator's discretion	147
44.2	Refusal to Receive or deliver Gas	147
45.	Non-Discrimination Clause	147
45.1	T1 Service to shippers	147
45.2	Access to DBNGP information	148
45.3	Arms' length dealings	148
46.	Pipeline Trustee's Limitation of Liability	149
47.	DBNGP Trustee's Limitation of Liability	149
	Schedule 1 - Inlet Points, Outlet Points and Contracted Capacity	150
	Schedule 2 - Charges	151
	Schedule 3 - Operating Specifications	152
	Schedule 4 - Description of DBNGP	154
	Schedule 5 - Parties' Details	166
	Schedule 6 - Existing Stations	167
	Schedule 7 - Tripartite Deed	168
	Schedule 8 - Curtailment Plan	169
	Schedule 9 - Reference Tariff Path	172

DAMPIER TO BUNBURY NATURAL GAS PIPELINE

SHIPPER CONTRACT

DATE

October 2004

PARTIES

Epic Energy (WA) Transmission Pty Ltd ABN 69 081 609 190 (*Operator*)

Epic Energy (WA) Nominees Pty Ltd ABN 78 081 609 289 as trustee of the Epic Energy WA Pipeline Trust (*Pipeline Trustee*)

DBNGP Holdings Pty Ltd ACN 110 721 081 as trustee of the DBNGP Trust (*DBNGP Trustee*)

[Shipper's details] ABN [] (*Shipper*)

RECITALS

1. Operator is the operator of the DBNGP in Western Australia.
2. Shipper requires Gas to be transported along the DBNGP.
3. Operator will provide Shipper with Gas transportation services along the DBNGP on the terms and conditions set out in this Contract.

OPERATIVE PROVISIONS

1. Interpretation

In this Contract, except where the context requires another meaning:

ACCC means the Australian Competition and Consumer Commission.

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

Access Manual means the DBNGP Access Manual dated 10 March 1998 (now repealed).

Access Regime means any legislative, legislative and administrative or administrative regime from time to time governing the terms and conditions of third party access to Capacity Services or Spot Capacity on the DBNGP, and at the time of this Contract includes the *Gas Pipeline Access (Western Australia) Act 1998* (WA) and the Gas Pipelines Access Law applying under it and any access arrangement approved under the Gas Pipelines Access Law and in force for the DBNGP.

Accumulated Imbalance means the accumulated imbalance calculated under clause 9.3 and (if applicable) adjusted under clause 9.9.

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

Accumulated Imbalance Notice is defined in clause 9.4.

Accurate means measuring the quantity of Gas with an inaccuracy of less than or equal to:

- (a) plus or minus 1.5% for Metering Equipment with a design flow of 5 T.J/d or greater, and
 - (b) plus or minus 3% for Metering Equipment with a design flow of less than 5 T.J/d.
- 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 Primary 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 American Gas Association's 8 standards or such other Gas industry standards as the Parties may agree).

Adjustment Effective Date has the meaning given in clause 20.8.

Advance Nomination means a Nomination by Shipper under clause 8.17.

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

Aggregated Service Allocated Daily Nomination means in relation to a particular shipper, the Daily Nomination for Aggregated T1 Service actually allocated to that shipper for the relevant Gas Day plus the material equivalent to such allocation for the relevant Gas Day in respect of Aggregated T1 Service under any other contract for Capacity Service with that shipper.

Aggregated T1 Service has the meaning given in clause 8.16.

Aggregate Tariff Adjustment Factor has the meaning given in clause 20.8.

Alcoa means Alcoa of Australia Limited (ABN 93 004 879 298).

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

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

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

Alcoa's Priority Quantity means 40 T.J/d of Alcoa's Exempt Delivery Entitlement.

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

Approved Tradeable Capacity has the meaning given in clause 27.3(g).

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

ASX means the Australian Stock Exchange Limited (ABN 98 008 624 691).

Associate has the meaning given in section 11 of the Corporations Act.
Associated, when used to describe the relationship between:

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

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

Back Haul means a Gas transportation service on the DBNGP where the inlet point is downstream of the outlet point.

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

Base T1 Tariff means \$1.053 as at 1 January 2003 as adjusted in accordance with clauses 20.5 and 20.8.

Capacity means:

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

and is to be expressed in T.J/d. For the avoidance of doubt, a reference in this Contract to Capacity is a reference to Capacity averaged across a Gas Day.

Capacity End Date means 08:00 hours on the date determined in accordance with clause 4 of this Contract (and in respect of Requested T1 Capacity has the meaning given in clause 16.5) and is 08:00 hours on the date on which Shipper's access to the particular Contracted Capacity is to end.

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

Capacity Service means any capacity service offered by Operator on the DBNGP excluding capacity under a Spot Transaction.

Capacity Shortfall is the amount of Requested T1 Capacity nominated by Shipper for a Gas Day at an outlet point or outlet points (or where the Requested T1 Capacity has not been granted under clause 16 the amount of Requested T1 Capacity) which Operator fails to provide on that Gas Day in breach of clause 16 and for the avoidance of doubt, no allowance is to be made for any Other Mitigation Amount of which Shipper is able to avail itself on that Gas Day, in calculating Operator's failure to provide Requested T1 Capacity on a Gas Day.

Capacity Start Date means 08:00 hours on the date specified in clause 4.2 of this Contract as the date at which Shipper's access to the particular Contracted Capacity is to start or started (and in respect of Requested T1 Capacity has the meaning given in clause 16.3(a)(iii)).

Capital Cost of the Expansion means in relation to any Expansion the costs, including all consultants fees, of the design, engineering, procurement, construction, installation, pre-commissioning and commissioning of the Expansion.

Carry Over Imbalance Amount, if Shipper was a party to an Initial Contract, means the "shipper's accumulated imbalance" under the Shipper's Initial Contract as at the Contract Commencement Date as the term "shipper's accumulated imbalance" was defined in regulation 176 of the *Gas Transmission Regulations 1994* (WA) as those regulations applied on 1 August 1997, and otherwise means zero.

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

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

Commodity Charge means the charge set out in clause 20.3.

Commodity Portion of the Aggregate Tariff Adjustment Factor means the Aggregate Tariff Adjustment Factor less the Reservation Portion of the Aggregate Tariff Adjustment Factor.

Confidential Information has the meaning given in clause 28.1.

Contract means this contract, as revoked, substituted or amended under clause 38, including the Schedules attached hereto.

Contract Amendment Acceptance Date has the meaning given in clause 16.4.

Contract Amendment Commencement Date has the meaning given in clause 16.4.

Contracted Capacity has the meaning given in clause 3.3 (as amended by any increases under clause 16.5 and any relinquishment under clause 26), and includes Capacity in any Type of Capacity Service so that for example Contracted T1 Capacity means Contracted Capacity in the T1 Service.

Contracted Firm Capacity means Alcoa's Exempt Capacity and Capacity under a T1 Service or a Firm Service.

Contract Commencement Date means the date on which the completion of the sale and purchase of the units in the Pipeline Trust, the shares in the Pipeline Trustee and the shares in the Operator is effected, as notified by Operator to Shipper.

Contract Year means the period from the Capacity Start Date until 31 December in the same calendar year and thereafter the period commencing 1 January in a calendar year

and ending on 31 December in the same calendar year with the last Contract Year ending on the earlier of the Capacity End Date and the sooner termination of this Contract.

Contribution Agreement has the meaning given to it in clause 6.7(b).

Control has the meaning given in the Corporations Act as at the Contract Commencement Date.

Controller has the meaning given in the Corporations Act as at the Contract Commencement Date.

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

CPI means the Consumer Price Index (All Groups) for Perth, Western Australia, as published for each quarter by the Australian Bureau of Statistics or, if the Consumer Price Index (All Groups) for Perth ceases to be published, such alternative index as Operator as a Reasonable And Prudent Person may determine.

CRS means Operator's electronic customer reporting system.

CS7 means compressor station no.7 on the DBNGP.

Cubic Metre or m³ means a cubic metre at MSC.

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

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

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

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

Curtailment Plan means the regime governing Curtailments of Capacity set out in Schedule 8 and clause 17.9.

Daily Bid has the meaning given to it in clause 3.5(c).

Daily Imbalance means for a particular Gas Day, Shipper's Total Inlet Quantity minus Shipper's Total Outlet Quantity for that Gas Day across all of its Capacity Services and its Spot Transactions (and minus any System Use Gas Delivered by Shipper under clause 5.13 on that Gas Day).

Daily Nomination means:

- (a) in respect of a Type of Capacity Service at an inlet point - the Capacity for the quantity of allocated Gas that Shipper is to Deliver to Operator at the inlet point on a Gas Day and the Type of Capacity Service; and
 - (b) in respect of a Type of Capacity Service at an outlet point - the Capacity for the quantity of allocated Gas that Shipper is to Receive from Operator at the outlet point on a Gas Day and the Type of Capacity Service.
- and in each case as actually allocated under clause 8, and includes the Capacity for a revised quantity of Gas allocated under a Renomination process.

Daily Spot Bid Price has the meaning given to it in clause 3.5(c).

DBNGP means the Gas transmission pipeline system that runs between Dampler and Bunbury in Western Australia, described in Schedule 4 as at the Contract Commencement

Date and includes all outlet points, spur lines and laterals within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as amended from time to time.

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

DBNGP Trust has the meaning given in clause 25.6(a).

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

Deed of Amendment and Restatement (Shipper Contract) means the deed so entitled entered into by the Parties to substitute the terms and conditions set out in this Contract for all of the terms and conditions set out in the Initial Contract in the manner and at the time set out in the Deed.

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

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

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

Dispute means any dispute or difference concerning:

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

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

Distance Factor means for each Outlet Point at which Shipper has Part Haul Contracted Capacity the distance in kilometres between the Inlet Point and the Outlet Point and is set out against each relevant Outlet Point in Schedule 9.

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

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

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

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

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

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

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

Excess Imbalance Charge means the charge payable by Shipper identified in clause 9.5(e) and in 9.6(b).

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

Existing Gas Supply Contract means a contract between a shipper and a customer for the sale and or transport of Gas to a customer of a shipper under which the Gas is to be supplied to the customer at or immediately downstream of an outlet point, which was in existence as at the date of the relevant change in Law as contemplated in clause 7.10, and excluding any amendments to that contract having effect after such date.

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

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

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

Existing Station means:

- (a) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that was installed and commissioned on or before 1 January 1995;
- or
- (b) an Inlet Station Associated with an Inlet Point or an Outlet Station Associated with an Outlet Point that is the subject of a Facility Agreement (which has the meaning given in clause 6.8) or similar agreement, as at the Contract Commencement Date,

all of which are listed in Schedule 6.

Expansion means all work required to be undertaken to or in connection with the DBNGP in order to expand the Gas Transmission Capacity of the DBNGP, including to provide Requested T1 Capacity in accordance within clause 16 or additional Capacity for Alcoa pursuant to the Alcoa Exempt Contract, but excluding (subject to the following sentence) any expansion which causes the DBNGP to exceed the geographical confines of the DBNGP Pipeline Corridor created under Part 4 of the DBP Act as at the date of this Contract. The preceding exclusion does not apply to expansion within the extended corridor as contemplated by the current expansion project of the easement for the corridor under the DBP Act or to any Expansion which satisfies clause 16.4(k).

Expansion Works Contractor has the meaning given in clause 16.11(a).

Final Capacity Requirement Notice has the meaning given in clause 16.4.

Financial Matter has the meaning given to it in clause 24.7.

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

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

- (a) acts of God, including epidemics, land slides, lightning, earthquakes, fires, storms, floods, wash outs and cyclones;
- (b) strikes, lock outs, stoppages, restraints of labour and other industrial disturbances;
- (c) acts of the enemy including wars, blockades and insurrection;
- (d) acts of terror, terrorism or terrorists;
- (e) riots and civil disturbances;
- (f) valid Laws of the Commonwealth or any Commonwealth statutory authority;
- (g) valid Laws of the State or a local government or any State statutory authority;
- (h) shortage of necessary equipment, materials or labour;
- (i) refusal or delay in obtaining any necessary consent or approval from any Commonwealth, State or local government or a Commonwealth or State statutory authority;
- (j) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the Party's operations;
- (k) any DBNGP shutdown or interruption which is validly required or directed by any Commonwealth, State or local government agency or any Commonwealth or State statutory authority having authority to so require or direct;
- (l) any DBNGP shutdown or interruption required to conform with design or regulatory limits on DBNGP facilities, whether arising due to environmental conditions or circumstances or otherwise;
- (m) DBNGP ruptures;
- (n) collisions or accidents; and
- (o) any other matter reasonably beyond the control of the Party.

Forward Haul means a gas transportation service on the DBNGP where the inlet point is upstream of the outlet point.

Full Haul means a Gas transportation service on the DBNGP where the outlet point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the inlet point, but does not include Back Haul.

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

- (a) as a fuel; or
 - (b) in any chemical process.
- Gas Day** means the 24 hour period starting at 08:00 hours on a day and ending at 08:00 hours on the following day and the date of the Gas Day is the date on which it commences.
- Gas Hour** means a period of 60 minutes, commencing and ending on the hour.

Gas Month means a 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.

Gas Pipelines Access Law means:

- (a) Schedule 1 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA); and
- (b) The National Third Party Access Code for Natural Gas Pipeline Systems as amended and in force for the time being (as defined by section 11 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA)).

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

Gas Year means the 12 month period starting at 08:00 hours on 1 January and ending at 08:00 hours on the following 1 January.

Gate Station means the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services.

GJ means gigajoule.

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

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

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

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

Higher Heating Value is to be determined using ISO 6974 for the analysis of natural Gas and using ISO 6976 for the calculations from that analysis, and means the gross number of mega joules produced by the complete combustion of one Cubic Metre of dry Gas at MSC

with air of the same temperature and pressure, when the products of combustion are cooled to the initial temperature of the Gas and air and when all water formed by combustion is condensed to the liquid state, corrected to a water - vapour free basis and expressed at MSC.

Hourly Peaking Charge means the charge payable under clause 10.3(d) or clause 10.4(b).

Hourly Peaking Limit has the meaning given in clause 10.1.

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

Hourly Quantity for a Gas Hour in respect of a particular shipper is to be expressed in terajoules and means the total quantity (across all outlet points in the relevant Pipeline Zone or Zones (as the case may be)) of Gas Received by the relevant shipper from Operator during the Gas Hour.

Inaccurate means measuring the quantity of Gas with an inaccuracy of greater than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii) (as the case may be).

Independent Expert is the expert chosen under clause 24.8.

Indirect Damage suffered by a person, means:

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

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

Initial Contract means Shipper's initial contract for the provision of Capacity on the DBNGP dated [] which has been amended and restated by the Deed of Amendment and Restatement (Shipper Contract).

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

Inlet Metering Equipment means the Metering Equipment which Shipper is required by clause 15.1(a) to supply, install, Operate and Maintain at an Inlet Station at its own expense.

Inlet Point means a flange, joint, or other point, specified in clause 3.3(a) at which Shipper has Contracted Capacity from time to time.

Inlet Point Operating Specifications means the Operating Specifications specified in column 2 of item 1 of Schedule 3.

Inlet Station means the Metering Equipment site Associated with an Inlet Point and includes any facilities installed at the site to perform overpressure protection, reverse flow

protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, any telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and services.

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

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

Interruptible Service means any capacity under a Spot Transaction.

ISO means an International Standards Organisation standard.

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

- (a) excludes any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this Contract); and
- (b) excludes any requirements of the Regulator (except for requirements which apply by force of law to prevail over any inconsistent clause of this Contract).

To avoid doubt, provisions of the Access Regime and requirements of the Regulator which apply by force of law to prevail over an inconsistent clause of this Contract are Laws for the purposes of this definition, but neither Party may seek to procure an amendment to an access arrangement under the Access Regime if the purpose for which such amendment is sought is to materially adversely affect the other Party's rights and obligations under this Contract (not being general rights and obligations applicable to all shippers).

Liquidated Damages in respect of a Gas Day means the Liquidated Damages Rate multiplied by the Capacity Shortfall for that Gas Day.

Liquidated Damages Rate means \$2.00 per GJ escalated from the Contract Commencement Date on 1 January each year in accordance with the following formula:

$$LDR_n = \$2.00 \times \frac{CPI_n}{CPI_b}$$

where:

LDR_n is the Liquidated Damages Rate for the year (expressed in \$ per GJ)

CPI_n means the CPI for the quarter ending on 30 September in the year prior to the year in which the Liquidated Damages Rate is being escalated; and

CPI_b means 138.6, being the CPI for the quarter ending on 30 September 2003.

Load Characteristics means the relationships between Gas flow and time.

Long Term Mitigation Capacity means the aggregate amount of capacity Operator has agreed to supply at one or more outlet points under a contract for Capacity Services (**Long Term Mitigation Capacity Contract**) for a term of at least 3 months (or such lesser period until the provision of the Requested T1 Capacity if such time is less than 3 months), as part of a bona fide attempt by Operator to mitigate the Liquidated Damages otherwise payable under clause 22.9(a) of this Contract, at a price not greater than the Base T1 Tariff and on terms and conditions which, as a whole, are not less favourable to Shipper than those which would apply to the supply of Capacity under this Contract during the relevant Gas Day.

Long Term Mitigation Capacity Contract has the meaning given in the definition of Long Term Mitigation Capacity.

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

Maintain includes, where necessary, renew or replace.

Maintenance Charge has the meaning given in clause 6.6(i).

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

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

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

Metering Information means the information specified in clause 15.5(d).

MHQ for an outlet point on a particular Gas Day in respect of a shipper, means (subject to clause 17.7(b)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that outlet point across all of the shipper's Capacity Services (including T1

Services and any Capacity under Spot Transactions) for that Gas Day in respect of that shipper.

Minimum Bid Price has the meaning given in clause 3.5(f).

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

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

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

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

Networks means AlintaGas Networks Pty Ltd ABN 90 089 531 975.

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

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

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

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

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

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

Nominations Plan means the process for allocating Nominations set out in clause 8.9 which is based upon the priorities set out in the Curtailment Plan.

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

Notional Gate Point has the meaning given in clause 6.10(a).

Operate includes to Maintain, test, or repair.

Operating Arrangement means the instrument titled Operating Arrangement between Transmission Division and Distribution Division of the Gas Corporation under Regulation 199C and dated 9 January 1998 originally annexed to a memorandum of understanding between the Gas Corporation (in its capacity as the corporation's DBNGP business) and the Gas Corporation (in its capacity as the corporation's distribution business), now as a result of transfers under the DBP Act and the Gas Corporation (*Business Disposal Act* 1999 (WA)) having effect as a contract between Operator and Networks.

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

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

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

Operator means the first party listed on page 1 of this Contract and includes its successors and permitted assigns.

Operator Default Notice has the meaning given in clause 22.6.

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

Operator Owned Point means an inlet point or an outlet point described in clauses 6.7(a)(i)(A) or (B).

Option has the meaning given in clause 4.3.

Original Capacity has the meaning given in clause 4.3.

Other Charges has the meaning given in clause 20.4.

Other Mitigation Amount in respect of a Gas Day means the sum of:

- (a) the aggregate of the amount of Capacity that Shipper, acting reasonably, could have availed itself of:
 - (i) by using unused Capacity on the Gas Day available to Shipper under any contract for Capacity Service which Shipper has not transferred or otherwise made available to another shipper and which Shipper, either under the terms of the contract or pursuant to a consent actually given by Operator, can use for Delivery of Gas;
 - (ii) by entering into a contract for Long Term Mitigation Capacity for Delivery of Gas that Shipper could use in substitution for the Requested T1 Capacity that Operator is failing to provide; or
 - (iii) by bidding for Spot Capacity if Shipper had bid rather than not doing so; and
 - (b) Spot Capacity which has been allocated to Shipper for that Gas Day and which Operator actually supplies.
- Other Reserved Service** means a Capacity Service offered under a contract which in Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, a Firm Service and Capacity under a Spot Transaction).
- Other shipper** means any shipper other than:
- (a) Alcoa as a shipper under the Alcoa Exempt Contract (but not otherwise); and
 - (b) Shipper.

Outer Accumulated Imbalance Limit has the meaning given in clause 9.6(a).

Outer Hourly Peaking Limit has the meaning given to it in clause 10.4.

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

Outlet Point means a flange, joint or other point, referred to in clause 3.3(b) at which Shipper has Contracted Capacity from time to time.

Outlet Point Operating Specifications means the Operating Specifications specified in columns 3 or 4 of Item 1 of Schedule 3 (Operating Specifications) (as the case may be).

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

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

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

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

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

Part Haul means a Gas transportation service on the DBNGP where the outlet point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the outlet point, but does not include Back Haul.

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

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

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

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

and for Spot Capacity means the Period of Supply for T1 Service under this Contract.

Physical Gate Point means a flange, joint or other point marked in the description of the DBNGP system in Schedule 4 as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point.

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

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

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

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

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

Point Specific Curtailment means a Curtailment as it affects or applies to a particular inlet point or outlet point.

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

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

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

Previous Verification means the Verification at which the Primary Metering Equipment was last found to be measuring the quantity of Gas accurately.

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

Producer means a producer or supplier of Gas with whom Shipper has entered into a Gas supply contract or contracts under which Gas is to be Delivered at an inlet point.

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

Receive means to accept or receive Gas and includes Gas deemed by this Contract to be received at an inlet point or outlet point (including a Multi-shipper Inlet Point or Multi-shipper Outlet Point).

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

Related Body Corporate has the meaning given to that expression in the Corporations Act.

Related Entity has the meaning given in the Corporations Act as at the Contract Commencement Date.

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

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

- (f) in respect of Other Reserved Service: the lesser of the shipper's Nominations for such Type of Capacity Service and the shipper's Reserved Capacity for such Type of Capacity Service for that Gas Day; and
- (g) in respect of the Aggregated T1 Service: the shipper's valid Initial Nomination for such Type of Capacity Service.

Requested Supply Period has the meaning given in clause 16.3(a)(iv).

Requested T1 Capacity has the meaning given in clause 16.3(a)(v).

Requested T1 Capacity End Date has the meaning given in clause 16.3(a)(iv).

Requested T1 Capacity Start Date has the meaning given in clause 16.3(a)(iii).

Reservation Portion of the Aggregate Tariff Adjustment Factor means 80% of the Aggregate Tariff Adjustment Factor.

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

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

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

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

Retail Market Rules means the retail market rules that govern, or will govern when operative, the retail gas market in Western Australia.

Season means either Summer or Winter.

Settlement Deed – Section 20 Dispute means the deed of that name between Operator and Shipper dated on or about the date of the Deed of Amendment and Restatement (Shipper Contract).

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

shipper means a person who, from time to time, has a contract with Operator for access to Gas Transmission Capacity, which includes Shipper.

Shipper Default Notice has the meaning given in clause 22.2.

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

SI means the International System of Units set out in AS1000-1979.

Spot Capacity means any capacity on the DBNGP on a Gas Day (being the capacity available after all Nominations for Reserved Capacity for that Gas Day has been allocated

Relinquishable Capacity has the meaning given in clause 26.1.

Relinquished Capacity has the meaning given in clause 26.3.

Relinquishment Acceptance has the meaning given in clause 26.3.

Relinquishment Notice has the meaning given in clause 26.7.

Relinquishment Offer has the meaning given in clause 26.1.

Remaining Period of Supply means that part of the relevant Period of Supply occurring after the Contract Commencement Date.

REMCo means the company established to administer and operate the approved retail market scheme for the retail gas market in Western Australia and includes any company, person or authority from time to time undertaking that role, being Retail Energy Market Company Limited (ACN 103 318 556) of Level 40, 140 William Street, Melbourne, Victoria 3000.

Remote Data is defined in clause 15.4(d).

Renomination has the meaning given in clause 8.10.

Replacement Contract means the contract which is deemed to arise between Operator and a Replacement Shipper by clause 27.6 following the Transfer of Tradeable Capacity to the Replacement Shipper.

Replacement Shipper has the meaning given in clause 27.2.

Request For Approval has the meaning given in clause 27.3(a).

Requested Relocation has the meaning given in clause 14.1.

Requested Reserved Capacity means, for a particular shipper on a particular Gas Day at a particular inlet point or outlet point (as the case may be):

- (a) in respect of Distribution Networks IPQ: the shipper's Nomination to the extent that such Nomination is both:
- (i) for the shipper's Share of the Distribution Networks' IPQ for that Gas Day; and
- (ii) in respect of the Distribution Network and is in respect of a National Gate Point;
- (b) in respect of Alcoa's Priority Quantity: if the shipper has rights to such quantity, the amount of Alcoa's Priority Quantity requested by such shipper for that Gas Day;
- (c) in respect of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity): if the shipper has rights to such entitlement, the amount of such entitlement requested by such shipper for that Gas Day;
- (d) in respect of the T1 Service: the lesser of the shipper's Nominations for T1 Service at that particular inlet point or outlet point (as the case may be) and the sum of the quantities referred to as Contracted Capacity for that inlet point across all of the shipper's T1 Contracts or the sum of quantities referred to as Contracted Capacity for that outlet point across all of the shipper's T1 Contracts (as the case may be);
- (e) in respect of the Firm Service: the lesser of the shipper's Nominations for Firm Service at that particular inlet point or outlet point (as the case may be) and the shippers' relevant Reserved Capacity for Firm Service at that point for that Gas Day;

by Operator for that Gas Day), which capacity, is, according to Operator (acting in good faith) available for purchase.

Spot Transaction means a transaction for the sale and purchase of Spot Capacity between Operator and a shipper on terms and conditions which are consistent with those contemplated in clause 3.5.

State means the State of Western Australia.

Statutory Price means the statutory price as defined in section 20(5) of the DBP Act.

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

SUG Nominated Inlet Point means one or more inlet points within Pipeline Zone 1 or Pipeline Zone 2 at which System Use Gas will be supplied, as nominated by Shipper at the time it makes its election under clause 5.12.

SUG Period of Supply means a Gas Year or Gas Years for which Shipper has elected to provide Shipper's share of System Use Gas.

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

Surcharges means the charges referred to in clauses 5.11(d) and 20.4(a)(i) to (iv) inclusive.

System Curtailment means a Curtailment which affects more than one inlet point or outlet point.

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

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

(a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:

- (i) compressor fuel;
- (ii) gas engine alternator fuel;
- (iii) heater fuel; and
- (iv) increases to linepack, other than:
 - (A) when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
 - (B) repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
- (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.

System Use Gas Notice has the meaning given in clause 5.13(b).

T1 Capacity or Tranche 1 Capacity has the meaning given in clause 3.2(b).

T1 Capacity Notice has the meaning given in clause 16.3(a).

T1 Capacity Reservation Tariff means 80% of the Base T1 Tariff from time to time.

T1 Commodity Tariff means the Base T1 Tariff at any time minus the T1 Capacity Reservation Tariff at that time.

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

T1 Cut-off has the meaning given in clause 3.2(b)(i).

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

T1 Service has the meaning given in clause 3.2(a).

Tariff Adjustment Factor has the meaning given in clause 20.8.

Tariff Component has the meaning given in clause 20.8.

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

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

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

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

Terminated Capacity has the meaning given in clause 22.12(d).

TJ means terajoule.

TJ/d means a TJ per Gas Day.

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

(a) in relation to inlet points, the sum of the shipper's Contracted Capacity for all inlet points; and

(b) in relation to outlet points, the sum of the shipper's Contracted Capacity for all outlet points.

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

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

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

Total Physical Capacity means the Total Current Physical Capacity as at the Contract Commencement Date.

Tradeable Capacity has the meaning given in clause 27.3(a).

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

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

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

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

Type of Capacity Service has the meaning given in clause 8.9(b).

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

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

Unavailability Notice is defined in clause 11.2(a).

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

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

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

Wobbe Index means the number obtained by the formula:

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

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

2. General

2.1 Construction generally

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

- (a) a reference to a clause number or Schedule is a reference to a clause or Schedule of this Contract;
- (b) words indicating the singular number include the plural number and vice versa;
- (c) words indicating one gender include any other gender;
- (d) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (e) a reference to any statutory law extends to and includes any amendment of, modification of, or substitution for, that law;
- (f) a reference to any contract or agreement is a reference to that contract or agreement as amended, varied, novated or substituted from time to time;
- (g) references to dollars or \$ are references to Australian dollars;
- (h) a reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in Perth, Western Australia, even if the obligation is to be performed elsewhere;
- (i) all time is expressed in a 24-hour format, with each day (but not a Gas Day) commencing at 00:00 hours and ending at 24:00 hours; and

- (j) unless specified otherwise, reference to a quantity of Gas is a reference to that quantity of Gas measured in GJ;
- (k) unless otherwise indicated, all units in this Contract are SI units;
- (l) unless the contrary intention appears, the interpretation provisions of the *Interpretation Act 1984* (WA) apply to the interpretation of this Contract;
- (m) any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (n) any specific reference to or listing of items following the words **including**, **for example** or **such as** is without limitation and does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (o) **under** includes **by**, **by virtue of**, **pursuant to** and **in accordance with**; and
- (p) a reference to rights, entitlements, obligations or terms "materially equivalent" or the "same" (in comparison to rights, entitlements, obligations or terms in this Contract or in comparison to other rights, entitlements, obligations or terms (as the case may be)) or any similar expressions shall be deemed to mean rights, entitlements, obligations or terms that are, in the opinion of a Reasonable And Prudent Person, materially equivalent to the relevant rights, entitlements, obligations or terms in this Contract or those other rights, entitlements, obligations or terms (as the case may be).

2.2 Headings

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

2.3 Rounding to a certain number

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

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

2.4 Other contracts

Where the context requires, a term which is defined in this Agreement (including T1 Service, Aggregated T1 Service, Other Reserved Service, Contracted Capacity, Total Contracted Capacity and T1 Capacity Notice) includes the same concept in another contract in relation to Shipper or in relation to another shipper.

2.5 System Operator

- (a) Operator's rights and powers under this Contract may be delegated to a contractor (**System Operator**) who is entitled to exercise, on behalf of Operator, all such rights and powers conferred on Operator.
- (b) System Operator will be Alinta Network Services Pty Ltd (ACN 104 352 650) (**ANS**), until such time as Operator gives notice in writing to Shipper that ANS no

longer acts as System Operator, in which case it must give notice of the person (if any) that is to act as System Operator in ANS's place.

- (c) Any act, matter or thing done by System Operator in respect of this Contract or in the performance of obligations related to this Contract in either its own name or in the name of Operator is deemed to have been done by Operator and Operator agrees to ratify and confirm whatsoever System Operator does or causes to be done by virtue of, or purportedly by virtue of, the powers contained in this Contract.
- (d) Without limiting clause 2.5(c), any communication or notice given, or document signed, by System Operator in respect of this Contract is deemed to have been given or signed by Operator and will bind Operator. Similarly, any communication, notice or document given to System Operator in respect of this Contract is deemed to have been given to Operator and will bind Operator.
- (e) Operator must procure that System Operator complies with the requirements of Clause 4 (Ring Fencing Arrangements) of the *National Third Party Access Code for Natural Gas Pipeline Systems* as if it were a 'Service Provider' for the purposes of that clause.

3. Capacity Service

3.1 Operator to provide T1 Service to Shipper

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

3.2 Capacity Service

- (a) The T1 Service is the Gas transportation service provided under this Contract which gives Shipper a right, subject to the terms and conditions of this Contract, to access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9):
 - (i) can only be curtailed in the circumstances specified in clause 17.2;
 - (ii) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - (iii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.9.
- (b) Operator acknowledges and agrees:
 - (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
 - (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP is 98% for each Period of a Gas Year;
 - (iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator,

acting as a Reasonable And Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and

- (iv) acting as a Reasonable And Prudent Person, Operator shall ensure that the sum of:
 - (A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and
 - (B) Alcoa's Exempt Capacity,does not materially exceed the amount of T1 Capacity in the DBNGP.
- (c) In this clause 3.2 **probability of supply** means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.
- (d) For the avoidance of doubt, Alcoa's Exempt Capacity is provided by Operator out of Tranche 1 Capacity in the DBNGP.

3.3 Contracted Capacity

Subject to this Contract, Shipper's Contracted Capacity for each Gas Day within a Period under this Contract:

- (a) at an inlet point specified in Item 1 of Schedule 1 - is the amount for each Type of Capacity Service set out in Item 1 of Schedule 1 for that Period; and
- (b) at an outlet point specified in Item 2 of Schedule 1 - is the amount for each Type of Capacity Service set out in Item 2 of Schedule 1 for that Period.

3.4 Operator must deliver Gas up to Contracted Capacity

During the Remaining Period of Supply, subject to the terms and conditions of this Contract (including clause 5 and 17), Operator will deliver on each Gas Day (aggregated across all outlet points) the quantity of Gas required by Shipper up to Shipper's Total Contracted Capacity plus any Spot Capacity allocated to Shipper for the Gas Day.

3.5 Spot Capacity

- (a) The Parties agree that, until otherwise agreed, the following principles shall apply to Spot Capacity and Spot Transactions (as the case may be).
- (b) For the avoidance of doubt, Spot Capacity is offered and provided to Shipper only under this Contract.
- (c) If Shipper seeks to bid for Spot Capacity for a Gas Day it must by notice to Operator at any time no later than 15:00 hours on the Gas Day before that Gas Day notify Operator of the amount of Spot Capacity it requires for that Gas Day (**Daily Bid**) and the price it offers to pay for that Spot Capacity for that Gas Day (the **Daily Spot Bid Price**).
- (d) Operator must by no later than 16:00 hours on each Gas Day before the relevant Gas Day allocate Spot Capacity for a Gas Day between Daily Bids on the basis (subject to clause 3.5(f)) of the shipper bidding the highest Daily Spot Bid Price for that Gas Day being allocated the Spot Capacity it bid for, the shipper bidding the second highest Daily Spot Bid Price for that Gas Day being allocated the Spot Capacity it bid for, and so on until all Daily Bids are satisfied or until all available

Spot Capacity is allocated to Daily Bids. If two or more shippers bid the same Daily Spot Bid Price and there is not sufficient available Capacity to allocate to each of them the amount of Spot Capacity bid for by each of them, the Spot Capacity available to be allocated between them shall be allocated in proportion to the amount of Spot Capacity bid for by each of them respectively at the said Daily Spot Bid Price for that Gas Day.

- (e) Subject to clause 3.5(g), if Shipper is allocated Spot Capacity for a Gas Day in response to a Daily Bid Shipper must pay the Daily Spot Bid Price bid by it for that Spot Capacity for that Gas Day whether or not it uses the Spot Capacity.
- (f) Operator may set a minimum bid price (**Minimum Bid Price**) for Daily Bids and is not obliged to allocate Spot Capacity to any shipper bidding a Daily Spot Bid Price which is less than the Minimum Bid Price. The Minimum Bid Price for Daily Bids may not be set by Operator at a price greater than 115% of the Base T1 Tariff applying on the relevant Gas Day.
- (g) Shipper is relieved from paying the Daily Spot Bid Price in relation to Spot Capacity allocated to it for a Gas Day only where:

- (i) Operator interrupts or Curtails the Spot Capacity which has been allocated to Shipper, and then only to the extent of that interruption or Curtailment; or
- (ii) Shipper does not use the Spot Capacity which has been allocated to it in circumstances where there were no other shippers bidding for Spot Capacity for that Gas Day to which the Spot Capacity allocated to Shipper could otherwise have been allocated.

(h) Operator must provide the following information to Shipper in respect of each Gas Day as soon as practicable after that Gas Day:

- (i) the quantities the subject of Daily Bids which relate to that Gas Day;
- (ii) the quantities of Spot Capacity allocated for that Gas Day; and
- (iii) the Daily Spot Bid Prices for all bids allocated Spot Capacity for that Gas Day.

(i) Operator will not bid for Spot Capacity and if an Operator Entity, Alcoa, Alinta Limited (ABN 40 087 857 001) or a Related Body Corporate of either Alcoa or Alinta Limited bids and is allocated Spot Capacity, Operator must indicate on the CRS that the relevant Spot Capacity has been allocated to an Operator Entity without disclosing the identity of the Operator Entity.

(j) Operator must ensure that the rules governing the market for Spot Capacity are designed with a view to achieving a market with the following objectives:

- (i) non-discriminatory in respect of the terms and conditions upon which, and the circumstances in which, Spot Capacity is granted to shippers;
- (ii) hindering market manipulation and gaming by Operator or other shippers; and
- (iii) consistent with this clause 3.5.

4. Duration of the Contract

4.1 Term

- (a) Subject to the terms and conditions of this Contract, including clause 16, the Capacity End Date is 08:00 hours on the day which is 15 years after the Contract Commencement Date.
- (b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates.

4.2 Capacity Start Date

The Capacity Start Date was 08:00 hours on [1 January 1995].

4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6 and 4.7, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Contract Commencement Date (**Original Capacity**) each for a period of 5 years (**Option**).

4.4 Conditions to be satisfied before exercising an Option

Shipper may only validly give notice exercising an Option if Shipper is not in default (within the meaning of clause 22.1) under this Contract in a way which is material in the context of this Contract as a whole at the time Shipper gives notice.

4.5 Notice exercising an Option

Not later than 30 months before the Capacity End Date, Shipper may give written notice to Operator that it wishes to exercise an Option. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

4.6 First Option Period

If Shipper gives a notice in accordance with clause 4.5 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended to 08:00 hours on the date occurring 20 years after the Contract Commencement Date and:

- (a) the Capacity End Date for the Original Capacity (as defined in clause 4.1) is amended to 08:00 hours on that date;
- (b) the extension of the Period of Supply for the Original Capacity will be subject to the condition that in the period between the giving of a notice under clause 4.5 and 08:00 hours on the date occurring 15 years after the Contract Commencement Date, this Contract is not validly terminated for Shipper's default (within the meaning of clause 22.1); and
- (c) this clause 4.6 (relating to the exercise of the Option) will have no effect after 08:00 hours on the date occurring 15 years after the Contract Commencement Date.

4.7 Second Option Period

If Shipper has exercised the first option and gives a notice in accordance with clause 4.5 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended to 08:00 hours on the date occurring 25 years after the Contract Commencement Date and:

- (a) the Capacity End Date for the Original Capacity (as amended by the previous operation of clause 4.6(a)) is amended to 08:00 hours on that date;
- (b) the extension of the Period of Supply will be subject to the condition that in the period between the giving of the notice under clause 4.5 and 08:00 hours on the date occurring 20 years after the Contract Commencement Date this Contract is not validly terminated for Shipper's default (within the meaning of clause 22.1); and
- (c) clauses 4.3, 4.4, 4.5 and this clause 4.7 (all relating to the exercise of the Option) will have no effect after 8:00 hours on the date occurring 20 years after the Contract Commencement Date.

5. Receiving and Delivering Gas

5.1 Delivery of Gas

Subject to this Contract, during the Remaining Period of Supply, Shipper may on each Gas Day Deliver at the inlet points on the DBNGP Gas up to its Contracted Capacity aggregated across all inlet points on the DBNGP (plus any Capacity under a Spot Transaction and any System Use Gas required to be delivered by Shipper under clause 5.13) and may Receive the Gas Delivered by Operator to it at the outlet points on the DBNGP on that Gas Day up to its Contracted Capacity aggregated across all outlet points on the DBNGP (plus any Capacity under a Spot Transaction).

5.2 Operator must Receive and Deliver Gas

Subject to this Contract, if Shipper offers Gas for Delivery to Operator at inlet points on the DBNGP, Operator must Receive that Gas from Shipper up to Shipper's Contracted Capacity aggregated across all inlet points on the DBNGP (plus any Capacity under a Spot Transaction and any System Use Gas required to be delivered by Shipper under clause 5.13) and Operator must deliver Gas to Shipper at nominated outlet points up to its Contracted Capacity aggregated across all outlet points on the DBNGP (plus any Capacity under a Spot Transaction).

5.3 Operator may refuse to Receive Gas

In addition to any other rights and remedies that may be available to it under this Contract or under law or in equity, Operator may (subject to clause 5.4(a)) without prior notice to Shipper, refuse to Receive Gas from Shipper at an inlet point:

- (a) to the extent that Operator is entitled to refuse to Receive Gas under:
 - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-Of-Specification Gas);
 - (ii) clause 9.5(b)(iv) (Accumulated Imbalance Limit);
 - (iii) clause 9.8(c) (Remedies for breach of imbalance limits);
 - (iv) clause 17.8(c) (Compliance with a Curtailment Notice); or
 - (v) clause 22.4(a) (Remedies for Shipper's default);
- (b) to the extent that Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that Operator considers as a Reasonable And Prudent Person that it would be unsafe to Receive that Gas.

- (d) to the extent that Receipt by Operator of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure;
- (e) to the extent that Shipper has not entered into any agreement in relation to that inlet point required by clause 6.7; or
- (f) to the extent that the Receipt of that Gas for a Gas Day at an inlet point is in excess of the aggregate of the following (in respect of that inlet point for that Gas Day):
 - (i) the sum of Shipper's Contracted Capacity for that inlet point;
 - (ii) Shipper's Aggregated Service Allocated Daily Nomination in respect of that inlet point for that Gas Day;
 - (iii) any Spot Capacity allocated to Shipper for that Gas Day; and
 - (iv) any System Use Gas required to be Delivered by Shipper under clause 5.13.

5.4 Notification of refusal to Receive Gas

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

- (a) use its reasonable endeavours to give Shipper advance notice which is reasonable in the circumstances of any impending refusal to Receive Gas;
- (b) if it does not give Shipper advance notice under clause 5.4(a) of a refusal to Receive Gas, Operator must notify Shipper of that refusal as soon as practicable after that refusal; and
- (c) notify Shipper (in reasonable detail) of the reasons for a refusal to Receive Gas.

5.5 Refusal to Receive Gas is a Curtailment in limited circumstances

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

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

5.6 No liability for refusal to Receive Gas

Subject to clause 23.2 and subject to any liability under clause 17 arising from a refusal of a type referred to in clause 5.5, Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Receive Gas under clause 5.3.

5.7 Refusal to Deliver Gas

In addition to any other rights and remedies that may be available to it under this Contract or under law or in equity, Operator may refuse to Deliver Gas to Shipper at an outlet point:

- (a) to the extent that Operator is entitled to refuse to Deliver Gas under:

- (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
 - (ii) clause 9.5(b)(iv) (Accumulated Imbalance Limit);
 - (iii) clause 9.8(c) (Remedies for breach of Imbalance Limit);
 - (iv) clause 10.3(a)(iv) (Consequence of exceeding Hourly Peaking Limit);
 - (v) clause 10.6(c) (Remedies for breach of Peaking Limits);
 - (vi) clause 11.5 (Operator may refuse to Deliver Overrun Gas);
 - (vii) clause 17.8(c) (Compliance with a Curtailment Notice); or
 - (viii) clause 22.4(a) (Remedies for Shipper's default);
- (b) to the extent that Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that Operator considers as a Reasonable And Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Physical Capacity of the relevant outlet point; or
- (d) to the extent that Shipper has not entered into any agreement in relation to that outlet point required by clause 6.7.

5.8 Notification of refusal to Deliver Gas

- When Operator refuses to Deliver Gas to Shipper under clause 5.7, Operator must:
- (a) use its reasonable endeavours to give Shipper advance notice which is reasonable in the circumstances of any impending refusal to Deliver Gas;
 - (b) if it does not give Shipper advance notice under clause 5.8(a) of a refusal to Deliver Gas, Operator must notify Shipper of that refusal as soon as practicable after that refusal; and
 - (c) notify Shipper of the reasons for a refusal to Deliver Gas in sufficient detail to explain the refusal.

5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances

- To the extent that a refusal to Deliver such Gas under clause 5.7(c) would not have occurred if Operator had taken the steps which would be expected of a Reasonable And Prudent Person to avoid the need for, or falling such avoidance, to minimise the magnitude and duration of, the refusal to Deliver Gas, a refusal to Deliver Gas under clause 5.7(c):
- (a) is a Curtailment for the purposes of this Contract; and
 - (b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.

5.10 No liability for refusal to Deliver Gas

Subject to clause 23.2 and subject to any liability under clause 17 arising from a refusal of a type referred to in clause 5.9, Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7.

5.11 System Use Gas

- (a) Operator will supply Shipper's share of System Use Gas unless Shipper elects to provide its own share of System Use Gas in accordance with this clause 5.11 and clauses 5.12 and 5.13.
- (b) Shipper may only make an election in accordance with this clause 5.11 and clauses 5.12 and 5.13 to provide its own share of System Use Gas after 08:00 hours on 31 December 2015.
- (c) For the purposes of this clause 5.11 and clauses 5.12 and 5.13, Shipper's share of System Use Gas for a Gas Day will be calculated by multiplying the total amount of all System Use Gas used on that Gas Day by the total quantity of gas delivered on that Gas Day to Shipper (under the T1 Service) downstream of CS7 divided by the quantity of gas delivered on that Gas Day to all shippers (across all Capacity Services including Interruptible Services and Capacity under Spot Transactions) downstream of CS7.
- (d) Shipper shall indemnify Operator in respect of the cost of additional Gas incurred by Operator in supplying System Use Gas in accordance with this Contract to the extent to which that System Use Gas is required to be supplied, in accordance with Good Gas Industry Practice, because of Shipper taking Overrun Gas or breaching the Accumulated Imbalance Limit or the Hourly Peaking Limit on any Gas Day, aggregated over a Contract Year, but only if that cost is not recovered by Operator during that Contract Year by Other Charges or Direct Damages paid by Shipper.
- (e) Operator shall provide each quarter an indicative report (**Quarterly Report**) (for Shipper's information only) of the costs incurred by Operator in supplying System Use Gas in the circumstances described in clause 5.11(d). The costs notified in the Quarterly Report are not final and are subject to a reconciliation at the end of each Contract Year of actual costs incurred and of recovery by Operator during the Contract Year by Other Charges or Direct Damages paid by Shipper.
- (f) Within 30 days after receipt of a Tax Invoice which includes an amount payable by Shipper under clause 5.11(d), Shipper may request an independent verification of the amount payable.
- (g) If requested under clause 5.11(f), the independent verification will be undertaken by an independent auditor agreed by the Parties or, failing agreement, by an auditor appointed as if they were to be an Expert for a Technical Matter under clause 24.
- (h) Operator must disclose all relevant information in relation to the calculation of the amount payable under clause 5.11(d) to the auditor agreed or appointed under clause 5.11(g). That auditor must not disclose that information to Shipper, but must review the information provided (and such further information as may be reasonably requested from Operator) and must then determine whether the amount included in Operator's Tax Invoice is accurate or, if not, the correct amount to be included.
- (i) The determination of the independent auditor under clause 5.11(h) will be final and binding upon the Parties.

5.12 Provision of System Use Gas by Shipper

- (a) By 31 August of each year from and including 2015, Operator will notify Shipper of:

- (i) the Credit Rate (as defined in clause 5.12(d)) that it will offer Shipper for each GJ of T1 Capacity utilized on a Gas Day in the next calendar year if Shipper elects to supply its share of System Use Gas in the next calendar year; and
- (ii) a bona fide estimate of the aggregate quantity of Shipper's share of System Use Gas over the next calendar year.
- (b) Within 30 days of receipt of the notice referred to in clause 5.12(a), Shipper must give notice to Operator of whether it will provide all of its share of System Use Gas for the following calendar year nominating one or more inlet points within Pipeline Zone 1 or Pipeline Zone 2 at which such System Use Gas will be supplied (each being a **SUG Nominated Inlet Point**), and if Shipper does not give such notice within such time, Operator will supply Shipper's share of System Use Gas under the Contract for the entire following calendar year.
- (c) If Shipper gives notice under clause 5.12(b) within the relevant time, then throughout the following calendar year:
- (i) Shipper must provide System Use Gas in accordance with clause 5.13; and
- (ii) in each monthly invoice, Operator will provide Shipper with a credit against Shipper's Commodity Charge at the Credit Rate (as defined in clause 5.12(d)) only if Shipper has provided its share of System Use Gas in accordance with this clause 5.12 and clause 5.13. If from time to time the aforementioned credit exceeds Shipper's Commodity Charge then such credit shall be applied against any substantial equivalent to a commodity charge levied in respect of any other Capacity Service or services (as the case may be) from time to time nominated by Operator, up to, in aggregate, the extent of the relevant credit.
- (d) For the purposes of this clause 5.12, the expression **Credit Rate** means an amount in dollars per GJ specified by Operator.

5.13 System Use Gas – Generally

- (a) If Shipper elects to provide its own share of System Use Gas, on each Gas Day during the relevant Gas Year, Operator may require Shipper to provide System Use Gas to Operator at the SUG Nominated Inlet Point(s) (as needs be).
- (b) If Operator requires System Use Gas from Shipper under clause 5.13(a) it will, at least one week prior to the required Delivery of System Use Gas, issue a notice to Shipper (**System Use Gas Notice**) in accordance with clause 29.3, which must set out:
- (i) the quantity of System Use Gas to be provided by Shipper at a SUG Nominated Inlet Point; and
- (ii) the Gas Day or Gas Days on which the System Use Gas is to be Delivered by Shipper.
- (c) No later than 16:30 hours on a Gas Day, Operator may issue a renomination notice whereby Operator seeks to amend the quantity of System Use Gas to be provided by Shipper at a SUG Nominated Inlet Point on the following Gas Day. Shipper must use reasonable endeavours to provide the amount of System Use Gas

requested by Operator pursuant to a renomination notice under clause 5.13(c). Shipper shall not be liable for any charges or penalties under clause 9 or clause 10 of this Contract to the extent that the breach of the relevant limit in clause 9 or clause 10 has resulted from, or been caused by, Shipper providing the amount of System Use Gas requested by Operator pursuant to a renomination.

- (d) Notwithstanding clauses 5.13(b) and 5.13(c), Operator may renominate on a Gas Day the amount of System Use Gas required to be provided by Shipper on that Gas Day if Operator believes (acting as a Reasonable And Prudent Person) such renomination is necessary or desirable due to either or both of the following:
- (i) a Renomination by Shipper under clause 8.13 for that Gas Day; and/or
- (ii) Shipper taking or delivering a quantity of Gas different from its Daily Nomination for that Gas Day.
- Shipper must use reasonable endeavours to provide the amount of System Use Gas requested by Operator pursuant to a renomination under this clause 5.13(d). Shipper shall not be liable for any charges or penalties under clause 9 or clause 10 of this Contract to the extent that the breach of the relevant limit in clause 9 or clause 10 has resulted from, or been caused by, Shipper providing the amount of System Use Gas requested by Operator pursuant to a renomination.
- (e) Operator will endeavour, acting as a Reasonable And Prudent Person, to:
- (i) minimise the quantity of System Use Gas that is required for the operation of the DBNGP; and
- (ii) in aggregate, over the course of the SUG Period of Supply, ensure that the amount of System Use Gas requested under this clause 5.13 is substantively equivalent to the quantity of Shipper's share of System Use Gas over the course of the SUG Period of Supply.
- (f) Shipper must supply, to the extent practicable at a uniform rate throughout the Gas Day, at those SUG Nominated Inlet Point(s) chosen by Shipper on each Gas Day, the amount of System Use Gas specified by Operator for that Gas Day in a System Use Gas Notice (as modified by a renomination notice issued in accordance with clause 5.13(c) or 5.13(d) or both (if any)), free of charge.
- (g) The requirement to supply System Use Gas in this clause 5.13 does not in any way:
- (i) increase Shipper's Contracted Capacity at an Outlet Point on any Gas Day,
- (ii) decrease Shipper's Contracted Capacity at any Inlet Point on any Gas Day; or
- (iii) contribute towards or be included in any calculations of Shipper's Daily Imbalance or Accumulated Imbalance.
- (h) At the end of each month during the SUG Period of Supply, Operator will reconcile the actual amount of System Use Gas consumed against the amount of Shipper's share of System Use Gas supplied by Shipper during the Gas Month and provide notice to Shipper of that reconciliation.
- (i) Any under-supply of System Use Gas is to be made up by Shipper within 3 days of such notice, and any over-supply is to be credited to Shipper (as a deemed supply of System Use Gas) such that Shipper need not supply the future requests for

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

6. Inlet Points and Outlet Points

6.1 Inlet Points and Outlet Points

- (a) The Inlet Points for this Contract are set out in Item 1 of Schedule 1; and
- (b) The Outlet Points for this Contract are set out in Item 2 of Schedule 1.

6.2 Multi-shipper Agreement

Shipper is taken to be a party to a current Multi-shipper Agreement in respect of an inlet point or outlet point if at the Contract Commencement Date there is an agreement, arrangement or understanding whether or not in writing, between all shippers which use that inlet point or outlet point, (which agreement, arrangement or understanding may include other parties, such as a Producer or REMCo) under which Operator is notified of how the Gas Delivered to or Received from that inlet point or outlet point is allocated between those shippers, for as long as that agreement, arrangement or understanding continues in force.

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

- (a) The Gas streams delivered to a Multi-shipper Inlet Point by or on behalf of Shipper are to be commingled at a point or points upstream of the inlet point with the Gas streams delivered to that Multi-shipper Inlet Point by other shippers.
- (b) For any purpose under this Contract, Shipper's proportional share of the commingled inlet stream at a Multi-shipper Inlet Point is to be determined immediately upstream of the inlet point after all Gas streams have been commingled, and Shipper's proportional share of the commingled outlet stream at a Multi-shipper Outlet Point is to be determined immediately downstream of the outlet point.
- (c) Subject to any contrary provisions in a Multi-shipper Agreement, Shipper's nominations, obligations and liabilities under this Contract in respect of any quantity, quality, temperature or pressure of Gas at a Multi-shipper Inlet Point are to be determined solely in respect of Shipper's proportional share of the commingled inlet stream determined under clause 6.4, and not by reference to any quantity, quality, temperature or pressure of any Gas delivered by or on behalf of Shipper into the commingled inlet stream.
- (d) All shippers using an inlet point or an outlet point (as the case may be) may enter into a written agreement (**Multi-shipper Agreement**) with Operator dealing with, amongst other things, the way in which Gas Delivered by them to an inlet point or Received by them from an outlet point is to be allocated between them.
- (e) Operator must promptly enter into a Multi-shipper Agreement in respect of an inlet point or outlet point if:
 - (i) (A) the agreement contains a formula or mechanism for allocating Gas deliveries to the inlet point or outlet point (as the case may be) for each Gas Hour between the shippers in a manner which enables Operator to determine the allocation by applying the formula or

System Use Gas up to the extent of that "credit". The Parties agree that, if the over-supply cannot be credited to Shipper against future requests for System Use Gas within the relevant SUG Period of Supply then Operator will pay Shipper, within 20 Working Days of the end of the relevant SUG Period of Supply, a fair market price for that quantity of Gas equal to that quantity of Gas which was over-supplied.

5.14 Additional Rights to Refuse to Receive or Deliver Gas

- (a) In addition to any other rights and remedies that may be available to it under any Law or under this Contract or in equity, if:
 - (i) the Governor or any other person, regulatory authority or body declares a state of emergency under the *Fuel, Energy and Power Resources Act 1972* (WA) or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP, or
 - (ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the *Energy Coordination Act 1994* (WA) or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP,
- (b) (any and all of these being a **Declaration**), then Operator may (with prior notice to Shipper wherever practicable) refuse to Receive Gas at an inlet point or refuse to Deliver Gas at an outlet point (or both) to the extent that Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.
- (b) To the extent that the exercise of rights and remedies under clause 5.14(a) would not have occurred if Operator had taken the steps which would have been expected of a Reasonable And Prudent Person to prevent the relevant event occurring, or failing such prevention, to minimise the magnitude and duration of the need to refuse to Receive or Deliver Gas, the exercise of rights and remedies under clause 5.14(a):
 - (i) is a Curtailment for the purposes of this Contract; and
 - (ii) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.
- (c) If Operator exercises any rights under clause 5.14(a), it must:
 - (i) promptly give notice to Shipper of the occurrence giving rise to the right of Operator to exercise such rights, and the steps that Operator intends to take under clause 5.14(a); and

- mechanism once it knows the total quantity of Gas delivered at that inlet point or outlet point (as the case may be) during the relevant Gas Hour, or
- (B) the agreement relates to an inlet point, it provides that Gas deliveries at the inlet point are allocated by a notice to Operator from the Producer that delivers Gas into the inlet point on behalf of all shippers using that inlet point; or
 - (C) the agreement relates to an outlet point, it provides that Gas deliveries at that outlet point are allocated by a notice provided to Operator from one of the shippers at that outlet point or from a third party nominated by one of the shippers at that outlet point;
 - (ii) the agreement allocates deliveries to the inlet point or outlet point (as the case may be) between the shippers on a daily basis;
 - (iii) the agreement is between all shippers who use the inlet point or outlet point (as the case may be) and Operator;
 - (iv) the agreement provides that as between each shipper and Operator for the purposes of each shipper's Gas transportation contract Operator may rely upon the allocation of Gas delivered by the shippers at an inlet point, or received by the shippers at an outlet point, determined in accordance with the agreement, as being the quantity of Gas delivered by each of those shippers at the inlet point and the quantity of Gas received by each of those shippers at the outlet point;
 - (v) the agreement provides that Operator may, in order to give effect to a Curtailment of the Capacity of one or more of the shippers using the outlet point, physically reduce the Capacity of the outlet point by an amount up to the Contracted Capacity (or the equivalent under that shipper's contract) at that outlet point for the shipper to be Curtailed;
 - (vi) Operator is reasonably satisfied with the metering arrangements for any meters being used for the purpose of allocating Gas deliveries at the inlet point or outlet point (as the case may be);
 - (vii) the agreement provides that Operator is not liable to shippers where it acts in accordance with the provisions of the agreement; and
 - (viii) the agreement does not impose any other obligations or liabilities upon Operator (other than in relation to the provision of metering information of the type contemplated in clause 15.5) and does not directly or indirectly vary or amend this Contract or any other contract between a shipper and Operator other than as specifically contemplated above.
- (f) A Multi-shipper Agreement (including a deemed Multi-Shipper Agreement under the Retail Market Rules) in relation to a Notional Gate Point, may provide that:
- (i) whilst the Retail Market Rules are in force, Gas deliveries at that point are allocated by REMCo, on behalf of all shippers using that Notional Gate Point, by:
 - (A) REMCo providing Operator with an algorithm for doing so which can be applied by Operator; or

(B) REMCo providing Operator a notice by electronic means within a reasonable period after each Gas Hour and after the end of each Gas Day; and

- (ii) at any time during which the Retail Market Rules are inoperative, Gas deliveries at that point are allocated by Networks, on behalf of all shippers using that Notional Gate Point pursuant to the terms of the Operating Arrangement.
- (g) A Dispute under clause 6.3(e) is to be referred to an Independent Expert under clause 24 as a Technical Matter.

6.4 Allocation of Gas at Inlet Points

- (a) On any Gas Day when Shipper is the only shipper Delivering Gas to Operator at an inlet point, Shipper shall be deemed to have Delivered all Gas Received by Operator at the inlet point for that Gas Day and clauses 6.4(b) and 6.4(c) shall not apply.
- (b) If Shipper and any other shipper Delivers Gas to Operator at an inlet point on a Gas Day, and:
 - (i) there is a relevant Multi-shipper Agreement then Shipper's proportional share of Gas at the inlet point will be determined by that Multi-shipper Agreement; or
 - (ii) Shipper procures the delivery of written confirmation to Operator from, or on behalf of, every shipper which delivers Gas to that inlet point on that Gas Day by not later than 08:30 hours on the following Gas Day, of the quantity of Gas supplied by those shippers at that inlet point, then (in the absence of evidence to the contrary) that confirmation shall be deemed to show the quantity of Gas Delivered by Shipper to Operator at that inlet point.
- (c) If there is no Multi-Shipper Agreement in relation to an inlet point and Shipper or any other shipper Delivering Gas at such inlet point fails to provide such written confirmation by the time specified in clause 6.4(b), then Shipper's proportionate share of Gas Received at that inlet point may be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the inlet point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper shall be deemed to have Delivered that proportionate share so determined of the Gas Received at that inlet point on that Gas Day.
- (d) Gas Delivered by Shipper to an inlet point will be deemed to be Received by Operator in the order specified generally or for a particular Gas Day by Shipper (which must always specify that System Use Gas is Received first by Operator), and if Shipper fails to specify for any Gas Day, in the following order:
 - (i) first, System Use Gas supplied under this Contract;
 - (ii) second, Gas for any available T1 Service which includes Gas for any available Aggregated T1 Service;
 - (iii) third, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.9(a);

- (iv) fourth, Gas for any available Capacity under any Spot Transaction; and
- (v) fifth, other gas.

6.5 Allocation of Gas at Outlet Points

- (a) On any Gas Day when Shipper is the only person taking Delivery of Gas from Operator at an outlet point, Shipper shall be deemed to have taken Delivery of all Gas Delivered by Operator at the outlet point for that Gas Day and clauses 6.5(b) and 6.5(c) shall not apply.
- (b) If Shipper and any other shipper take Delivery of Gas from Operator at the outlet point on a Gas Day, then if there is a Multi-Shipper Agreement in relation to the outlet point Shipper's proportional share of Gas at the outlet point must be determined under the Multi-shipper Agreement.
- (c) if there is no Multi-shipper Agreement in relation to an outlet point or if Shipper fails to otherwise reach agreement with other shippers at the outlet point in respect of the allocation of Gas Receipts or fails to provide Operator with a copy of a Multi-shipper Agreement referred to in clause 6.5(b) prior to the commencement of the relevant Gas Day, then Shipper's proportional share of Gas at the outlet point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the outlet point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper will be deemed to have Received that proportionate share so determined of the Gas Delivered to that outlet point on that Gas Day.
- (d) Gas Delivered by Operator to an outlet point will be deemed by this clause to be Received by Shipper in the order specified generally or for a particular Gas Day by Shipper, and if Shipper fails to specify for any Gas Day in the following order:

- (i) first, Gas for any available T1 Service (which shall include any available Aggregated T1 Service);
- (ii) second, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.9(a);
- (iii) third, Gas for any available Capacity under any Spot Transaction; and
- (iv) fourth, other gas.

6.6 Installation, operation and maintenance of inlet stations and outlet stations

- (a) (i) Shipper shall install, operate and maintain or procure the design, installation, operation and maintenance of, Inlet Stations at its own expense and when (if ever) Shipper and other shippers deliver Gas to Operator at an inlet point on the DBNGP, Shipper and those other shippers shall, at their joint expense, collectively install, operate and maintain the Associated Inlet Station.
- (ii) Other than in respect of an Existing Station, and unless agreed otherwise, Operator shall install, operate and maintain Outlet Stations that are not Gate Stations, at Shipper's request, and at Shipper's expense to be determined in accordance with clause 6.6(i).

(iii) Other than in respect of an Existing Station, Shipper shall pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but not otherwise) that:

- (A) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause 6.6(a)(iii)(B); and
- (B) in the case of an Outlet Station related to an outlet point at which Shipper does not have Contracted Capacity, is equal to the proportion that the sum of Shipper's deliveries of Gas (across all Capacity Services) at the outlet point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such outlet point, during the previous calendar month.
- (iv) For the purposes of this clause 6.6, an obligation to install, operate and maintain shall include (but not be limited to) an obligation to ensure that an Inlet Station or Outlet Station (as the case may be) meets the requirements set out in clauses 6.6(b) to (f).
- (v) Shipper must use its reasonable endeavours to assist Operator in gaining access to an Outlet Station which is not a Gate Station, to which Operator has no rights of access, for the purpose of maintaining and operating that Outlet Station.
- (vi) Other than in respect of an Existing Station, all Gate Stations associated with a Sub-network are to be installed, operated and maintained by Operator at the collective expense of all shippers who receive Gas from Operator at the Notional Gate Point for the Sub-network, and Shipper shall pay a proportion of the Maintenance Charge that is equal to the proportion that the sum of Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the Notional Gate Point, for the time being bears to the sum of all Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point, for the time being.
- (vii) Without limiting the generality of clause 6.6(a)(vi), whenever a new Gate Station is installed, or a Gate Station is enhanced, the amounts referred to in clause 6.6(a)(vi) are to be included in the apportionments between all shippers who receive Gas from Operator at the Notional Gate Point, including shippers with grants of capacity made before the date of installation or enhancement.
- (viii) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point or a Gate Station, Operator may have regard to the likely impact of clause 6.6(a)(vi).

- (b) (i) The site for an Inlet Station or Outlet Station must:
- (A) be within a security fenced enclosure;
 - (B) provide suitable vehicular access and an alternative means of personnel access;
 - (C) provide adequate space for the installation of all equipment; and
 - (D) have a concrete, sealed, or gravel surface to enable access in all weather conditions.
- (ii) Telemetry, power supply and other sensitive equipment at an Inlet Station or Outlet Station must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.
- (c) (i) Every Inlet Station or Outlet Station must provide a means, to a standard acceptable to a Reasonable And Prudent Person, of automatically:
- (A) preventing the reverse flow of Gas through the Inlet Station or Outlet Station; and
 - (B) stopping or restricting Gas flow in the event of any excessive pressure upstream of, or any failure, leak or rupture within or downstream of, the Inlet Station or Outlet Station.
- (ii) Operator, whenever it is permitted by any written law or a contract to stop or reduce Gas flow (and whether or not there has been a failure, leak or rupture), may utilize for that purpose any mechanism installed under clause 6.6(c)(i).
- (iii) Operator may at any time, for, or in anticipation of, the purposes of clause 6.6(c)(i), make any necessary connections, modifications or additions to any mechanism installed under clause 6.6(c)(i), to enable it to be utilized for the purposes of clause 6.6(c)(ii).
- (iv) Operator cannot charge Shipper for any mechanism installed under clause 6.6(c)(i) or clause 6.6(c)(iii).
- (d) (i) Every Inlet Station must include filters or separators, or both, to a standard acceptable to a Reasonable And Prudent Person.
- (ii) An Outlet Station must, whenever Operator as a Reasonable And Prudent Person determines it to be necessary, include filters or separators, or both, to a standard acceptable to a Reasonable And Prudent Person.
- (iii) Operator may make a determination under clause 6.6(d)(ii) at any time, including after an Outlet Station is commissioned.
- (iv) For the purposes of clause 15.4, neither filters nor separators are to be regarded as Metering Equipment.
- (e) All facilities upstream of an Inlet Point or downstream from an Outlet Point must be electrically isolated from the DBNGP by an isolating joint or flange located either:
- (i) at the Inlet Point or Outlet Point; or
- (ii) sufficiently close to the Inlet Point or Outlet Point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 6.6(e)(i),
- which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.
- (f) All facilities at an Inlet Station or Outlet Station must be connected to an effective earthing system of a type acceptable to a Reasonable And Prudent Person.
- (g) Any new equipment installed at an Inlet Station or Outlet Station must be compatible with existing equipment and systems.
- (h) (i) The quantity of Gas passing through a Notional Gate Point in any period of time is to be taken to be the sum of the quantities metered as passing through all associated Physical Gate Points in that period of time.
- (ii) Nothing in clause 6.6(h)(i) is to prevail over the deeming in clause 6.5 of the quantity of Gas taken by a shipper or shippers at a Notional Gate Point.
- (i) For the purposes of this clause 6.6, **Maintenance Charge** means, with respect to a particular Outlet Station or Gate Station Associated with a Sub-network, the charge determined by Operator (acting as a Reasonable And Prudent Person) for designing, installing (which is to be taken as including the capital cost of acquiring and installing all relevant components of an Outlet Station or Gate Station), maintaining, operating and decommissioning such Outlet Station or Gate Station (as the case may be) and which shall, in all cases, exceed the actual cost of such design, installation, maintenance, operation and decommissioning by a reasonable premium calculated to recognise Operator's management time and to allow Operator to realise a reasonable rate of return on the cost of such design, installation, maintenance, operation and decommissioning (as the case may be), allowing for the charge to amortise the cost of such design, installation, maintenance, operation and decommissioning over the life of the Outlet Station or Gate Station. At the request of Shipper, Operator shall provide a statement of the calculations used to determine the Maintenance Charge in the form in which Operator normally calculates the Maintenance Charge as at the Contract Commencement Date. Any disagreement as to the level of Maintenance Charge shall be a Dispute for the purposes of clause 24 of this Contract.
- (j) Nothing in this clause 6.6 shall affect or derogate from charges payable under any other agreement between Operator and Shipper in respect to the installation, operation and maintenance of Inlet Stations, Outlet Stations and Gate Stations and any upgrades, modifications and expansions to Inlet Points or Outlet Points.
- (k) Operator agrees that it shall not be entitled to impose any charges under this clause 6.6 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995 and which increased or increases the capacity of that Existing Station to receive or deliver Gas into or from the DBNGP, and Operator is entitled to impose charges on Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs as determined in accordance with the provisions in clause 6.6(a)(iii).

- (l) Despite any other provisions of this Contract, each Existing Station and all facilities, ancillary equipment and services at each Existing Station and the metering arrangements entered into with the State Energy Commission of Western Australia prior to 1 January 1995 in respect of each Existing Station are to be taken to comply in all respects with the provisions of this Contract including this clause 6.6.

6.7 Contribution Agreement

- (a) Shipper may only Deliver Gas to an inlet point, or Receive Gas from an outlet point, to which it did not Deliver Gas or from which it did not Receive Gas, at the Contract Commencement Date if:
- (i) the inlet point or outlet point is Associated with an Existing Station;
 - (ii) the inlet point or outlet point is:
 - (A) owned by Operator or an Operator Entity; or
 - (B) leased by Operator or an Operator Entity under an equipment lease,
- and Shipper has entered into a Contribution Agreement in respect of the inlet point or outlet point; or
- (iii) the inlet point or outlet point is not of a type referred to in clause 6.7(a)(i) or 6.7(a)(ii)(A) or (B) and Shipper has reached an agreement, arrangement or understanding, whether or not in writing to use that inlet point or outlet point with the owner of the inlet point or outlet point.

For the purposes of clause 6.7(a)(ii) an Operator Entity excludes any Related Bodies Corporate of Alcoa or Alinta Limited.

- (b) A Contribution Agreement in respect of an inlet point or an outlet point is an agreement between Operator and Shipper:
- (i) under which Shipper agrees to pay to Operator an amount in order to contribute to the Maintenance Charge for the inlet point or the outlet point, determined in accordance with clause 6.6(i);
 - (ii) under which Shipper's proportion of the Maintenance Charge is determined under clause 6.6(a)(iii) or is otherwise agreed in the Contribution Agreement; and
 - (iii) Shipper agrees that another shipper (**New Shipper**) may deliver Gas to the relevant inlet point or receive Gas from the relevant outlet point, if:
 - (A) New Shipper agrees to pay to Operator an amount in order to contribute to the Maintenance Charge for the inlet point or the outlet point determined in a manner consistent with the principles in clause 6.6(a)(iii); and
 - (B) Operator agrees to rebate to Shipper the contributions it receives from New Shipper under clause 6.7(b)(iii)(A).
 - (c) Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, a Contribution Agreement.
 - (d) Nothing in this clause 6.7 requires Shipper to enter into an agreement with any person other than Operator.

6.8 Shipper Specific Facility Agreement

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

- (a) subject to clause 6.8(b), New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.7(b)(iii); and
- (b) Operator agrees to rebate to Shipper the contributions it receives from New Shipper under clause 6.8(a).

6.9 Total Physical Capacity

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

6.10 Notional Gate Point

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

7. Operating Specifications

7.1 Gas must comply with Gas specifications

Gas Delivered by Shipper to Operator at an inlet point or Delivered to Shipper by Operator at an outlet point must comply with the relevant column in the Gas specifications set out in Item 1 of Schedule 3.

7.2 Gas to be free from certain substances

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

7.3 Gas to be free from objectionable odours

Gas Delivered by Shipper to Operator at an inlet point must be free, by normal commercial standards, from objectionable odours.

7.4 Gas temperature and pressure

- (a) The minimum and maximum temperatures and the minimum and maximum pressures at which Shipper may Deliver Gas to Operator at the inlet points, and Operator may Deliver Gas to Shipper at the outlet points, are those set out in Item 2 of Schedule 3.
- (b) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Item 2 of Schedule 3.
- (c) Subject to clause 7.4(d), if Shipper Delivers Gas to Operator at an inlet point or Shipper Receives Gas from Operator at an outlet point at which the minimum and the maximum temperature and the minimum and maximum pressure are not set out in Item 2 of Schedule 3 Shipper is entitled to Deliver Gas to the inlet point or Receive Gas at the outlet point (as the case may be) under this Contract at the temperature and pressure at which Operator at the relevant inlet point or outlet point is otherwise Receiving Gas into the DBNGP or Delivering Gas out of the DBNGP at the time the Gas is Delivered or Received by Shipper at that outlet point, or if Operator is otherwise not Receiving Gas into the DBNGP or Delivering Gas out of the DBNGP at that time, then at the temperature and pressure at which Operator was last entitled or obliged to Receive Gas into the DBNGP or Deliver Gas out of the DBNGP at that inlet point or outlet point under the terms of a contract with the relevant shipper.
- (d) If the outlet point is a Notional Gate Point, Shipper is entitled to Receive Gas at the outlet point under this Contract at the temperature and pressure prescribed in or determined under clauses 6 and 7 of the Operating Arrangement for the Physical Gate Points associated with the Sub-network with which those Physical Gate Points are associated.

7.5 Notice of Out-Of-Specification Gas

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

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

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

7.7 Operator may Receive Out-Of-Specification Gas

Operator may, at its own risk, agree to Receive Out-Of-Specification Gas from Shipper at an inlet point on whatever terms and conditions (including as to pricing) that Shipper and Operator may agree.

7.8 Shipper's Liability for Out of Specification Gas

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

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

7.9 Shipper may Receive Out-Of-Specification Gas

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

7.10 Change of Law

if:

- (a) at any time during the term of this Contract there is a change in Law which requires Operator to Receive Gas into the DBNGP with an operating specification for one or more components outside the Operating Specifications applying to the component or those components of the Operating Specifications (as may be amended from time to time pursuant to this clause 7.10) (*Permissible Specifications*); and
- (b) there is no shipper with an Inconsistent Existing Contractual Specification; and
- (c) Operator actually Receives into the DBNGP Gas outside the Operating Specifications but within the Permissible Specifications to such an extent that it is unable to comply with the Operating Specifications for an outlet point set out in Schedule 3,

then Operator may notify Shipper that:

- (d) the Inlet Point Operating Specifications (and Item 1 of Schedule 3) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Inlet Point Operating Specification, for the operating specification of that component of the Inlet Point Operating Specification; and
- (e) the Outlet Point Operating Specifications (and Item 1 of Schedule 3) is amended so as to broaden the specification for each component which has been amended in respect of the Inlet Point Operating Specification, by the same amount as the Inlet Point Operating Specification has been broadened by the operation of this clause.

In this clause 7.10 **Inconsistent Existing Contractual Specification** means:

- (i) in relation to an Inlet Point, if the amendments to the Inlet Point Operating Specification were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Producer Contract; or
- (ii) in relation to an Outlet Point, if the amendments to the Outlet Point Operating Specifications were made to accommodate the Permissible Specifications, the shipper could be in material breach of an Existing Gas Supply Contract.

7.11 Amendment Notice

The notice under clause 7.10 must:

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

7.12 Odourisation

Operator will Deliver Gas to Shipper at each outlet point at which odourising occurs as at the Contract Commencement Date odourised to the specification set out in the *Gas Standards Regulations 1983* (WA).

7.13 Weighted average gas flows

- (a) If on a Gas Day at a Multi-shipper Inlet Point the Gas Delivered by Shipper to the inlet point is Out-Of-Specification Gas but the Blended Gas Delivered by all shippers to the inlet point meets the Blended Specifications then (despite clause 7.6) Operator must Receive the Gas from Shipper.
- (b) For the purpose of this clause:
- (i) **Blended Gas** means all Gas Delivered to the relevant inlet point comprising the commingled inlet stream;
- (ii) **Blended Specifications** means the notional operating specifications applying to the Blended Gas determined as a weighted average of the

operating specifications for the relevant inlet point applying under all Relevant Contracts calculated by weighting:

- (A) the value of each component comprising the Operating Specifications for the inlet point under each Relevant Contract; by
- (B) the Scheduled Nominations at the inlet point for the Gas Day across all Capacity Services under each Relevant Contract;
- (iii) **Relevant Contracts** means the contracts for each shipper who is delivering Gas to the inlet point on that day.

7.14 Shipper Changes of Gas Specification

- (a) Shipper may from time to time request Operator to vary the Gas specification for an inlet point (with a corresponding change in respect of outlet points), and if each component of the proposed new specification is no less stringent than the corresponding component in the 'broadest specification' as specified under the Access Manual immediately before that manual ceased to have effect (a copy of which appears in Item 3 of Schedule 3), then Operator must agree to the variation in the specification unless it can demonstrate to the standard of a Reasonable And Prudent Person that there is a risk that its Receiving Gas in accordance with the varied specification would render it incapable of complying with an outlet point specification under a contract with any other shipper.
- (b) Any dispute under clauses 7.14(a) or 7.14(d) is a Technical Matter which can be referred to the Independent Expert.
- (c) To avoid doubt, nothing in this clause 7 is to be read as requiring Operator to install Gas processing equipment to accommodate changes in inlet point Gas specification agreed under this clause 7.14 or otherwise imposed by Law.
- (d) If Receiving Gas under the Gas specification as varied under clause 7.14(a) will (compared with the position under the Operating Specification):
- (i) materially increase Operator's costs;
- (ii) materially adversely affect the capacity of the DBNGP (expressed in units of energy) to transport Gas; or
- (iii) in the opinion of Operator, acting as a Reasonable And Prudent Person, adversely affect the rights of any shipper (other than Shipper).
- then Operator may refuse to Receive Gas under the varied gas specification until the Parties have agreed to reasonable compensation to be paid by Shipper to Operator.

8. Nominations

8.1 Shipper may delegate to a Producer

To the extent that this Contract prescribes certain things to be done by Shipper which relate to Gas being Received by Operator at an inlet point, Shipper may by agreement with a Producer, appoint the Producer to do those things, but nothing in any such agreement relieves Shipper of its obligations to Operator under this Contract.

T1 Service or to wholly or partly refuse to Receive Gas from, or Deliver Gas, to Shipper.

8.6 Shipper's initial Nomination

- (a) Shipper may, by notice to Operator no later than 14:00 hours on any Gas Day, nominate for the following Gas Day the quantity of Gas that Shipper requires to Deliver to Operator at each Nominated Inlet Point (including any System Use Gas required to be delivered by Shipper under clause 5.13), and the quantity of Gas that Shipper requires to Receive from Operator at each Nominated Outlet Point in the T1 Service (**Initial Nomination**).
- (b) In addition to the information required by clause 8.6(a), Shipper's Initial Nomination must:
 - (i) set out the sum of those Nominations:
 - (A) across all inlet points; and
 - (B) across all outlet points; and
 - (ii) for each Nominated Inlet Point, identify the Producer or Producers which is or are to supply Gas to Shipper for Delivery to Operator and (if there is more than one) the quantity to be provided by each.

8.7 Allocation of Daily Nominations

- (a) Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to Shipper allocate to Shipper for the Nominated Day, a Daily Nomination for T1 Service and Capacity determined in accordance with this clause for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, for each Nominated Inlet Point, the Daily Nomination for T1 Service:
 - (i) may not exceed Shipper's Initial Nomination for T1 Service at the inlet point;
 - (ii) subject to clauses 8.7(b)(i) and 8.7(c), may not be less than Shipper's Contracted Capacity at the inlet point across all of Shipper's T1 Contracts; and
 - (iii) subject to clause 8.7(c) and clause 8.7(g), may exceed Shipper's Contracted Capacity for that inlet point.
- (c) Subject to clause 8.7(h), in no case may the sum (across all inlet points) of Shipper's Daily Nominations for T1 Service exceed Shipper's Total Contracted Capacity across all inlet points.
- (d) Subject to the terms of any Multi-shipper Agreement, for each Nominated Outlet Point, the aggregate of the Daily Nominations for T1 Service:
 - (i) may not exceed Shipper's Initial Nomination for T1 Service at the outlet point;
 - (ii) subject to clauses 8.7(d)(i) and 8.7(e), may not be less than Shipper's Contracted Capacity at the outlet point; and

8.2 Requests for advance information

(a) To assist in its planning and forecasting, Operator may from time to time, acting as a Reasonable And Prudent Person, request Shipper to provide it with advance estimates (covering such periods and in such detail as Operator may determine) in good faith of:

- (i) Shipper's likely Nominations; and
 - (ii) Shipper's likely requirement for additional T1 Capacity under clause 16 of this Contract,
- which information will be governed by the provisions of clause 28.
- (b) Shipper must in good faith make reasonable endeavours to comply with any request made by Operator under clause 8.2(a).
 - (c) Except as provided in clause 8.2(d) below, Shipper may, without penalty, make (or not make) Nominations or requests under clause 16 which differ materially from any estimates provided by it under clause 8.2(a).
 - (d) Nothing in clause 8.2(c) limits any action against Shipper if Shipper fraudulently or negligently provides to Operator under clause 8.2(a) materially false information.

8.3 Shipper's Daily Nominations do not affect Contracted Capacities

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

8.4 Nominations and Renominations must be in good faith

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

8.5 Operator to make available bulletins of available Capacity

- (a) Operator must, on regular occasions during each Gas Day (sufficient to assist Shipper in making its Initial Nomination, and any Renomination), make available on the CRS a bulletin specifying:
 - (i) for at least that Gas Day and the following Gas Day, the amount of Capacity available or anticipated to be available for Nomination or Renomination; and
 - (ii) subject to obtaining the relevant shipper's consent, details of any Tradeable Capacity to be made available under clause 27.4.
- (b) No obligation to allocate Capacity under clauses 8.7 and 8.13 or otherwise arises merely by reason of Operator specifying under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits Operator's rights, under this Contract or at Law, to wholly or partly Curtail Shipper's

Contracted Capacity at that inlet point or for the Capacity Service at that outlet point (as the case may be).

8.9 Nominations priority

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

8.10 Shipper may give Renomination notice

Shipper may once in respect of each Renomination time (as set out in clause 8.11) for a Gas Day request a variation of its Daily Nomination for the Gas Day (**Renomination**) for one or more inlet points or for one or more outlet points, by giving notice to Operator specifying the amount and duration (which may be any duration up to and including the balance of the Gas Day in respect of which the Renomination is made) of the requested variation.

8.11 Times for Renomination and allocation of revised Daily Nominations

- (a) Subject to clause 8.11(c), the Renomination times for each Gas Day are 07:00 hours (at which time Renominations may be given for the Gas Day just about to begin, not the Gas Day just about to end), and 12:00 hours and 20:00 hours in the Gas Day.
- (b) Subject to clause 8.11(c), if under clause 8.13 Operator is required to allocate a revised Daily Nomination in response to Shipper's Renomination received prior to a Renomination time, Operator must use reasonable endeavours to make that allocation within 1 hour after the Renomination time.
- (c) Operator may, acting as a Reasonable And Prudent Person, from time to time by notice to Shipper (which same notice must be given to all shippers) supplement or vary any one or more of the times prescribed in clause 8.11(a) or the period prescribed in clause 8.11(b).
- (d) A notice under clause 8.11(c) may be expressed to continue indefinitely or for a specified time, and may revoke, substitute or amend a previous notice.

8.12 Renominations reducing Daily Nomination

If a Renomination seeks to reduce Shipper's Daily Nomination, Operator must by notice to Shipper allocate a revised Daily Nomination in accordance with the Renomination.

8.13 Renominations increasing Daily Nomination

- (a) Operator may only refuse to increase Shipper's Daily Nomination in response to a Renomination:
 - (i) if accommodating that increase is not Technically Practicable; or

- (iii) subject to clauses 8.7(e) and 8.7(g), may exceed Shipper's Contracted Capacity for that outlet point.

(e) In no case may the sum (across all outlet points) of Shipper's Daily Nominations for T1 Service exceed Shipper's Total Contracted Capacity across all outlet points.

(f) Subject to the terms of any Multi-shipper Agreement, unless the Parties otherwise agree, in allocating a Daily Nomination in respect of Aggregated T1 Services at an inlet point or at an outlet point, Operator must, to the extent that:

- (i) it is Operationally Feasible (including it does not, when aggregated with other shippers' Nominations, exceed the Total Physical Capacity of the inlet point or outlet point (as the case may be) at the relevant time); and
- (ii) it is consistent with clauses 8.7(c), 8.7(e) and 8.7(g).

endeavour as a Reasonable And Prudent Person to ensure that the Daily Nominations for T1 Service either is equal to Shipper's Initial Nomination (calculated across all of Shipper's T1 Contracts) at that inlet point or that outlet point (as the case may be), or (if that is not possible) is less than that Initial Nomination (calculated across all of Shipper's T1 Contracts) by the smallest amount possible.

(g) In all cases subject to it being Operationally Feasible and unless this Contract provides otherwise (for example without limitation in clauses 8.7(b)(i) and (ii) and 8.7(d)(i) and (ii)), if for any Gas Day more than one shipper has made Nominations under different Types of Capacity Service or under the same Type of Capacity Service for delivery or receipt of Gas at an inlet point or an outlet point and Operator determines that it is not Operationally Feasible to meet all those Nominations, Operator must Curtail the shippers' Contracted Capacities and the available Capacity (if any, as determined by Operator, acting as a Reasonable And Prudent Person) must be allocated to those Nominations for that inlet point or outlet point (as the case may be) in accordance with the provisions of clause 17.9.

(h) The Daily Nomination for T1 Service at a Nominated Inlet Point may exceed Shipper's Contracted Capacity in that Capacity Service for that Nominated Inlet Point by a quantity of Gas which is Delivered for the purpose, or which would have the effect of bringing Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless Operator considers as a Reasonable And Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.

(i) If Operator allocates a Daily Nomination for T1 Service to Shipper which is less than Shipper's Initial Nomination for T1 Service at an Inlet Point or an Outlet Point, Operator is to be taken to have issued a Curtailment Notice at the time it makes the allocation of the Daily Nomination in respect of the difference between the Shipper's Contracted T1 Capacity and the Shipper's Daily Nomination for T1 Service for that Gas Day.

8.8 Default provision for Daily Nomination

If Shipper does not make an Initial Nomination complying with clause 8.6 or an Advance Nomination complying with clause 8.17 for a Gas Day for Capacity at an inlet point or at an outlet point, then Shipper's Daily Nomination for that Gas Day for the inlet point or for the Capacity Service at the outlet point (as the case may be) shall be taken to be Shipper's

- (ii) to the extent that, after applying clauses 8.13(d) and 8.13(e) there is insufficient unallocated Capacity to satisfy the Renomination for that inlet point or outlet point.
- (b) Subject to clause 8.13(a), if Shipper's Renomination seeks to increase its Daily Nomination, Operator must within the period prescribed in clause 8.11(b) (as varied, if applicable, by notice under clause 8.11(c)) by notice to Shipper allocate revised Daily Nominations.
- (c) A notice under clause 8.13(b) must specify the period in respect of which the revised Daily Nominations are to apply.
- (d) Clause 8.7 applies (with appropriate modifications) to Operator's allocation under clause 8.13(b) of revised Daily Nominations.
- (e) Without otherwise limiting Operator's discretion in relation to Curtailment, Operator must to the extent practicable and Operationally Feasible in the circumstances, Curtail any Capacity in a Type of Capacity Service (the first Type of Capacity Service), whenever it is necessary to do so in order to satisfy any shipper's Renomination for Reserved Capacity in relation to a Type of Capacity Service which has priority over the first Type of Capacity Service according to the order of priority set out in the column of the Curtailment Plan headed "Point Specific Curtailment".

8.14 Default provision for Renomination process

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by Operator not providing information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then Shipper's Daily Nominations are to remain unchanged (but if Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.11(b) it must do so).

8.15 Aggregated T1 Service

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

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

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

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

8.17 Shipper's Advance Nomination

- (a) Shipper may nominate in advance for each Gas Day in any week or any month by giving notice complying with the requirements of clause 8.6 (with appropriate changes) for each of those Gas Days (**Advance Nomination**).
- (b) The Advance Nomination must be given:
 - (i) no later than 17:00 hours on the Wednesday in the week before the nominated week (in the case of a Nomination a week in advance); or
 - (ii) at least 6 Working Days before the start of the nominated month (in the case of a Nomination a month in advance).
- (c) Operator must in response to an Advance Nomination allocate a Daily Nomination for each nominated day determined in accordance with the provisions of clauses 8.7, 8.9, 8.15 and 8.16:
 - (i) no later than Friday in the week before the nominated week (in the case of a Nomination a week in advance); or
 - (ii) within 5 Working days of receipt of the Advance Nomination (in the case of a Nomination a month in advance).
- (d) Shipper may submit an Initial Nomination for a Gas Day in respect of which it has made an Advance Nomination and been allocated a Daily Nomination, in which case:
 - (i) the Initial Nomination is not a Renomination; and
 - (ii) Shipper's Advance Nomination for the Gas Day is of no effect.

8.18 Use of Full Haul capacity upstream of CS9

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

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

9. Imbalances

9.1 Operator to maintain balance

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

9.2 Shipper to maintain balance

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

9.3 Shipper's Accumulated Imbalance

At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus Shipper's Daily Imbalance on the Gas Day. For the avoidance of doubt, the Accumulated Imbalance as at the Contract Commencement Date is the Carry Over Imbalance Amount.

9.4 Notice of Shipper's imbalances

Before 11:00 hours on each Gas Day, Operator must notify Shipper of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day (**Accumulated Imbalance Notice**).

9.5 Accumulated Imbalance Limit

- (a) Shipper's Accumulated Imbalance Limit for a Gas Day is 8% of the sum of Shipper's quantities referred to as Contracted Capacity across all of Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions) for that Gas Day.
- (b) If at any time the absolute value of Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished and Operator, acting as a Reasonable And Prudent Person, considers that a continuation of that condition:
- (i) will have a material adverse impact on the integrity or operation of the DBNGP; or
 - (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for T1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,
- then, Operator (acting as a Reasonable And Prudent Person) may, subject to clause 9.5(f):
- (iii) issue a notice requiring Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or (ii)) and Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure compliance, with the notice, so as to bring Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and/or
 - (iv) refuse to Receive Gas from Shipper at an inlet point or refuse to Deliver Gas to Shipper at an outlet point so as to bring the absolute value of Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.
- (c) If Operator issues a notice under this clause 9.5 and Shipper's Accumulated Imbalance is:
- (i) positive, Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or

- (ii) negative, Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit.
- (d) If, after Operator issues a notice under clause 9.5(b)(iii):
- (i) subject to clause 9.5(d)(ii), the absolute value of Shipper's Accumulated Imbalance is reducing each Gas Day, then Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and
 - (ii) where the absolute value of Shipper's Accumulated Imbalance exceeded Shipper's Outer Accumulated Imbalance Limit and the absolute value of Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii).

(e) If Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of Shipper's Accumulated Imbalance exceeds Shipper's Accumulated Imbalance Limit until the absolute value of Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as Operator sees fit).

(f) The Operator may not:

- (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
- (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).

9.6 Excess Imbalance Charge

- (a) Shipper's Outer Accumulated Imbalance Limit for a Gas Day is 20% of the sum of Shipper's quantities referred to as Contracted Capacity across all of Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions) for that Gas Day.
- (b) If the absolute value of Shipper's Accumulated Imbalance at the end of a Gas Day exceeds the Outer Accumulated Imbalance Limit for the Gas Day just finished, then subject to clause 9.6(c), Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of Shipper's Outer Accumulated Imbalance Limit in accordance with clause 20.

- (a) an action for breach of clause 9.5(b)(iii), limited to the recovery of Direct Damages in accordance with clause 23 and Shipper's liability to Operator for Direct Damages suffered by Operator which is caused by or arises out of Shipper's failure to comply with clause 9.5(b)(iii) shall be reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by Shipper in respect of that failure;
 - (b) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
 - (c) to refuse to Receive Gas from Shipper at an inlet point or refuse to Deliver Gas to Shipper at an outlet point so as to bring Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
 - (d) any combination of clauses 9.8(a), 9.8(b) and 9.8(c).
- The Parties agree that, because the rights and remedies set out in this clause 9.8 apply across all of Shipper's Capacity Services, when in a particular circumstance, Operator exercises a right or pursues a remedy under this clause 9.8, Operator shall not exercise the equivalent right, or pursue the equivalent remedy, under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

9.9 Trading in imbalances

- (a) Shipper may exchange all or part of its Accumulated Imbalances with another shipper, on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts Shipper has with Operator for Capacity Services, in accordance with this clause 9.9.
- (b) Shipper must give notice in writing of any such exchange in respect of a Gas Day to Operator by 12:00 hours on the next Working Day following receipt from Operator of Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day. If Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.
- (c) On receipt of a notice under clause 9.9(b), Operator must calculate adjustments in Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.

9.10 Cashing out imbalances at end of Contract

- (a) The balancing process prescribed in this clause 9.10 is only to be undertaken at the Capacity End Date.
- (b) If at the Capacity End Date, Shipper's Accumulated Imbalance is a positive number, Operator is to pay a fair market price to Shipper for that Gas.
- (c) If at the Capacity End Date, Shipper's Accumulated Imbalance is a negative number, Shipper is to pay a fair market price to Operator for that Gas.

9.11 Charges do not affect Daily Delivery

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

- (c) No Excess Imbalance Charge under clause 9.5(e) or 9.6(b) is to be payable to the extent that the imbalance arose because:
 - (i) Shipper's Capacity Service was Curtailed under clause 17;
 - (ii) Operator, for any reason not caused by Shipper, does not Receive from Shipper at any Inlet Point a quantity of Gas equal to Shipper's Daily Nomination for that Inlet Point;
 - (iii) Operator fails to provide Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
 - (iv) Shipper is unable, for reasons beyond Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.6(c)(i), 9.6(c)(ii) or 9.6(c)(iii),
 but in each case Shipper's Daily Imbalance and Accumulated Imbalance are still to be calculated for the Gas Day.

9.7 Balancing in particular circumstances

- (a) If the Parties anticipate a failure of Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit or the Outer Imbalance Limit (or both), in order to enable Shipper to deposit additional Gas in the DBNGP in advance of that failure.
- (b) The Parties may, during a period in which Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow Shipper to exceed the Accumulated Imbalance Limit, whether or not Shipper has deposited additional Gas under clause 9.7(a) in anticipation of the failure of Shipper's Gas supply.
- (c) Subject to clause 9.7(d), an agreement under clause 9.7(a) or 9.7(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate.
- (d) Operator may require an agreement under clause 9.7(b) to contain any reasonable provisions it sees fit, including any or all of the following provisions:
 - (i) that Operator may from time to time during the duration of that agreement by notice to Shipper specify a limit for Shipper's Accumulated Imbalance, beyond which limit Operator may refuse to Receive Gas from Shipper at an inlet point or Deliver Gas to Shipper at an outlet point, or both; and
 - (ii) that upon resumption of Shipper's Gas supply, Operator may require Shipper to restore the absolute value of its Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.
- (e) Nothing in this clause compels a Party to enter into an agreement under clause 9.7(a) or 9.7(b).

9.8 Remedies for breach of imbalance limits

Except as provided in clause 9.10 below, Operator may not exercise any rights or remedies against Shipper for exceeding the Accumulated Imbalance Limit, other than:

10. Peaking

10.1 Hourly Peaking Limits

The Hourly Peaking Limits are:

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

10.2 Shipper to stay within Hourly Peaking Limit

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

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

10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time Shipper exceeds an Hourly Peaking Limit and Operator, acting as a Reasonable And Prudent Person, considers that a continuation of that condition:
 - (i) will have a material adverse impact on the integrity or operation of the DBNGP; or
 - (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for T1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,Operator (acting as a Reasonable And Prudent Person) may, subject to clause 10.6 and to clause 10.3(h):
 - (iii) issue a notice requiring Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clause 10.3(a)(i) or (ii)) and Shipper must use best endeavours in accordance with clause 10.3(c) to immediately comply, or procure compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and/or
 - (iv) refuse to Deliver Gas to Shipper at any outlet point within the relevant pipeline zone.

- (b) If Operator issues a notice to Shipper under this clause and the Hourly Peaking Limit being exceeded relates to outlet points:
 - (i) on the DBNGP generally, Operator must issue a similar notice to all shippers;
 - (ii) in Pipeline Zone 10, Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10; or
 - (iii) in Pipeline Zone 10B, Operator must issue a similar notice to all shippers with a contractual entitlement to capacity in Pipeline Zone 10B,which are exceeding their Hourly Peaking Limit or the equivalent under their relevant contracts.

- (c) If, after Operator issues a notice under clause 10.3(a)(iii):
 - (i) subject to clause 10.3(b), Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and
 - (ii) Shipper's Hourly Quantity calculated across the relevant outlet points is not within the Hourly Peaking Limit by the end of the following Gas Hour, Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).

- (d) If Shipper does not comply and is not deemed pursuant to clause 10.3(c) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:
 - (i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause 10.4(e)); or
 - (ii) in excess of the Hourly Peaking Limit up to the Outer Hourly Peaking Limit (if a notice has been issued pursuant to clause 10.4(e)).

- (e) in accordance with clause 20.

- (e) If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which Shipper is no longer exceeding any of the Hourly Peaking Limits (after which Shipper shall not pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii)).

- (f) If Shipper exceeds more than one Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.3(d) is calculated using only the amount of the largest excess.

- (g) No Hourly Peaking Charge whether under clause 10.3(d) or 10.4(b) is payable in respect to any Gas Hour in respect of which Operator:

- (i) fails to provide Shipper with the information required in accordance with clause 15.5(d)(i); or

- (ii) provides Shipper with information under clause 15.5(d)(i) which is materially inaccurate.
- (h) Operator may not:
 - (i) issue a notice pursuant to clause 10.3(a)(iii) or refuse to Deliver Gas pursuant to clause 10.3(a)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with Shipper to ameliorate the impact of the Shipper exceeding its Hourly Peaking Limit; or
 - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Deliver Gas pursuant to clause 10.3(a)(iv) without having issued a notice in accordance with clause 10.3(a)(iii).

10.4 Outer Hourly Peaking Limit

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

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

- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.4(e) that Shipper exceeds an Outer Hourly Peaking Limit, Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.
- (c) If Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.4(b) is calculated using only the amount of the largest excess.
- (d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.4(b) in respect of a Gas Hour, then Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.4(b).
- (e) If at any time Shipper's take of Gas is such that Operator, acting as a Reasonable And Prudent Person, believes that Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, Operator may issue a notice to Shipper of that fact. A notice given under this clause 10.4(e) is only valid for the purposes of clause 10.4(b) and clause 10.3(d)(ii) until Shipper has ceased to exceed the Hourly Peaking Limit.

10.5 Charges do not affect Daily Delivery

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

10.6 Remedies for breach of peaking limits

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

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

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

10.7 Permissible Peaking Excursion

Operator must not refuse to Deliver Gas under clause 10.3(a)(iv) if Shipper is not exceeding its Outer Hourly Peaking Limit and:

- (a) is a Distribution Networks Shipper and the cause of Shipper exceeding its Hourly Peaking Limit is the quantity of Gas Received by Shipper at a Notional Gate Point for a Distribution Network; or
- (b) another shipper has recently had or has an absolute peak significantly greater than its Outer Hourly Peaking Limit or a Distribution Networks Shipper has exceeded its Hourly Peaking Limit in the manner permitted by clause 10.7(a), and this causes or contributes to the need for Operator to propose to refuse to Deliver Gas to Shipper at outlet points.

11. Overtun

11.1 Overtun Charge

- (a) In respect of each GJ of Overtun Gas Received by Shipper on a Gas Day, Shipper must pay an Overtun Charge calculated by applying the Overtun Rate to the total Overtun Gas Received by Shipper on that Gas Day in accordance with clause 20.
- (b) The Overtun Rate is the greater of:
 - (i) 115% of the Base T1 Tariff; and
 - (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid, (**Overtun Rate**).

- (c) All Overrun Gas Delivered on a Gas Day is to be included in the calculation of Shipper's Hourly Quantities, Total Inlet Quantity and Total Outlet Quantity for that Gas Day.

11.2 Unavailability Notice

- (a) Operator may at any time, acting as a Reasonable And Prudent Person, and (subject to clause 11.2(b)) without advance notice to Shipper, give notice (an **Unavailability Notice**) to Shipper that Overrun Gas is unavailable to Shipper, or is only available to Shipper to a limited extent, for one or more Gas Days, but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, Firm Capacity, any Other Reserved Service or allocated Spot Capacity. Operator shall at the same time give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, impacts upon the ability of Operator to Deliver Gas to meet its obligations to shippers.
- (b) Operator must use reasonable endeavours to give Shipper advance notice (which may be by written notice or otherwise) which is reasonable in the circumstances of any unavailability or limited availability of Overrun Gas.
- (c) Any Curtailment Notice issued under clause 17 for any period is to be taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:
- (i) is a Point-Specific Curtailment;
 - (ii) does not affect Gas Transmission Capacity generally; and
 - (iii) does not affect the inlet point or outlet point at which the Overrun Gas is being received by Shipper.

11.3 Content of an Unavailability Notice

An Unavailability Notice:

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

11.4 Compliance with Unavailability Notice

Shipper must use its best endeavours to immediately, and must as soon as practicable and in any event no later than one hour after receipt of the notice, comply, or procure compliance, with an Unavailability Notice, by ensuring that the total of its Overrun Gas for each Gas Day to which the Unavailability Notice applies does not exceed the quantity of Overrun Gas (if any) indicated by the Unavailability Notice to be available to Shipper.

11.5 Operator may refuse to Deliver Overrun Gas

In addition to any other rights Operator has to refuse to Deliver Gas under clause 5.7, Operator may refuse to Deliver Overrun Gas to Shipper at an outlet point if Shipper does not comply with an Unavailability Notice.

11.6 Unavailable Overrun Charge

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

11.7 Saving and damages

- (a) Nothing in this clause 11 limits, affects or prejudices Operator's right to refuse to Receive Gas under clause 5.3 or to refuse to Deliver Gas under clause 5.7.
- (b) Shipper's liability to Operator for any Direct Damage suffered by Operator which is caused by or arises out of Shipper's failure to comply with an Unavailability Notice shall be reduced by any Unavailable Overrun Charge paid by Shipper under clause 11.6 in respect of that failure.
- (c) Shipper is not liable to pay the Overrun Charge under clause 11.1 and the Unavailable Overrun Charge under clause 11.6 in respect of the same quantity of Overrun Gas.
- (d) Shipper is not liable to pay the Unavailable Overrun Charge with respect to any Gas Day in which Operator:
 - (i) fails to provide Shipper with the information required in accordance with clause 15.5(d)(i); or
 - (ii) provides Shipper with information under clause 15.5(d)(i) which is materially inaccurate,but shall be liable to pay the Overrun Charge in respect to the relevant quantity of Overrun Gas as if an Unavailability Notice had not been issued.
- (e) The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances Operator exercises a right or issues a remedy under this clause 11 Operator shall not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.

12. Additional Rights and Obligations of Operator

12.1 Commingling of Gas

Operator will have the right to commingle the Gas supplied by Shipper at the inlet point with other Gas in the DBNGP during transportation and is entitled to Deliver different molecules to Shipper at the outlet points.

12.2 Processing

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

12.3 Operation of Pipeline System

(a) in operating, maintaining or expanding the DBNGP, Operator must:

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

12.4 Delivery of Gas

Operator may (but only if Operator chooses to do so) satisfy its obligation to Deliver Gas to Shipper by using a Gas pipeline other than the DBNGP, provided:

- (a) that Operator meets its obligations under this Contract; and
- (b) there is no extra cost or risk to Shipper in doing so.

13. Control, Possession and Title to Gas

13.1 Warranty of Title

- (a) Shipper warrants that at the time it Delivers Gas to Operator at an inlet point, Shipper has good title to the Gas free and clear of all liens, encumbrances and claims of any nature inconsistent with Operator's operation of the DBNGP.
- (b) Subject to clause 13.1(a) being true and accurate at all times, Operator warrants that at the time it supplies Gas to Shipper at an outlet point, Operator has good title to the Gas free and clear of all liens, encumbrances and claims of any nature whatsoever.

13.2 Control, Possession, Responsibility and Title of Shipper

- Shipper warrants to Operator at each relevant time that Shipper:
- (a) is in Possession of the Gas immediately prior to its supply at an inlet point and immediately after its Delivery to Shipper at an outlet point; and
 - (b) has legal responsibility and liability for Gas while it is within the Possession of Shipper.

13.3 Title, Custody, Control and Responsibility of Operator

- (a) Operator will:
 - (i) take title to and have Possession of Gas from the receipt of Gas from Shipper at an inlet point until Delivery of Gas to Shipper at an outlet point; and
 - (ii) have legal responsibility and liability for Gas while it is within Operator's Possession.

- (b) (i) Operator shall deliver good title to Gas Delivered to Shipper at an outlet point; and
 - (ii) Shipper will take title to Gas immediately after its Delivery to Shipper at an outlet point,
- free and clear of all liens, encumbrances and claims of any nature whatsoever.

13.4 Entitlements to Receive Gas

- (a) Subject to clause 13.4(c), upon the transfer from Shipper to Operator of title to and possession of a quantity (in terajoules) of Gas Delivered at an inlet point, Shipper becomes entitled to:
 - (i) Receive Gas from Operator at an outlet point other than a Notional Gate Point; or
 - (ii) subject to clause 13.5(b), Receive Gas from Operator at an outlet point that is a Notional Gate Point.
- (b) The quantity of Gas that Shipper becomes entitled to Receive in aggregate under clause 13.4(a) is a quantity equivalent (in terajoules) to the quantity of Gas delivered at the inlet point.
- (c) Clauses 13.4(a) and 13.4(b) do not affect a provision of this Contract entitling Operator to wholly or partially Curtail or interrupt Shipper's use of Capacity or to wholly or partially refuse to Deliver Gas to Shipper and do not affect the obligations of Shipper to Deliver Gas and Receive Gas in such a manner as complies with this Contract including so as to ensure Shipper remains within the limits prescribed by this Contract in clauses 9 and 10.

13.5 Title at outlet points

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

14. Relocation

14.1 Request for relocation of Contracted Capacity

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

14.2 Assessment of Requested Relocation

- (a) Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable And Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to, among other things, the order, relative to its receipt of equivalent notices received from other shippers, in which Shipper's Requested Relocation was received, (but for the avoidance of doubt the Parties intend this priority to apply only to the extent that requested relocations compete or conflict with each other for utilization of capacity).
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity will not be an Authorised Relocation if:
- (i) the Requested Relocation would cause the sum (after the relocation) of all shippers':
 - (A) quantities referred to as Contracted Capacity for that inlet point across all of shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; or
 - (B) quantities referred to as Contracted Capacity for that outlet point across all shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the relevant lateral; or
 - (ii) in the opinion of Operator, as a Reasonable And Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible.
- (c) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Inlet Point will be an Authorised Relocation under the Contract if:

- (i) the Requested Relocation would result in the New Inlet Point being downstream of the Existing Inlet Point;
- (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that inlet point across all of shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; and

- (iii) Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.7(a)(iii), in relation to that New Inlet Point.

(d) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity to a New Outlet Point will be an Authorised Relocation under this Contract if:

- (i) the Requested Relocation would result in the New Outlet Point being upstream, or within a proximity of 2 kilometres, whether upstream or downstream of the Existing Outlet Point;
- (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that outlet point across all shippers' Capacity Services (including T1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the relevant lateral; and
- (iii) Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.7(a)(iii), in relation to that outlet point.

14.3 Operator to notify Shipper

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

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

14.4 Requested Relocation is an Authorised Relocation

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

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

14.5 Requested Relocation is not an Authorised Relocation

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

(b) ensure that at all times all data required by Operator from Inlet Metering Equipment is electronically accessible by Operator.

15.2 Operator's responsibility

Operator must:

- (a) at Shipper's expense supply, install, Operate and Maintain Outlet Metering Equipment at each Outlet Station in good working order and condition and in accordance with the standard of a Reasonable And Prudent Person; and
- (b) calculate and record:
 - (i) the quantity of Gas Delivered to Operator by Shipper; and
 - (ii) the quantity of Gas Delivered to Shipper by Operator.

15.3 Metering uncertainty

(a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:

(i) measurement to within a maximum uncertainty of:

- (A) subject to clause 15.3(b), 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 T/J/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 T/J/d; and
- (ii) measurement to within a maximum uncertainty of plus or minus one quarter of one percent of Higher Heating Value at a minimum of the 95% confidence level.

(b) Alternative Metering Equipment referred to in clause 15.4(b) need not comply with clause 15.3(a)(i)(A) if:

- (i) it is designed, adjusted and Operated so as to achieve measurement to within a maximum uncertainty of plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level; and
 - (ii) it is not used or likely to be used for more than 72 hours in any Gas Year.
- (c) Subject to clauses 15.3(a) and 15.3(b), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.
- (d) In this clause 15, **95% confidence level** has the meaning given to that expression by ISO 5168.

15.4 Primary Metering Equipment

(a) Primary Metering Equipment must:

(i) continuously compute and record:

- (A) (in the case of Inlet Metering Equipment) the quantity and quality of Gas Delivered by Shipper to Operator under this Contract; and

14.6 Relocated Contracted Capacity to be on same terms and conditions

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

14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract are to be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional or actual reversal of flow of Gas transported under this Contract for Shipper from Forward-Haul to Back-Haul.
- (b) If a relocation of Capacity under this clause results in Gas being transported to Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), Shipper must pay the additional tariff required by Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges Operator to accept a Requested Relocation of Capacity to an inlet point or outlet point which is not located on the DBNGP.
- (c) If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated is to:
 - (i) remain on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - (ii) be treated under this Contract as though it was Full Haul Capacity.

14.8 Pressures at New Inlet Point and New Outlet Point

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

14.9 This Contract amended to reflect relocation

If the Parties reach agreement under clause 14.4 or 14.5, the Requested Relocation and the terms and conditions so agreed are to be given effect to by an amendment of Schedule 1 of this Contract in accordance with clause 38.

15. Metering

15.1 Shipper's responsibility

Shipper must, or, must procure another party to:

- (a) supply, install, Operate and Maintain Inlet Metering Equipment at each Inlet Station in good working order and condition and in accordance with the standard of a Reasonable And Prudent Person; and

- (B) (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by Operator to Shipper under this Contract;
- (ii) be of a standard of manufacture acceptable to Operator acting as a Reasonable And Prudent Person;
- (iii) comply with AS 2885 and any Australian or international standards required from time to time by Operator;
- (iv) subject to clauses 15.4(b) and 15.4(c), encompass newest proven technology;
- (v) be able in all streams to withstand Gas flows of up to 120% of the design flow;
- (vi) provide data signals in the form of galvanically isolated 4-20 milliamp current loops or potential free contacts, as appropriate, or in such other form as the Parties as Reasonable And Prudent Persons may agree; and
- (vii) include facilities to enable electronic data collection by Operator's Electronic Data Collection System.
- (b) Primary Metering Equipment with a design maximum flow rate of 5 T.J/d or more must include:
- (i) alternative Metering Equipment capable of measuring Gas quantity and (for Inlet Metering Equipment) Gas quality;
- (ii) a means for detecting a fault in Duty Equipment which is likely to materially affect the accuracy of any measurements produced by the Duty Equipment, and a means in the event of such a fault for automatically switching metering from the faulty Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i); and
- (iii) a means for manually switching metering from Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i).
- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
- (i) delivery temperature;
- (ii) delivery pressure;
- (iii) instantaneous energy flow rate in T.J/d;
- (iv) totalised energy flow in G.J;
- (v) Relative Density;
- (vi) Higher Heating Value in megajoules per cubic metre;
- (vii) nitrogen content in mole percent;
- (viii) carbon dioxide content in mole percent;
- (ix) LPG content in tonnes per TJ 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 clauses 15.4(c)(i) to 15.4(c)(xi).
- (d) Unless Operator and Shipper as Reasonable And Prudent Persons agree to the contrary, Outlet Metering Equipment may utilize Gas quality data from equipment which is not located at the Outlet Station in question (the **Remote Data**), in which case:
- (i) Operator may as a Reasonable And Prudent Person adopt procedures relating to that utilization, including relating to the use of preset Gas quality values when the Remote Data is unavailable for any reason; and
- (ii) clauses 15.9 and 15.12 apply, with appropriate modifications, to any procedures adopted under clause 15.4(d)(i).
- (e) Outlet Metering Equipment must provide digital signals Associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables Associated with Gas quantity:
- (i) delivery temperature;
- (ii) delivery pressure;
- (iii) instantaneous energy flow rate in terajoules per day derived using the Higher Heating Value;
- (iv) totalised energy flow in G.J;
- (v) all primary measures and Derived Variables used in any computation required by clauses 15.4(e)(i) to 15.4(e)(iv); and
- (vi) Higher Heating Value in megajoules per cubic metre.
- (f) The Inlet Metering Equipment, and any building erected for such equipment, is the property of Shipper (or its nominee), and the Outlet Metering Equipment, and any building erected for such equipment, is (subject to clause 15.4(g)) the property of Operator.
- (g) To the extent that:
- (i) Shipper has paid for the Outlet Metering Equipment and any building erected for such equipment;
- (ii) the Outlet Metering Equipment is detachable from the DBNGP without any damage to or effect on the DBNGP;
- (iii) no third party has any interest in or title to the Outlet Metering Equipment or the building; and
- (iv) no third party (including a shipper) is deriving any benefit from the Outlet Metering Equipment,
- the Outlet Metering Equipment and any building erected for such equipment is, at the end of this Contract, to become the property of Shipper, and may be detached and removed at the expense and risk of Shipper.

15.5 Provision of information to Shipper

- (a) Operator must, on request by and at the expense and risk of Shipper, make available to Shipper access to:

- (i) the galvanically isolated analogue or digital data signals in a form agreed by the Parties from any Outlet Metering Equipment at the Outlet Station Associated with the Outlet Point at which Shipper has Contracted Capacity;
- (ii) any other form of metering data requested by Shipper from time to time and consented to by Operator acting reasonably and taking into account, inter alia, the commercial sensitivity of the data, whether the data relates solely to Shipper, any requirements of confidentiality, any Law, and provided that such disclosure does not materially or directly detrimentally affect other shippers in the context of their dealings with Operator, but only insofar as that data relates solely to Shipper.
- (b) Operator takes no responsibility for the accuracy of any data obtained by Shipper under clause 15.5(d)(i) and is not liable for any Direct Damage or Indirect Damage suffered by Shipper as a result of any reliance placed by Shipper on any data obtained by Shipper under clause 15.5(d)(i).
- (c) In complying with clause 15.5(a), Operator must allow Shipper access to unverified delivery data signals insofar as is relevant to the information referred to in clause 15.5(a).
- (d) Operator must make available to Shipper via the CRS or a similar communications system:
- (i) within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by Shipper at each outlet point during that Gas Hour;
- (ii) within 3 hours after the end of each Gas Day, the unverified quantities of Gas in that Gas Day Delivered by Shipper to each inlet point and Delivered by Operator to Shipper at each outlet point excluding all Physical Gate Points, and
- (iii) within three Working Days after the end of the Gas Month, the verified quantities of Gas Delivered by Shipper at each inlet point and each outlet point for each Gas Day during the previous Gas Month.
- (e) Operator must make available to Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:
- (i) Received by Shipper in a Gas Day at each Physical Gate Point; and
- (ii) Received by Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.
- (f) Operator must make available to Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:
- (i) Received by Shipper in that Gas Day at each Physical Gate Point; and
- (ii) Received by Shipper aggregated across all outlet points including all Physical Gate Points.
- (g) Clauses 15.5(e) and (f) only apply for as long as Shipper is a Distribution Networks Shipper.

15.6 Changes to requirements for Metering Equipment

Operator may by notice in writing require Shipper to modify, or to allow and arrange for Operator to modify, existing Metering Equipment to comply with requirements or standards specified by Operator after that equipment was installed, and if the modification is necessary to comply with safety Laws of general application, or to comply with the standard required by an amendment to this Contract implementing such Laws, the modification is to be made at Shipper's expense, and otherwise the modification is to be made at Operator's expense.

15.7 Approval of Inlet Metering Equipment

- (a) Shipper must obtain, or must procure that a third party obtains:
- (i) prior to commencing the construction, installation or modification of any Inlet Metering Equipment or any component thereof; and also
- (ii) prior to the commissioning of any newly constructed, installed or modified Inlet Metering Equipment or any component thereof;
- Operator's written approval (which may not be unreasonably withheld) of, or of any amendment to, the design, location and construction of, and the proposed Operating and Maintenance procedures in relation to, that equipment or component.

(b) For the purposes of clause 15.7(a), Shipper must give to Operator not less than one month's notice of the anticipated date of commencement of the relevant construction, installation or modification.

(c) Operator must, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to Shipper of Operator's approval of or refusal to approve the Inlet Metering Equipment.

(d) Without limiting the generality of clause 37, Shipper must, for the purposes of clause 15.7(a), prior to and during the construction, installation, modification or commissioning of any Inlet Metering Equipment or any component thereof, afford all reasonable rights of entry and inspection (including all relevant data, drawings and components) to Operator and its agents at Operator's expense and risk.

15.8 Check Metering Equipment

(a) Shipper may at its own expense at an Outlet Station, and Operator may at its own expense at an Inlet Station, supply, install, Maintain and Operate Check Metering Equipment for the purpose of monitoring the accuracy of the Primary Metering Equipment.

(b) Check Metering Equipment (and any associated pressure or quantity control regulators or other equipment) must be located downstream of, and must not interfere with the operation of, the Primary Metering Equipment.

(c) Check Metering Equipment at the Outlet Station is Shipper's property, and Check Metering Equipment at the Inlet Station is Operator's property.

(d) Any Verification of the accuracy of Check Metering Equipment is to be at the expense of the Party owning that equipment.

- (e) Subject to clause 15.14(d)(i), data from Check Metering Equipment may not be used for billing purposes.
- 15.9 Preservation of accuracy**
- (a) All Primary Metering Equipment is to be installed in a manner which permits an accurate measurement of the quantity, and (for Inlet Metering Equipment) the quality, of Gas Delivered, and a ready Verification of the Accuracy of measurement.
- (b) Each Party must, in the installation, Maintenance and Operation of any Metering Equipment, exercise the care of a Reasonable And Prudent Person to prevent any inaccuracy in the measurement of the quantity of Gas Delivered under this Contract.

15.10 Presumptions of accuracy

- (a) Subject to clause 15.13, a measurement of the quantity or quality of Gas from any Primary Metering Equipment is 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 15.10(a) and 15.10(b) are to apply until the contrary is shown.
- (d) If either or both of the presumptions in clauses 15.10(a) and 15.10(b) is, or are, shown to be incorrect in respect of any period or periods, clauses 15.13 and 15.14 apply, with appropriate modifications, to measurements taken by the Metering Equipment during the period or periods.

15.11 Verification of Primary Metering Equipment

- (a) Operator:
- (i) must at least once each month (or other period agreed between the parties) during the duration of this Contract, and
- (ii) may at such greater frequency or on any occasion that either Party may request,
- verify the accuracy of any Primary Metering Equipment in accordance with a procedure described in clause 15.11(b).
- (b) The Verification procedure is to consist of:
- (i) a comparison between simultaneous independent measurements of Gas flows;
- (ii) the physical substitution of the Primary Metering Equipment to be Verified with similar Metering Equipment having a demonstrated accuracy within the Prescribed Limits of Uncertainty; or
- (iii) any Metering Equipment testing procedure complying with applicable Australian or International standards that the Parties agree in writing to use.

- (c) Each Party may have representatives present at the time of any Verification of the Accuracy of any Primary Metering Equipment (unless the number of persons present must be restricted for safety or logistical reasons, in which case the Parties are to agree on which representatives are to be present), and Operator must give Shipper sufficient notice of an intended Verification to enable Shipper's representative to be present.
- (d) The results of any Verification are binding on both Parties unless within 7 Working Days after a Verification either Party gives notice to the other Party that it disputes the conduct of the Verification, in which case:
- (i) the provisions of clause 24 apply, and
- (ii) any reference in this clause 15.11 to accuracy figures produced by a Verification means the accuracy figures finally determined for that Verification under a dispute resolution process adopted in accordance with clause 24.
- (e) Subject to clause 15.11(f), any Verification under clause 15.11(a) is to be made at Shipper's expense, provided that Operator is to bear the cost of attendance of Operator's representatives.
- (f) If a Verification requested by Operator under clause 15.11(a)(ii) reveals that the accuracy of the Primary Metering Equipment is within the Prescribed Limits of Uncertainty, the Verification is to be at Operator's expense and Operator must pay to Shipper Shipper's reasonable expenses of that Verification, in accordance with clause 20.

15.12 Adjustment or replacement of defective equipment

- (a) Subject to clause 15.12(b), if any component of Primary Metering Equipment is at any time found to be defective or otherwise out of service or operating outside the Prescribed Limits of Uncertainty, Operator must at an Outlet Station and Shipper must at an Inlet Station (in either case at Shipper's expense) forthwith either:
- (i) adjust it to read accurately within the Prescribed Limits of Uncertainty, or
- (ii) if such adjustment is not possible, replace it with a serviceable component.
- (b) If Primary Metering Equipment with a design maximum flow rate of less than 5 T/J/d is at any time found to be for any reason operating outside the Prescribed Limits of Uncertainty, Operator must at an Outlet Station and Shipper must at an Inlet Station (in either case at Shipper's expense) within 48 hours cause the Primary Metering Equipment to Operate within the Prescribed Limits of Uncertainty.

15.13 Inaccurate equipment

- (a) If any Verification reveals that any Primary Metering Equipment is operating outside the Prescribed Limits of Uncertainty but is measuring the quantity of Gas with an inaccuracy of less than or equal to:
- (i) plus or minus 1.5% for Metering Equipment with a design flow of 5 T/J/d or greater; and
- (ii) plus or minus 3% for Metering Equipment with a design flow of less than 5 T/J/d,

(ii) 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) The records and other information produced by, and any calculations and other information derived from, any Primary Metering Equipment or Check Metering Equipment remain the property of the Party owning that equipment.

(c) Each Party must use reasonable endeavours to, within 20 Working Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by its Primary Metering Equipment which solely relate to the other Party, for inspection and verification by that other Party and the other Party may make and return any copies of those records and other information and must return the originals within 10 Working Days of their receipt.

15.16 Unused outlet points

(a) if:

(i) Shipper has no Contracted Capacity at an outlet point; and

(ii) such point has not been used, or is, in Operator's opinion (acting reasonably and after consulting with Shipper), unlikely to be used, to Deliver Gas to Shipper for a period, in aggregate, greater than 12 continuous months; then,

Operator may, at the cost of Operator, decommission, remove and deal with or dispose of as it sees fit (including selling for its own benefit) any part or the whole of that outlet point and any Associated Outlet Station. Upon the commencement of such decommissioning, such outlet point shall, subject to clause 15.16(b), cease to be an outlet point for the purpose of this Contract.

(b) If requested by Shipper, Shipper and Operator will discuss in good faith deferring the decommissioning of the outlet point and any Associated Outlet Station on the basis that Shipper will pay ongoing maintenance charges incurred by Operator in maintaining the outlet point and any Associated Outlet Station.

(c) If subsequent to the commencement of such decommissioning, Shipper wishes to use such point as an outlet point under this Contract, Shipper must give at least 10 months written notice to Operator and must fully indemnify Operator for all costs, losses, liabilities and expenses incurred by Operator in respect of such recommissioning of the point as an outlet point for the purposes of this Contract and in respect of recommissioning any Associated Outlet Station.

16. Additional T1 Capacity and Capacity Expansion Options

16.1 No additional T1 Capacity except by this clause

Shipper hereby acknowledges and agrees that Shipper's rights to apply for and be granted additional Contracted Capacity under this Contract, is to be governed solely by this clause 16.

then the measurements from that Primary Metering Equipment shall be taken to be correct.

(b) If any Verification reveals that any Primary Metering Equipment is measuring the quantity of Gas with an inaccuracy of greater than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii) or agreed under clause 15.3(c), then (unless the Parties agree otherwise) all measurements affected or potentially affected by that inaccuracy are to be determined in accordance with clause 15.14.

(c) If the Parties have agreed under clause 15.3(c) to limits of uncertainty for a component or components of Primary Metering Equipment, then the Parties may agree to limits which are to apply in substitution for the limits prescribed in clauses 15.13(a)(i) or 15.13(a)(ii) for that Primary Metering Equipment, and clause 15.13(a) has effect accordingly.

15.14 Correction of measurements

(a) All measurements made prior to the Previous Verification shall be taken to be correct.

(b) The period between the Previous Verification and the Current Verification is to be divided into an earlier period and a later period, being:

(i) if the time at which the Primary Metering Equipment became Inaccurate can be established, respectively the period before and the period after that time; or

(ii) if the time at which the Primary Metering Equipment became Inaccurate cannot be established, 2 equal periods.

(c) The measurements produced by the Primary Metering Equipment for the earlier period shall be taken to be correct.

(d) The measurements for the later period are to be estimated:

(i) if Check Metering Equipment is installed and is established to the reasonable satisfaction of both Parties to have been operating during the later period within the Prescribed Limits of Uncertainty, by using the measurements recorded by that Check Metering Equipment;

(ii) if clause 15.14(d)(i) does not apply and if the percentage of error in the measurements is ascertainable to the reasonable satisfaction of both Parties by calibration test or mathematical calculation, by calculating a correction for that percentage error; or

(iii) in any other circumstance, by reference to measurements made under similar conditions when the Primary Metering Equipment was registering accurately.

(e) Following the correction of any measurements in accordance with this clause 15.14, the Parties will determine the relevant overpayment or underpayment that has resulted under this Contract from the measurement error and the appropriate Party shall make an adjusting payment to the other in accordance with clause 21.6.

15.15 Metering records

(a) Any record produced by Primary Metering Equipment:

(i) in paper form is to be retained for 2 years after the date of production; and

5 Working Days of Operator's request, reasonable financial (including historical financial) information to enable Operator to assess the ability of Shipper to perform all of its obligations arising from time to time under this Contract as amended by virtue of this clause 16.

- (c) If, after receiving a T1 Capacity Notice from Shipper, Operator (acting as a Reasonable And Prudent Person) requests it, Shipper must lodge an application and do all other things reasonably required under the queuing policy under the Access Regime in order to facilitate the operation of this clause 16.

16.4 General Conditions for grant of Requested T1 Capacity

if:

- (a) Operator has received a T1 Capacity Notice:
 - (i) containing all information required by clause 16.3(a); and
 - (ii) with a Requested T1 Capacity Start Date, Requested T1 Capacity End Date and Requested T1 Capacity which are consistent with all the requirements of clause 16.3(a)(iii), (iv) and (v), and
- (b) neither the notice nor any information provided in response to a request from Operator under clause 16.3(b) contains any information which materially affects the substance of the T1 Capacity Notice;
- (b) each new inlet or outlet point (if any) requested in the T1 Capacity Notice is located or to be located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act;
- (c) Operator has not received a T1 Capacity Notice from Shipper within the previous 12 months which resulted in an agreement between Operator and Shipper for Operator to provide Requested T1 Capacity under this clause 16 (unless Operator believes, in its absolute discretion, that it will suffer no detriment whatsoever by accommodating the additional T1 Service requested in the T1 Capacity Notice into its existing expansion timetable and plans);
- (d) if applicable, Shipper has complied with all requests by Operator under clause 16.3(b);
- (e) Shipper is not in default of an obligation under this Contract within the meaning of clause 22.1;
- (f) Operator is satisfied (acting reasonably) that granting the Requested T1 Capacity to Shipper will not contravene any Laws. For the purpose of this clause 16.4(f), non-compliance with the queuing policy under the Access Regime is not regarded as a contravention of Laws;
- (g) Shipper has, in favour of Operator, granted, or procured the grant of, such guarantees, undertakings, performance bonds, mortgages, charges, liens and other securities required by Operator (acting reasonably taking into account Shipper's financial position based on information provided) from Shipper or third parties (as the case may be) in relation to, and securing to Operator's reasonable satisfaction, Shipper's obligations for the Capacity Reservation Charges arising under this Contract but only to the extent that the Capacity Reservation Charge is increased by virtue of this clause 16;

16.2 Operator must issue Capacity Expansion Option

- (a) Where Operator is not able to provide Requested T1 Capacity from Capacity available to it by virtue of relinquishments (or otherwise from available Capacity), Operator must undertake an Expansion so as to be able to provide the Requested T1 Capacity to Shipper at the times and to the extent required in accordance with this clause 16.
- (b) Where clause 16.2(a) applies and Operator is required to make an Operator's Expansion Offer in accordance with clause 16.4:
 - (i) the Operator's Expansion Offer constitutes a Capacity Expansion Option for the purposes of the Access Arrangement in respect of the Requested T1 Capacity for the Requested Supply Period at the inlet points and outlet points specified in the T1 Capacity Notice;
 - (ii) the consideration for the Capacity Expansion Option is Shipper's undertaking to indemnify Operator for all Costs incurred by Operator in respect of the T1 Capacity Notice, and subject to the limit, contained in clause 16.6(b); and
 - (iii) the Capacity Expansion Option may be traded by Shipper on the same basis, and subject to the same terms and conditions, as apply to the Transfer of Contracted Capacity under clause 27.

16.3 Additional T1 Capacity Notice

- (a) If Shipper requires additional T1 Service under this Contract, Shipper shall provide Operator with a notice (**T1 Capacity Notice**) which must contain the following:
 - (i) each existing inlet point or outlet point on the DBNGP (if any) at which Shipper requires increased or new contracted capacity;
 - (ii) each new inlet point or outlet point on the DBNGP (if any) at which Shipper requires new contracted capacity;
 - (iii) the requested start date for the supply of the Requested T1 Capacity (**Requested T1 Capacity Start Date**), which must not be less than 30 months (or such shorter period agreed to by the Parties) from the date the T1 Capacity Notice is served on Operator;
 - (iv) the requested end time for supply of the Requested T1 Capacity (**Requested T1 Capacity End Date**), which must be at least 15 years from the Requested T1 Capacity Start Date (the period between the Requested T1 Capacity Start Date and the Requested T1 Capacity End Date being the **Requested Supply Period**);
 - (v) the amount of requested T1 Service (in T1/d) at each inlet point and each outlet point (being the amount of increased or new contracted capacity requested for each specified inlet point and outlet point) (**Requested T1 Capacity**). The Requested T1 Capacity for each specified inlet point or outlet point must be the same for each day of the Requested Supply Period unless the Parties agree otherwise; and
 - (vi) the most recent audited financial accounts of Shipper.
- (b) Operator (acting as a Reasonable And Prudent Person) may within 10 Working Days after receiving a T1 Capacity Notice request, and Shipper must provide within

- (h) subject to clause 16.4(o), the amount of Requested T1 Capacity for Shipper, and for any other shippers that have provided Operator with a T1 Capacity Notice at or around the same time as Shipper, is for at least 10 T1/d in total across all inlet points on the DBNGP and for at least 10 T1/d in total across all outlet points on the DBNGP each day for a continuous period of 15 years commencing no later than 12 months after the Requested T1 Capacity Start Date;
- (i) subject to clauses 16.9 and 16.10, and except to the extent that the Requested T1 Capacity can be provided under clause 16.4(o) or 16.7, all necessary funding (having regard to clause 16.4(p)) for the design, engineering, procurement, construction and commissioning of the work necessary to provide the Requested T1 Capacity on the DBNGP is available to Operator, the Pipeline Trustee or the DBNGP Trustee on reasonable commercial terms and conditions (which, without limiting any enquiry as to what else may be reasonable, will be taken to be reasonable if the terms and conditions are similar to the funding made available to Operator or Operator Entities for the funding of the first expansion of Gas Transmission Capacity of the DBNGP following the Contract Commencement Date, allowing for changes in financial market conditions since the Contract Commencement Date);
- (j) either:
- (i) the conditions of the funding referred to in clause 16.4(i) require that the proposed Expansion be technically feasible; or
- (ii) the Expansion is to be funded by Shipper under clause 16.9 or 16.10 and Operator requires that the proposed Expansion be technically feasible,
- then the proposed Expansion is to be regarded as technically feasible unless an independent consulting engineer experienced in the expansion of high pressure Gas pipelines appointed by the financiers providing all or part of the funding referred to in clause 16.4(i) or appointed by Operator (as the case may be), is of the opinion that the Expansion is not technically feasible;
- (k) the Expansion requires the DBNGP to be looped and Operator is able to construct and install a length of pipeline that is parallel to the DBNGP and not also parallel to a looping of the DBNGP which has been previously installed,
- then, Operator shall offer (**Operator's Expansion Offer**) within 2 months after the provision of the T1 Capacity Notice to Operator to amend this Contract to include the Requested T1 Capacity for the Requested Supply Period at the inlet points and outlet points specified in the T1 Capacity Notice, as Contracted Capacity. An offer to amend this Contract remains open for acceptance until a date 6 months from the provision of the T1 Capacity Notice (**Contract Amendment Acceptance Date**), and Shipper may accept such offer by delivering an unconditional final capacity requirement notice (**Final Capacity Requirement Notice**) to Operator. The amendment to this Contract takes effect on and from the date that Shipper's Final Capacity Requirement Notice is received by Operator (**Contract Amendment Commencement Date**) but if the offer is not accepted within the period of 6 months from the provision of the T1 Capacity Notice, the offer expires automatically and is incapable of acceptance.
- For the avoidance of doubt:
- (l) If the threshold referred to in clause 16.4(h) is only satisfied by adding the amount of Requested T1 Capacity for Shipper with the amount of Requested T1 Capacity

- for other shippers that have provided Operator with a T1 Capacity Notice at or around the same time as Shipper, then Operator must offer all other shippers the amount of T1 Capacity required by them as notified to Operator and Operator's offer pursuant to this clause 16.4 can only be accepted by Shipper if shippers with an aggregate Requested T1 Capacity sufficient to satisfy the threshold in clause 16.4(h) who have made a T1 Capacity Notice accept Operator's offer by way of a Final Capacity Requirement Notice in accordance with this clause 16.4 or if Shipper or some of the other shippers that have provided Operator with a relevant T1 Capacity Notice (or both) amend the amount of their Requested T1 Capacity in their respective T1 Capacity Notices so that the threshold in clause 16.4(h) remains satisfied. If the requirement contained in this clause 16.4(i) is not satisfied, the offer to Shipper shall lapse;
- (m) without limiting the provisions of clause 16.4(c), if an offer lapses under clause 16.4(i), a subsequent T1 Capacity Notice may relate to Requested T1 Capacity which was the subject of the offer which lapsed;
- (n) the requirement that Shipper lodge an access request, if required by Operator under clause 16.3(c), does not prejudice or affect the provisions of clause 16.4(f);
- (o) Operator may provide the Requested T1 Capacity from Capacity available to it by virtue of relinquishments, as well as by the expansion of Gas Transmission Capacity of the DBNGP and to the extent that Operator proposes to provide the Requested T1 Capacity from Capacity available to it by relinquishments the requirement that the Requested T1 Capacity be for at least 10 T1/d is to be disregarded;
- (p) for the purposes of clause 16.4(i), funding is to be considered not necessary to the extent that, in the view of the independent consulting engineer referred to in clause 16.4(j), such funding relates to costs of the Expansion which exceed those which would be permitted under section 8.16 of the Gas Access Code in Schedule 2 of the Access Regime;
- (q) Shipper's obligation to pay the Capacity Reservation Charge in respect of the Requested T1 Capacity commences from the time Operator provides the Requested T1 Capacity; and
- (r) Operator must notify Shipper as soon as reasonably practicable after Operator becomes aware that one of the conditions in this clause 16.4 is not satisfied.

16.5 Amendments to this Contract

- On and from the Contract Amendment Commencement Date this Contract shall be amended as follows:
- (a) when the term **Capacity End Date** is used in this Contract it shall mean:
- (i) in respect of the Contracted Capacity the subject of this Contract as at the Contract Commencement Date, the Capacity End Date as determined under clause 4; or
- (ii) in respect of each quantity of Requested T1 Capacity granted by Operator to Shipper under this clause 16, the date being the Requested T1 Capacity End Date for that Requested T1 Capacity.

(b) **Contracted Capacity** shall mean the amount set out in Schedule 1, which shall be amended:

- (i) on each Contract Amendment Commencement Date by adding the amount of Requested T1 Capacity at an inlet point and at an outlet point relevant to that Contract Amendment Commencement Date to the amount specified in Item 1 of Schedule 1 and Item 2 of Schedule 1 respectively with the amount of Requested T1 Capacity shown as commencing on the date being the Requested T1 Capacity Start Date for that Requested T1 Capacity; and
- (ii) at each Capacity End Date by subtracting either:
 - (A) the amount of Contracted Capacity the subject of this Contract as at the Contract Commencement Date at an inlet point or an outlet point at the Capacity End Date for that Contracted Capacity as determined in accordance with clause 4; or
 - (B) the amount of Requested T1 Capacity at an inlet point and at an outlet point relevant to that Capacity End Date from the amount specified in Item 1 of Schedule 1 and Item 2 of Schedule 1 respectively.

In all other respects, the terms and conditions of this Contract remain the same and govern the provision of the Requested T1 Capacity under this Contract.

16.6 Failure to give Final Capacity Requirement Notice

- (a) Operator shall give Shipper:
 - (i) within 10 Working Days after the date Shipper gives it a T1 Capacity Notice, a good faith estimate of the Costs likely to be incurred by Operator in the remainder of the current calendar month; and
 - (ii) if Operator gives an Operator's Expansion Offer in accordance with this clause 16, at least 2 Working Days prior to the start of each month arising after the issue of the estimate referred to in clause 16.6(a)(i), a good faith estimate of the Costs likely to be incurred by Operator in the following calendar month and a reconciliation of Costs incurred since the date of the previous reconciliation compared to Operator's estimate of those Costs.
- (b) If Shipper issues a T1 Capacity Notice, Operator issues an Operator's Expansion Offer and Shipper fails to give a Final Capacity Requirement Notice in accordance with clause 16.4 within six months of the provision of such T1 Capacity Notice, Shipper shall promptly upon demand indemnify Operator for all of Operator's out of pocket costs, losses, claims, liabilities and expenses (**Costs**) incurred by Operator, acting as a Reasonable And Prudent Person, in respect of the T1 Capacity Notice, including pre-construction and front end engineering, design, regulatory approvals and feasibility studies, to the extent that such Costs would not have been incurred but for the issue of such T1 Capacity Notice, up to the Escalated Cost Limit.
- (c) For the purpose of this clause 16 **Escalated Cost Limit** means the sum of \$250,000 escalated with effect from 08:00 hours on 1 January of each year commencing on 1 January 2006 on the following basis:

$$\text{Escalated Costs Limit for relevant year} = \text{Escalated Costs Limit for previous year} \times \frac{\text{CPI}_n}{\text{CPI}_{n-1}}$$

Where:

CPI_n means the CPI for the quarter ended on 30 September of the previous year;

CPI_{n-1} means the CPI for the quarter ended on 30 September of the year before the previous year.

16.7 Assignment of Capacity

Shipper agrees that Operator may satisfy part or all of its obligations (if any) to provide the Requested T1 Capacity to Shipper under this clause 16 by procuring a third party to assign or transfer Gas Transmission Capacity to Shipper. Notwithstanding anything in the third party's existing contract in relation to that Gas Transmission Capacity, Shipper shall take such Capacity on the terms and conditions under this Contract in the manner referred to in clause 16.5 (and for the avoidance of doubt, none of the terms, conditions, obligations or liabilities of the assignee or under the third party's contract shall have any force or effect in relation to Shipper). Shipper agrees to execute all documents and do all things reasonably requested of it to give effect to such assignment or transfer (provided that nothing obliges Shipper to take any assignment or transfer in breach of any Law) and Operator shall pay Shipper's reasonable costs and expenses of doing so.

16.8 Operation of this clause 16

- (a) Shipper may not give Operator a T1 Capacity Notice under this clause 16 after 08:00 hours on 1 January 2020.
- (b) A valid T1 Capacity Notice given before 08:00 hours on 1 January 2020 is effective and this Contract continues in effect for the purposes of giving effect to that T1 Capacity Notice, even though the Requested T1 Capacity may not be made available to Shipper until after 08:00 on the Capacity End Date.
- (c) Operator shall use reasonable endeavours to ensure that the Expansion Works Contractor's liability to Operator for Liquidated Damages for a delay in completing the Expansion required to enable Operator to provide the Requested T1 Capacity is an amount at least equal to 20% of the Capital Cost of the Expansion.
- (d) Operator shall obtain, or shall procure that the Expansion Works Contractor obtains, insurance against the risks of delays in completing the Expansion or against Operator's liability for Liquidated Damages to shippers for failing to provide Requested T1 Capacity to shippers by the Requested T1 Capacity Start Date for at least an amount determined by an independent insurance broker to be reasonable and prudent for a project of the same nature and scope as the Expansion. The independent insurance broker's determination is not to have any regard to the maximum liability of Operator under clause 22.13.
- (e) If either Party disputes the independent consulting engineer's opinion under clause 16.4(j) that the Expansion required to enable Operator to provide the Requested T1 Capacity is not technically feasible, either Party may refer the dispute to an Independent Expert for determination as a Technical Matter under clause 24. To avoid doubt, any other Dispute under this clause 16 may be dealt with as a Dispute generally under clause 24.
- (f)

- (i) Shipper agrees to withdraw each access request (if any) it has provided to Operator under the Access Regime (whether before or after the commencement of the Access Arrangement) for an Increased Capacity Quantity at, or within 10 Working Days after, the Contract Commencement Date, except an Access Request relating to a T1 Capacity Notice provided under this clause 16.
- (ii) For the purposes of clause 16.8(f)(i), **Increased Capacity Quantity** means Capacity which when granted increases the aggregate amount of Capacity Shipper has reserved on the DBNGP under all contracts with Operator as at the Contract Commencement Date. For the avoidance of doubt:
- (A) an extension of the term of a contract for the same amount of Capacity, or
 - (B) the grant of an option to extend the term of a contract for the same amount of Capacity,
- is not an Increased Capacity Quantity.

16.9 Shipper and Operator to discuss funding

If Operator notifies Shipper that the condition for the grant of Requested T1 Capacity under clause 16.4(f) is not able to be satisfied by Operator, before Shipper undertakes to contribute the Capital Cost of the Expansion, Operator and Shipper will meet to discuss in good faith the optimal means of funding in the circumstances, including discussing the manner in which funding may be provided by Shipper through subordinated debt.

16.10 Shipper funding contribution

- (a) If Shipper and Operator do not reach agreement in relation to alternative means of funding following the discussions pursuant to clause 16.9, funding will be taken to be available on reasonable commercial terms under clause 16.4(i) if Shipper undertakes to contribute the necessary amount of funding required to make debt available on a reasonable commercial basis for the Expansion (in this clause 16.10 **Shipper's Funding**) on the following basis:
- (i) Shipper's Funding is to be provided at the times and in the manner required to meet Operator's liability for the earliest scheduled payments for the design, engineering, procurement and construction of the Expansion, with security for the balance of Shipper's Funding outstanding at any time being provided to the reasonable satisfaction of Operator by way of unconditional bank undertaking, performance bond, or other form of security acceptable to Operator.
 - (ii) Following the contribution of Shipper's Funding, Shipper shall be entitled to an interest or increased interests in the special purpose holding trust (in this clause 16.10 **DBNGP Trust**) for the consortium which owns Operator and indirectly through ownership of the Pipeline Trust, the DBNGP.
 - (iii) Shipper's Funding may comprise debt or unit interests in the DBNGP Trust at the option of Operator and will be subject to obtaining all necessary external approvals (including approvals required under the debt documentation of the DBNGP Trust and its subsidiaries). Operator will use

reasonable endeavours to procure any external approvals required in a timely manner.

- (iv) If Shipper's Funding is provided by Shipper acquiring unit interests in the DBNGP Trust, the value of Shipper's Funding will be a market value agreed between the Parties. If the Parties are unable to agree on the market value, the dispute must be resolved in accordance with clause 24. In making a market value determination, an independent Expert appointed pursuant to clause 24.8 will (without limitation) have regard to:

- (A) the interest obtained by Shipper in the DBNGP Trust,
- (B) the rights that apply with respect to those units; and
- (C) the impact of the Expansion on the financial position of the DBNGP Trust.

- (v) If Shipper's Funding is provided by debt, such debt must be unsecured and subordinated to all other debt in the DBNGP Trust or any of its subsidiaries and contributed on terms consistent with this clause 16.10. The return on debt must be proportionate to the return generated by the Expansion (and any upfront financing and legal costs required to be paid in respect of funding the Expansion) after the deduction of all reasonable operating and maintenance costs, corporate overheads, taxation, depreciation and amortisation and the service of other debt used to fund the Expansion.

- (vi) Shipper, the Pipeline Trustee and the DBNGP Trustee must execute all documents that are reasonably required to give effect to the contribution of Shipper's Funding, and to reflect Shipper's entitlement to units or interests in the DBNGP Trust, including a subscription agreement and the Unitholders Agreement between unitholders in the DBNGP Trust (**Unitholders Agreement**). Shipper's Funding must be made in the most cost efficient manner possible. For the purposes of this clause 16.10(a)(vi), cost efficiency includes ensuring that Shipper's Funding does not have any adverse stamp duty or taxation impact (excluding normal transaction costs).

- (vii) The contribution of Shipper's Funding by way of debt or unit interests in the DBNGP is subject to ensuring:

- (A) that there is no adverse ratings impact on the DBNGP Trust, its subsidiaries or any of its existing unitholders as a consequence of Shipper's Funding; and
- (B) that Shipper's Funding does not give rise to a default or a potential event of default under the financing documents of the DBNGP Trust or any of its subsidiaries.

- (viii) Shipper is not obliged to provide Shipper's Funding.

- (ix) If Shipper's Funding is contributed by way of debt, Shipper may nominate another person to provide Shipper's Funding in which case the provisions of this clause 16 shall be varied to the extent necessary to allow the funding by that person on reasonable commercial terms.

- (x) If Shipper's Funding is contributed by way of equity, Shipper may sell that equity to third parties, subject to any restrictions (including pre-emptive rights) contained in the Unitholders Agreement.
- (b) Operator warrants to Shipper that the Unitholders Agreement makes provision for shippers that contribute Shipper's Funding to acquire equity or other interests in the DBNGP Trust in the manner contemplated in clause 16.10(a). This warranty is made on and from the Contract Commencement Date and shall be taken to be made anew each day thereafter for the duration of this Contract.
- (c) If there is any change in the ownership structure relating to the DBNGP or Operator or both, then:
- (i) Operator, Pipeline Trustee and the DBNGP Trustee must promptly notify Shipper, and
 - (ii) Operator, Pipeline Trustee, the DBNGP Trustee and Shipper must negotiate in good faith appropriate amendments to this clause 16.10 and clause 25.5 to reflect the new structure, but without changing the operation or commercial objectives of those provisions.
- (d) If the Expansion is being undertaken to provide Requested T1 Capacity for more than one shipper, Shipper's Funding shall be that proportion of the Capital Cost of the Expansion that the amount of Shipper's Requested T1 Capacity that is being provided by that Expansion bears to the amount of Requested T1 Capacity requested by all shippers that is being provided by that Expansion, provided that Operator will not be taken to be satisfied for the purposes of clause 16.4(f) until all shippers whose Requested T1 Capacity the Expansion is being undertaken to provide have each undertaken to provide their relevant shipper's equity portion such that the entire Capital Cost of the Expansion is provided by the shippers.

16.11 Extension of Requested T1 Capacity Start Date

- (a) In the circumstances where the contractor engaged by Operator to undertake the works required to expand the Gas Transmission Capacity of the DBNGP (*Expansion Works Contractor*) reasonably satisfies Operator that those works cannot be procured, installed and commissioned within 24 months from the delivery of the Final Capacity Requirement Notice due to the time which it will take to order and procure long lead time items required for those works, Operator may give Shipper a notice within 10 Working Days of receipt of the Final Capacity Requirement Notice extending the Requested T1 Capacity Start Date, but in no event may the Requested T1 Capacity Start Date be more than 30 months after the delivery of the Final Capacity Requirement Notice.
- (b) For the avoidance of doubt, where Operator is prevented from providing the Requested T1 Capacity by the Requested T1 Capacity Start Date due to the *Expansion Works Contractor* being validly entitled to claim force majeure or delay (or similar rights) under the contract for the works to expand the Gas Transmission Capacity of the DBNGP, the Requested T1 Capacity Start Date is extended by the same period that the *Expansion Works Contractor* is entitled to extend the Requested T1 Capacity Start Date for force majeure or delay (or similar rights).

16.12 Provisions of information

To allow Shipper to align its T1 Capacity Notice with other shippers' T1 Capacity Notices for the purposes of satisfying clause 16.4(h), Operator shall notify Shipper in writing (or by other agreed means) no less frequently than 6 monthly (unless the plans or details change in a material way in which case Operator shall notify Shipper as soon as reasonably practicable after the change), of its future planned expansions and the relevant details of T1 Capacity Notices actually received or anticipated to be received (save that nothing in this clause requires Operator to disclose the identity of those other shippers).

17. Curtailment

17.1 Operator's obligations and Curtailment principles

- (a) Operator must use its best endeavours to minimise the magnitude and expected duration of any Curtailment of the T1 Service.
- (b) A Curtailment may affect one or more inlet points or outlet points on the DBNGP. Unless the Curtailment affects only one inlet point or outlet point, it is a System Curtailment.
- (c) Curtailment occurs in two stages, although in some instances Operator will not need to move to the second stage:
 - (i) **Stage 1:** Operator identifies that a Curtailment is necessary and, acting as a Reasonable And Prudent Person, determines how much Capacity needs to be Curtailed. In most circumstances this will be a System Curtailment.
 - (ii) **Stage 2:** If it is necessary (at the same time or subsequently) for Operator to resolve incompatible demands by shippers for the use of a single inlet point or outlet point, Operator undertakes a Point Specific Curtailment at each such point.
- (d) In a Curtailment, whether System Curtailment or in any Point Specific Curtailments, Contracted Capacity at a particular point (incumbent capacity) has priority for the use of that point above capacity relocated from another point for that Gas Day, unless the incumbent capacity has been fully curtailed by virtue of the application of the Curtailment Plan in a System Curtailment which affects a Curtailment Area greater than a Point Specific Curtailment.

17.2 Curtailment Generally

- Operator may Curtail the provision of the Capacity Services to Shipper from time to time to the extent Operator as a Reasonable And Prudent Person believes it is necessary to Curtail:
- (a) if there is an event of Force Majeure where Operator is the Affected Party;
 - (b) whenever it needs to undertake any Major Works;
 - (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;
 - (d) for any Planned Maintenance; and

(e) in circumstances where Operator, acting as a Reasonable And Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

17.3 Curtailment without liability

(a) Subject to clause 17.3(b), Operator is to be liable to Shipper for Direct Damage caused by or arising out of a Curtailment or interruption of Shipper's T1 Service. For the avoidance of doubt the giving of a Curtailment Notice constitutes a Curtailment and the provision by Operator of Capacity equal to Shipper's reduced Contracted Capacity under clause 17.7(d) during the currency of the Curtailment Notice which gave effect to that reduced Contracted Capacity is a Curtailment for the purposes of this clause 17.3(a).

(b) Operator has no liability to Shipper whatsoever for a Curtailment under clause 17.2 in any of the following circumstances:

- (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the T1 Service during the Gas Year does not cause the T1 Permissible Curtailment Limit to be exceeded;
- (ii) where the Curtailment is in accordance with any of clauses 17.2(a), (b) or (c); or
- (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way Operator's obligation under clause 17.1(a).

(c) The T1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:

- (i) a Curtailment in circumstances set out in clauses 17.2(a), (b) or (c);
- (ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and
- (iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied.

is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.

17.4 Refund of Capacity Reservation Charge

To the extent that Shipper's T1 Service is Curtailed for any reason other than:

- (a) an event of Force Majeure where Shipper is the Affected Party; or
- (b) a reason described in clause 17.2(c); or
- (c) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.

17.5 Operator's rights to refuse to Receive or deliver Gas

Subject to clauses 5.5 and 5.9, where Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (Operator may refuse to Receive Gas);
- (b) clause 5.7 (Operator may refuse to Deliver Gas),

such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(c).

17.6 Curtailment Notice

(a) Operator must give Shipper a notice (**Curtailment Notice**) setting out the matters referred to in clause 17.7(a) and the expected duration of an impending Curtailment and otherwise complying with this clause 17.

(b) Operator must use reasonable endeavours to give Shipper a Curtailment Notice a reasonable period in advance of the starting time of the Curtailment, and in any event (other than when due to Force Majeure or by reason of an emergency it is unable to do so) must give the Curtailment Notice at least one hour before the starting time of the Curtailment. In the case of Major Works, reasonable notice is 90 days' notice.

(c) Operator will send a copy of the Curtailment Notice in accordance with clause 29.1(a) (Notices) and will also endeavour to telephone Shipper to advise that the Curtailment Notice has been or will be provided.

(d) Operator is not responsible for informing all affected Producers and downstream entities that relate to Shipper of the notification of the Curtailment or the Curtailment Notice.

(e) A Curtailment Notice under clause 17.6(a) must give the reasons for the Curtailment.

(f) Operator will, on a reasonable request by Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to explain the issue of a Curtailment Notice.

17.7 Content of a Curtailment Notice

(a) A Curtailment Notice must specify the following details:

- (i) the starting time of the Curtailment (which must not be any time before the Gas Day on which the Curtailment Notice is given), including the Gas Day or Gas Days to which the Curtailment Notice applies; and
 - (ii) the portion of Shipper's Contracted Capacity that is to be Curtailed.
- (b) A Curtailment Notice:
- (i) takes effect from the time specified in the Curtailment Notice;
 - (ii) may apply to the Gas Day on which the Curtailment Notice is issued even if, in order to comply with a Curtailment Notice, Shipper must use best endeavours to, and to procure persons to whom Shipper supplies Gas to,

- cease taking delivery of any Gas upon receipt of the Curtailment Notice in accordance with clause 17.8(a);
- (iii) may be expressed to continue indefinitely or for a specified time;
 - (iv) may revoke, substitute or amend a previous Curtailment Notice;
 - (v) must not require Shipper to reduce its Receipt of Gas for the Gas Day as a whole to a level less than Shipper has already actually Received for the Gas Day before the Curtailment Notice takes effect (that is, the Curtailment Notice must not be impossible to comply with); and
 - (vi) does not retrospectively affect Shipper's compliance with Hourly Peaking Limits or Outer Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes Shipper's compliance with those limits for an hour is to be determined having regard to Shipper's Contracted Capacity at the commencement of the hour).
- (c) Operator may at any time, whether or not it has specified in a Curtailment Notice an end time for a Curtailment, give notice to Shipper (in accordance with clause 29) wholly or partly terminating a Curtailment either immediately or from any time in the future.
 - (d) A Curtailment Notice constitutes a variation of this Contract while the Curtailment Notice is in force reducing Shipper's Contracted Capacity to the extent, and in accordance with the apportionment (if any), specified in the notice, except for the purposes of calculating the Charges payable by Shipper under clause 20 and for ascertaining whether Shipper has been Curtailed under this clause 17, for which purposes Shipper's Contracted Capacity remains as specified in Schedule 1. Further, in respect of a particular shipper when calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, inlet point or outlet point) the amount shall not include any capacity Curtailed under clause 17.8 either generally or in respect of a specific Capacity Service, inlet point or outlet point, and the material equivalent to such clause in any of the shipper's contracts for Capacity Service.
 - (e) If a Curtailment Notice takes effect before Shipper's next Nomination or Renomination under clause 8, Shipper's Daily Nominations are to be taken to be reduced (if a reduction is required) to the same amount of Capacity Service as Shipper is to have available under the Curtailment Notice given in respect of Shipper's Contracted Capacity.
 - (f) Shipper may not:
 - (i) Nominate or Renominate under clause 8 for Contracted Capacity; or
 - (ii) Deliver Gas to or Receive Gas from Operator,
 in excess of whichever is the lower of:
 - (iii) its reduced Contracted Capacity because of clause 17.7(e); or
 - (iv) the quantity specified in a Curtailment Notice as the maximum quantity which Operator will Receive from, or Deliver to, Shipper.

17.8 Compliance with Curtailment Notice

- (a) Where the Curtailment is a Point Specific Curtailment, Shipper must use its best endeavours to immediately, and must as soon as practicable and in any event must no later than one hour after receipt of the notice, comply, or procure compliance, with the requirements of a Curtailment Notice by:
 - (i) not Delivering any Gas at the inlet points; or
 - (ii) not Receiving any Gas delivered to Shipper at the outlet points,
 in excess of the quantity specified for that inlet point or outlet point, as the case may be, in the Curtailment Notice.
- (b) Where the Curtailment is not a Point Specific Curtailment, Shipper must comply, or procure compliance, with the requirements of the Curtailment Notice.
- (c) If Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a), Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from Shipper at an inlet point or refusing to Deliver Gas to Shipper at an outlet point.
- (d) If Operator refuses to Receive or Deliver Gas under clause 17.8(c) in order to give effect to the requirements set out in a Curtailment Notice and Operator incidentally refuses to Receive or Deliver Gas in excess of the requirements of the Curtailment Notice (**Excess Curtailment**), to the extent that such Excess Curtailment occurred despite Operator acting as a Reasonable And Prudent Person in attempting to avoid or minimise (as the case may be) such Excess Curtailment is not to be regarded as a Curtailment under this Contract.
- (e) If the Curtailment is a Point Specific Curtailment and Shipper Delivers Gas to Operator at an inlet point or Receives Gas from Operator at an outlet point in excess of the quantity specified in the Curtailment Notice for that inlet point or outlet point (as the case may be), then Shipper shall pay Operator an Unavailable Overrun Charge under clause 11 at the Unavailable Overrun Rate in respect of each GJ of Gas which Shipper's actual receipts or deliveries (or both) vary from those specified in the Curtailment Notice.
- (f) Other than when due to Force Majeure or by reason of an emergency it is unable to do so, Operator is to give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c).
- (g) Shipper is not liable to pay the Unavailable Overrun Charge under clause 17.8(e) in respect of a Gas Day in respect of which Operator:
 - (i) fails to provide Shipper with the information required in accordance with clause 15.5(d)(i); or
 - (ii) provides Shipper with information under clause 15.5(d)(i) which is materially inaccurate.

17.9 Priority of Curtailment

- (a) Any Curtailment of Shipper's Total Contracted Capacity or capacity under a Spot Transaction, is to be conducted in accordance with the Curtailment Plan. In applying the Curtailment Plan in a Point Specific Curtailment or System Curtailment, a Type of Capacity Service will only be Curtailed once all Types of

- Capacity Services listed below it in that column in the Curtailment Plan have been reduced to zero.
- (b) The general principle in clause 17.9(a) is subject to the following:
- (i) Any Laws regulating the priority of Capacity Services (which for the purposes of this clause shall include capacity under a Spot Transaction) on the DBNGP.
 - (ii) Where the Curtailment is a Point Specific Curtailment, the Curtailment Plan will be subject to any Multi-shipper Agreement relating to that inlet point or outlet point.
 - (iii) Any Point Specific Curtailment of the Aggregated T1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded to the extent that Shipper is entitled to give a Renomination Notice in respect of either of the following:
 - (A) (subject to clause 17.9(b)(iii)(B)) one or more inlet points or outlet points (as the case may be) where Shipper has unutilised Contracted Capacity for the T1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to Shipper's unutilised Contracted Capacity for the T1 Service at that or those inlet points or outlet points (as the case may be);
 - (B) one or more inlet points or outlet points (which may be points referred to in clause 17.9(b)(iii)(A) above) where Shipper can otherwise utilise Capacity.
 - (iv) If and to the extent that, because of the default, negligence, breach of contractual term, or other conduct of a shipper (in this clause 17.9(b)(iv) called the **defaulting shipper**):
 - (A) a reduction in Gas Transmission Capacity is caused that makes necessary any Curtailment of the use of Gas Transmission Capacity by any shipper; or
 - (B) Operator is entitled to refuse to Receive Gas from or Deliver Gas to any shipper (or, if applicable, to Curtail the use of Gas Transmission Capacity by any shipper).
- Operator must, to the extent that it is entitled to do so, wholly refuse to Receive Gas from or Deliver Gas to the defaulting shipper and must reduce the defaulting shipper's use of Gas Transmission Capacity of any kind (but only to the extent necessary to correct the default of the shipper) before it reduces any shippers' (other than the defaulting shipper's) use of Gas Transmission Capacity of any kind, and Operator is not liable to the defaulting shipper for any Direct Damage or Indirect Damage (whatsoever) arising from that Curtailment or refusal.
- (v) To the extent that:

- (A) the use of Gas Transmission Capacity by a particular shipper would, but for this clause 17.9(b)(v), be included in an apportionment of a Curtailment; and
 - (B) in the view of Operator (acting fairly and reasonably) the inclusion of that Gas Transmission Capacity would because of the location of the particular shipper's inlet point or inlet points or outlet point or outlet points in relation to the circumstances which gave rise to the need to Curtail be unlikely to wholly or partially reduce the need to Curtail any other shipper's use of Gas Transmission Capacity, Operator may exclude that Gas Transmission Capacity from the apportionment of Curtailments (despite what would otherwise be Operator's obligation to include that Gas in the apportionment).
- (vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, Shipper's:
- (A) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at the Outlet Points located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:
 - (1) not be included in the Aggregated T1 Service; and
 - (2) be included in the T1 Service, available to Shipper in the Curtailment Area;
 - (B) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at any Outlet Point located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:
 - (1) be included in the Aggregated T1 Service;
 - (2) not be included in the T1 Service, available to Shipper in the Curtailment Area.
- (vii) Despite any provision of the Curtailment Plan or any contract, the Delivery of Gas to Shipper is at all times subject to Operator's absolute right to utilise part of the DBNGP's capability to transport Gas which is required by Operator for operational purposes in relation to the DBNGP.
- (viii) Operator must enforce its rights under the Alcoa Exempt Contract in relation to allocating to, and Delivering to, Alcoa no more than Alcoa's Exempt Delivery Entitlement during a Curtailment, including taking the full benefit of any force majeure provisions of the Alcoa Exempt Contract when and to the extent that it is entitled to do so.
- (ix) Nothing in this clause 17 limits or affects Operator's right to refuse to Receive or Deliver Gas under clauses 5.3 or 5.7.
- (x) This clause 17 is subject to any contrary agreement reached between Shipper and other shippers as to the manner of treating Curtailments between them.

- (c) (i) Subject to clauses (ii) and (iii) below, if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by Operator acting in good faith, on the basis of the following:

Available Capacity $\times \frac{A}{B}$

Where:

Available Capacity = the total amount of relevant capacity which Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

A = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of T1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day);

B = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of T1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day)
- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service or an Interruptible Service (other than capacity under a Spot Transaction), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by Operator acting as a Reasonable And Prudent Person.

(iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.
- (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one outlet point; Operator must apportion any refusals to Receive Gas across those outlet points in the manner required by Shipper; or
- (iii) Contracted Capacity or Daily Nominations (or both) at more than one inlet point or outlet point; Operator must apportion any Curtailment of Shipper's Capacity Service at the inlet points or outlet points across those inlet points or outlet points in the manner required by Shipper, except in the case of Point Specific Curtailments.
- (b) Operator is not required to make the apportionment referred to in clause 17.10(a) if:
 - (i) acting as a Reasonable And Prudent Person, Operator considers it is not Technically Practicable to do so;
 - (ii) acting as a Reasonable And Prudent Person, Operator considers the circumstances do not reasonably allow Operator to consult with Shipper as to the apportionment or wait for Shipper's response following such consultation; or
 - (iii) Operator has requested Shipper notify Operator of its apportionment, and Shipper has not done so by the end of the relevant Gas Day.

in which case Operator may apportion the refusal across the relevant inlet points or outlet points (as the case may be) in the manner it considers appropriate.

- (c) Shipper may at any time and from time to time propose to Operator an apportionment mechanism which will operate as a standing requirement as to how Operator is to apportion any:
 - (i) refusals to Receive Gas across inlet points;
 - (ii) refusals to Deliver Gas across outlet points; or
 - (iii) Curtailments across inlet points and outlet points.

- (d) Operator and Shipper must, in good faith, attempt to agree any apportionment mechanism for the purposes of this clause 17.10. If Operator and Shipper have not agreed an apportionment mechanism for the purposes of this clause 17.10 within 1 month from the date of Shipper's proposal, either Party may refer this Dispute to an Independent Expert under clause 24 as a Technical Matter.
- (e) If Operator and Shipper have agreed an apportionment mechanism or an apportionment mechanism has been determined by an Independent Expert for the purposes of this clause 17.10, then Operator must apportion any:
 - (i) refusals to Receive Gas;
 - (ii) refusals to Deliver Gas; or
 - (iii) Curtailments,

in accordance with that mechanism.

17.11 Curtailment of Alcoa

The Parties acknowledge and agree that Shipper has agreed to the Order of Priority specified in column 1 of the Curtailment Plan on the basis that the methodology for

- (c) (i) Subject to clauses (ii) and (iii) below, if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by Operator acting in good faith, on the basis of the following:

Available Capacity $\times \frac{A}{B}$

Where:

Available Capacity = the total amount of relevant capacity which Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

A = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of T1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day);

B = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of T1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day)
- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service or an Interruptible Service (other than capacity under a Spot Transaction), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by Operator acting as a Reasonable And Prudent Person.

(iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.
- (ii) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one inlet point; Operator must apportion any refusals to Deliver Gas across those inlet points in the manner required by Shipper;

17.10 Apportionment of Shipper's Curtailments

- (a) Subject to clause 17.10(b), if Shipper has:
 - (i) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one inlet point; Operator must apportion any refusals to Deliver Gas across those inlet points in the manner required by Shipper;

establishing the effective priority of Alcoa's Priority Quantity and Alcoa's Exempt Delivery Entitlement are unchanged since March 1998.

18. Maintenance and Major Works

- (a) By 31 August of each Contract Year, Shipper may provide Operator with a schedule of events which Shipper, acting as a Reasonable And Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 October (*Maintenance Year*) which sets out Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) Within 30 days of receiving the schedule referred to in clause 18(a), Operator (acting as a Reasonable And Prudent Person) must in consultation with Shipper and other shippers schedule Major Works and Planned Maintenance for the DBNGP for the Maintenance Year (*Annual DBNGP Maintenance Schedule*), having reasonable regard to the periods during which Shipper's requirements for Capacity are reduced and Shipper's and other shippers' requirements generally.
- (c) Operator will issue to all shippers who provided Operator with a schedule pursuant to clause 18(a) a copy of the Annual DBNGP Maintenance Schedule.
- (d) At Shipper's request, Operator shall provide Shipper with its estimate of the Curtailment to Capacity available to Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.
- (e) Operator to the extent practical will notify Shipper of changes to its schedule of Major Works and Planned Maintenance issued to shippers under clause 18(c).
- (f) Operator must as a Reasonable And Prudent Person endeavour to:
 - (i) comply with the Annual DBNGP Maintenance Schedule; and
 - (ii) give Shipper as much advance notice as is reasonably practicable of any material departure from the Annual DBNGP Maintenance Schedule that is likely to affect Shipper.
- (g) If Shipper is affected by any planned Curtailment arising out of any Planned Maintenance, or any Major Works, Operator must use endeavours which are reasonable in the circumstances to:
 - (i) consult with Shipper concerning the scheduling and duration of;
 - (ii) accommodate the needs of Shipper in scheduling; and
 - (iii) minimise the duration and impact of the Curtailment.
- (h) Despite clause 18(b), but subject to clauses 18(f) and (g), Operator may determine the timing and extent of any Curtailment necessitated by Planned Maintenance or Major Works in its discretion.

19. Force Majeure

- (a) A Party (the **Affected Party**) is excused from performance of, and is not liable for any failure in carrying out any of its obligations under this Contract, to the extent that it is prevented from doing so by Force Majeure.
- (b) Subject to clause 19(f), an obligation to pay money is not excused by Force Majeure.
- (c) Without prejudice to Shipper's entitlement to a refund under clause 17.4 in circumstances where a Curtailment is other than as a result of an event of Force Majeure where Shipper is the Affected Party, Shipper is not relieved of its obligation to pay the Capacity Reservation Charge by the occurrence of an event of Force Majeure in respect of it however caused.
- (d) If a Party claims the benefit of Force Majeure, it must:
 - (i) promptly give notice to the other Party of the occurrence and circumstances in which the claim arises;
 - (ii) use its best endeavours to remedy the consequences without delay; and
 - (iii) resume full performance of its obligations under this Contract as soon as reasonably practicable.
- (e) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the Party claiming the benefit of this clause and the Party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
- (f) Shipper is relieved from paying the Surcharges to the extent that it was unable to prevent such Surcharges accruing due to some event of Force Majeure affecting it.
- (g) For the avoidance of doubt, the Parties acknowledge that lack of finances, lack of funds or access to funds, or inability to borrow funds shall not in any circumstances be an event of Force Majeure under this Contract.

20. Charges

20.1 Obligation to pay Charges

Shipper must pay the Charges and any other amounts payable under this Contract to Operator in the manner and at the times set out in this Contract, including the charges set out in clauses 20.2, 20.3 and 20.4 (inclusive). The Charges are to be invoiced and payable in accordance with clause 21.

20.2 Capacity Reservation Charge

- (a) The Capacity Reservation Charge will be calculated for each Gas Day during the Remaining Period of Supply by multiplying the sum of Contracted Capacity for T1 Services at each Outlet Point by the T1 Capacity Reservation Tariff.
- (b) Subject to clause 17.4, the Capacity Reservation Charge is payable for each Gas Day during the Remaining Period of Supply regardless of whether Shipper provides Gas at any inlet point and regardless of whether Shipper takes Gas at any outlet point.

- (c) When calculating the Capacity Reservation Charge under this clause 20.2, the Reservation Portion of the Aggregate Tariff Adjustment Factor is to be added to or subtracted from the T1 Capacity Reservation Tariff in accordance with clause 20.8.
- (d) The Capacity Reservation Charge in relation to Part Haul Contracted Capacity for each Outlet Point at which Shipper has Part Haul Contracted Capacity for each Gas Day will be calculated by multiplying the charges calculated in accordance with clauses 20.2(a), (b) and (c) by the Distance Factor for that Outlet Point and dividing the product by 1400.
- 20.3 Commodity Charge**
- (a) The Commodity Charge will be calculated for each Gas Day during the Remaining Period of Supply by multiplying the T1 Commodity Tariff by each GJ of Gas Delivered to Shipper up to Contracted Capacity for T1 Services at all outlet points by Operator on that Gas Day.
- (b) When calculating the Commodity Charge under this clause 20.3, the Commodity Portion of the Aggregate Tariff Adjustment Factor is to be added to or subtracted from the T1 Commodity Tariff in accordance with clause 20.8.
- (c) The Commodity Charge in relation to Part Haul Contracted Capacity for each Outlet Point at which Shipper has Part Haul Contracted Capacity for each Gas Day will be calculated by multiplying the charge calculated in accordance with clauses 20.3(a) and (b) by the Distance Factor for that Outlet Point and dividing the product by 1400.
- 20.4 Other Charges**
- (a) The following charges apply to this agreement:
- (i) Excess imbalance Charge (clause 9.5(e) and 9.6(b));
 - (ii) Hourly Peaking Charge (clauses 10.3(d) and 10.4(b));
 - (iii) Overrun Charge (clause 11.1(a));
 - (iv) Unavailable Overrun Charge (clauses 11.6 and 17.8(e));
 - (v) any charges or other sums payable under clauses 5.11(d), 6.6, 14.7, 15.11 or elsewhere in this Contract,
- (together **Other Charges**).
- (b) The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that Operator will incur as a result of the conduct entitling such charges to be levied. Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by Operator or is otherwise a penalty or constitutes penal damages.
- 20.5 Adjustment to Base T1 Tariff**
- (a) The Parties acknowledge that the Base T1 Tariff has been calculated as at 1 January 2003.
- (b) With effect from 08:00 hours on 1 January 2004 the Base T1 Tariff shall be adjusted each year with effect from 08:00 hours on 1 January of each year until 1 January 2012, in accordance with CPI on the following basis:

$$\text{Base Tariff}_n = \text{Base Tariff}_x \times (\text{CPI}_n / \text{CPI}_x)$$

where:

Base Tariff_n = the adjusted Base T1 Tariff;

Base Tariff_x = the Base T1 Tariff as at the Contract Commencement Date;

CPI_n means the CPI for the quarter ending on 30 September 2002; and

CPI_x means the CPI for the quarter ending on 30 September of the year before the year for which the Base T1 Tariff is being adjusted.

- (c) With effect from 08:00 hours on 1 January 2012 the Base T1 Tariff shall be adjusted each year with effect from 08:00 hours on 1 January of each year until 1 January 2016, in accordance with CPI less 2.5% on the following basis:

$$\text{Base Tariff}_n = \text{Base Tariff}_{n-1} \times \left(\frac{\text{CPI}_n}{\text{CPI}_{n-1}} - 0.025 \right)$$

where:

Base Tariff_n = the adjusted Base T1 Tariff;

Base Tariff_{n-1} = the Base T1 Tariff prior to adjustment;

CPI_n means the CPI for the quarter ending on 30 September of the year before the year for which the Base T1 Tariff is being adjusted; and

CPI_{n-1} means the CPI for the quarter ending on 30 September 2 years before the year for which the Base T1 Tariff is being adjusted.

- (d) With effect from 08:00 hours on 1 January 2016, and subject to clause 20.5(g), the Base T1 Tariff shall be adjusted so that the Base T1 Tariff, T1 Capacity Reservation Tariff and T1 Commodity Tariff is at any time the same as the Firm Service Reference Tariff (or equivalent) at that time.

- (e) In this clause 20.5:

Firm Service Reference Tariff means the Reference Tariff for the Reference Service under the Access Arrangement that is at 100% load factor the closest equivalent Full-Haul Service to the T1 Service as at 1 January 2016 (**T1 Equivalent Reference Service**).

- (f) (i) The present intention of the Parties is that, with effect from 08:00 hours on 1 January 2016, the tariff payable by Shipper under clause 20.5(d) will be a Reference Tariff based on the Reference Tariff Policy in clause 7 of the Access Arrangement as that clause was in force at the Contract Commencement Date (for the purposes of which that clause 7 is to be read as though references to "Firm Services" were replaced with "T1 Service").
- (ii) The diagram and the financial model assumptions in Schedule 9, being the forecast tariff post 2016, illustrate the Parties' current expectations as to the effect of clause 20.5(f)(i). The Parties agree that the tariff levels depicted in Schedule 9 are based on certain assumptions about the inputs and methodology for determining tariffs under the current approach approved by the ERA in the Reference Tariff Policy referred to in clause 20.5(f)(i), and that the actual tariff levels payable under clause 20.5(d) may differ from the tariff levels shown in Schedule 9 if the

- (C) means Operator is unable to perform any of its obligations under the Alcoa Exempt Contract; or
- (D) is otherwise inconsistent with the provisions of the Code.
- (vi) The Parties intend this clause 20.5 to have effect as a contractual right for the purposes of clauses 2.47 and, if applicable, 6.18(c) of the Gas Access Code in Schedule 2 to the Access Regime.
- (g) If on 1 January 2016, and during any time thereafter, the capacity reservation charge/commodity charge split (ie fixed/variable charge split) is not 80%/20% of the Firm Service Reference Tariff, the capacity reservation charge/commodity charge split of the Base T1 Tariff will be the same percentage split as the Firm Service Reference Tariff at and during that time.

20.6 Goods and Services Tax

- (a) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST.
- (b) If a supply under this Contract is subject to GST then the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount shall be reduced by any part of that loss, cost expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) The additional amount payable under clause 20.6(b) shall be payable at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a Tax Invoice being issued by the Party making the supply.
- (e) Where in relation to this agreement a Party makes a taxable supply, that Party shall provide a Tax Invoice in respect of that supply at or before the time the payment to which the supply relates is payable.
- (f) If a Party becomes aware of an adjustment event, that party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the Supplier has satisfied itself that the adjustment event has occurred.
- (g) For the purposes of this clause:
GST means GST as that term is defined in the GST Law; and
 In this clause, the terms **GST group, member, recipient, representative member, supply, consideration, input tax credit, taxable supply, adjustment, adjustment event and adjustment note** have the same meaning as in the GST Law.

inputs and methodology are different at 2016. The Parties acknowledge that this clause 20.5 and Schedule 9 may be provided to the Regulator in making any submission referred to in clause 20.5(f)(iii) or clause 20.5(f)(iv).

(iii) Subject to clause 20.5(f)(v), Operator agrees as soon as it considers is appropriate after the Contract Commencement Date to endeavour as a Reasonable And Prudent Person to have the Regulator approve amendments to the Access Arrangement that have the following outcomes (and Shipper agrees to support those amendments (provided such amendments are not inconsistent with the intention of the Parties as at the date of this Contract in respect of the Firm Service Reference Tariff as of 1 January 2016, as reflected by Schedule 9) if necessary by making written submissions to the Regulator):

- (A) the Full Haul T1 Service to be included as a Reference Service;
- (B) the Base T1 Tariff as adjusted under clauses 20.5(b) and 20.5(c) to be the Reference Tariff for the Reference Service referred to in clause 20.5(f)(iii)(A) for the periods identified in clauses 20.5(b) and 20.5(c); and
- (C) the capacity reservation charge/commodity charge split (ie fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iii)(B) to be 80%/20%.
- (iv) Subject to clause 20.5(f)(v), the Parties must not make any submission to the Regulator which is inconsistent with the following outcomes:
 - (A) the tariff described in clause 20.5(f)(i) becoming the Reference Tariff for the Reference Service described in clause 20.5(f)(iii)(A) from 1 January 2016; and
 - (B) the capacity reservation charge/commodity charge split (ie fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iv)(A) to be 80%/20%.
- (v) The Parties agree that should the regulatory methodology for calculation of the Reference Tariff assumed in Schedule 9 be one that is considered by the Regulator not to be appropriate for use on the DBNGP from 1 January 2016 or is not consistent with pipeline regulatory practice within Australia, the Parties will endeavour as Reasonable And Prudent Persons to work together to achieve a tariff path outcome which as close as possible delivers the outcomes described in clause 20.5(f)(ii). However, the Parties agree that nothing in this clause 20.5(f), requires the Parties to make a submission which:
 - (A) means Operator is unable to recoup its full operating and capital costs to the full extent permitted by the Gas Access Code in Schedule 2 to the Access Regime (**Code**);
 - (B) means the return on capital (debt and equity) to Operator is outside the range permitted by the Code having regard to reasonable market requirements, including those deemed by the relevant Regulator as being reasonable, at the relevant point in time;

20.7 Other Taxes

if at any time during the Term:

- (a) any Tax which was not in force as at the Contract Commencement Date is validly imposed;
- (b) the rate at which a Tax is levied is validly varied from the rate prevailing as at the Contract Commencement Date; or
- (c) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Contract Commencement Date, (called the **Tax Change**) then, to the extent that the Tax Change changes any costs incurred by Operator in performing its obligations under this Contract or otherwise affects the amounts payable under this Contract, Shipper must pay to Operator an amount equal to the increase in costs attributable to the Tax Change, or Operator must pay to Shipper an amount equal to the decrease in costs attributed to the Tax Change (as the case may be), which amount shall be added to amounts, or deducted from (as the case may be) otherwise due under this Contract.

20.8 Capacity expansion tariff adjustment

- (a) Following an Expansion of the Gas Transmission Capacity of the DBNGP prior to 1 January 2016, the T1 Capacity Reservation Tariff and the T1 Commodity Tariff (**Tariff Components**) are to be adjusted, and thereby the Base T1 Tariff is to be adjusted, in accordance with the provisions of this clause 20.8 by the addition or the subtraction of the Reservation Portion of the Aggregate Tariff Adjustment Factor and the Commodity Portion of the Aggregate Tariff Adjustment Factor, respectively.
- (b) The adjustment to the Tariff Components will be effective on the date that the additional Capacity in the DBNGP becomes available following commissioning of the Expansion, or part thereof in the case of an Expansion with Capacity becoming available at more than one time (in which case the adjustment at the time must relate only to the costs of that part of the Expansion which comes available at the time), (**Adjustment Effective Date**) and will be effected for the purposes of calculating the Capacity Reservation Charge and the Commodity Charge under clauses 20.2 and 20.3 by adding to:
 - (i) the T1 Capacity Reservation Tariff, the Reservation Portion of the Aggregate Tariff Adjustment Factor;
 - (ii) the T1 Commodity Tariff, the Commodity Portion of the Aggregate Tariff Adjustment Factor.For the avoidance of doubt:
 - (iii) where an Aggregate Tariff Adjustment Factor is a negative number, the absolute value of the Reservation Portion of the Aggregate Tariff Adjustment Factor and the Commodity Portion of the Aggregate Tariff Adjustment Factor are to be subtracted from the T1 Capacity Reservation Tariff and the T1 Commodity Tariff respectively;
 - (iv) each Expansion of Gas Transmission Capacity of the DBNGP may result in a Tariff Adjustment Factor which will apply to adjust the T1 Capacity Reservation Tariff and the T1 Commodity Tariff for the purposes of

calculating the Capacity Reservation Charge and the Commodity Charge under clauses 20.2 and 20.3 from the Adjustment Effective Date for that Expansion; and

- (v) none of the Tariff Adjustment Factor, the Aggregate Tariff Adjustment Factor, the Reservation Portion of the Aggregate Tariff Adjustment Factor, or the Commodity Portion of the Aggregate Tariff Adjustment Factor are subject to adjustment in accordance with the provisions of clause 20.5 and for the purposes of calculating the Capacity Reservation Charge and the Commodity Charge under clauses 20.2 and 20.3 respectively, the Reservation Portion of the Aggregate Tariff Adjustment Factor and the Commodity Portion of the Aggregate Tariff Adjustment Factor (as derived from the Tariff Adjustment Factor calculated in accordance with clause 20.8(c)) are added to or subtracted from the T1 Capacity Reservation Tariff and the T1 Commodity Tariff (as derived from the Base T1 Tariff adjusted annually in accordance with the provisions of clause 20.5).

- (c) The **Tariff Adjustment Factor** for an Expansion is to be determined in accordance with the following:

$$\text{Tariff Adjustment Factor (in \$/GJ)} = \frac{\text{Revenue Adjustment}}{\text{Total Available Capacity} \times 365}$$

and,

Aggregate Tariff Adjustment Factor is the aggregate of the Tariff Adjustment Factors at any time,

Where:

Revenue Adjustment is determined in dollars in accordance with the following formula:

$$\text{Discount Rate} \times (\text{Compressor Cost Variance} + \text{Looping Cost Variance})$$

Total Available Capacity means the total Full Haul Capacity of the DBNGP (including all Reserved Capacity) in GJ/day in Summer (including the additional Capacity from Expansion), whether or not that Full Haul Capacity is committed to a shipper under a contract, and being as at the date of this Contract 559,000 GJ/day;

Compressor Cost Variance is determined in accordance with the following formula:

$$\text{Compressor Cost Variance} = \text{Total Compressor Upgrade Actual Costs} - \text{Total Compressor Upgrade Budget Costs}$$

Where:

Total Compressor Upgrade Actual Costs are the total verified Capital Cost of the Expansion of the DBNGP, as recorded against the Compressor Line Items, where the work for the purposes of that Expansion includes the installation of one or more compressors on the DBNGP after the Contract Commencement Date (**Compressor Expansion**), to be expressed in \$2004 by discounting the effect of inflation between the years in which the Adjustment Effective Dates for the respective Compressor Expansions

occurred and 2004;

Compressor Upgrade Budget Costs are the budgeted Capital Cost of the Expansion per compressor for the Compressor Expansion being:

- (i) if a Solar Mars compressor, \$18M in \$2004;
- (ii) if a Solar Centaur compressor, \$7.75M in \$2004;
- (iii) if any other compressor, reasonable costs (expressed in \$2004) calculated in accordance with Good Gas Industry Practice after taking into account the relative costs and specifications of (i) and (ii);

Total Compressor Upgrade Budget Costs is the sum of the Compressor Upgrade Budget Costs for each compressor forming part of an Expansion;

Compressor Line Items are all things necessary to undertake and deliver a Compression Expansion, including:

- (i) detailed design, including the preparation of all the discipline construction drawings, material purchase requisitions, material tender packages, specifications, detailed project schedule, detailed costings and the construction specification for the Compressor Expansion;
- (ii) front end engineering design;
- (iii) material procurement, including the tendering of the material purchase requisition packages, evaluation and award to the successful tenderer for material;
- (iv) construction, including all off-site and on-site fabrication and installation of the additional compressor station facilities;
- (v) transport;
- (vi) pre-commissioning;
- (vii) commissioning and handover;
- (viii) consultants fees;
- (ix) duty;
- (x) interest costs during construction and after commissioning;
- (xi) departmental overheads;
- (xii) project management, including all aspects of managing the Compressor Expansion from the decision to conduct Compressor Expansion to completion of Compressor Expansion, and including the project management costs of contractors;
- (xiii) insurance; and
- (xiv) project documentation compilation and handover, including compilation and handover to Operator in hardcopy and electronic form of all relevant documentation associated with the Compressor Expansion;

Looping Cost Variance is determined in accordance with the following formula:

Looping Cost Variance = (Looping Actual Costs – Looping Budget Costs) x Looping Total Kilometres

Where:

Looping Actual Costs are the total verified Capital Cost of the Expansion of the DBNGP, as recorded against the Looping Line Items, per kilometre of looping pipeline where the work for the purposes of that Expansion is the installation of all looping pipeline installed on the DBNGP since the Contract Commencement Date (**Looping Expansion**) to be expressed in \$2004 by discounting the effect of inflation between the years in which the Adjustment Effective Dates for the respective Looping Expansions occurred and 2004;

Looping Budget Costs are the budgeted Capital Costs of the Expansion for the Looping Expansion, being:

- (i) if 30" pipe, \$752,000 per kilometre in \$2004;
- (ii) if 24" pipe, \$540,000 per kilometre in \$2004;
- (iii) if any other pipe, reasonable costs (expressed in \$2004) calculated in accordance with Good Gas Industry Practice after taking into account the relative costs and specifications of (i) and (ii);

Looping Total Kilometres which is the total length of Looping Expansion in kilometres;

Looping Line Items are all things necessary to undertake and deliver a Looping Expansion, including:

- (i) detailed design, including the preparation of all the discipline construction drawings, material purchase requisitions, material tender packages, specifications, detailed project schedule, detailed costings and the construction specification for the Looping Expansion;
- (ii) front end engineering design;
- (iii) material procurement, including the tendering of the material purchase requisition packages, evaluation and award to the successful tenderer for material;
- (iv) coating (internal and external);
- (v) construction, including all off-site and on-site fabrication and installation of the pipeline duplication;
- (vi) transport;
- (vii) pre-commissioning;
- (viii) commissioning and handover, including the actual gas-up of the pipeline duplication to the nominated transmission pressure and leak testing prior to the pipeline actually flowing gas to shippers;
- (ix) consultants fees;
- (x) duty;

- (g) For the purposes of this clause 20.8 the Capital Cost of the Expansion shall not include:
- (i) interest costs other than those incurred during construction or at any time after commissioning of the relevant Expansion; or
 - (ii) any administrative, head office or other internal costs of Operator or any Operator Entity other than to the extent directly associated with the specific department responsible for the Expansion (such as a gas development group or equivalent), or
 - (iii) any bank fees,
- but shall include:
- (iv) fees and costs (including project management costs) of any company contracted by Operator to provide operating, maintenance and contract procurement and management services in respect of the DBNGP under a long term contract, whether that company is an Operator Entity or not; and
 - (v) costs incurred by Operator in insuring against risks of delays in completing the Expansion by the Requested T1 Capacity Start Date or against Operator's liability for Liquidated Damages to shippers for failing to provide Requested T1 Capacity to shippers by the Requested T1 Capacity Start Date for that Expansion.
- (h) Operator is to give Shipper, as soon as is reasonable after it has determined a Tariff Adjustment Factor, notice of that Tariff Adjustment Factor and reasonable details of the components and calculations that were used to determine that Tariff Adjustment Factor.
- (i) No adjustments to the Tariff Components under this clause 20.8 are to be made after 1 January 2016.

21. Invoicing and Payment

21.1 Monthly payment of Capacity Reservation Charge

- (a) Operator must, no later than 20 days before the start of a month, provide Shipper a Tax Invoice in respect of the Capacity Reservation Charges payable by Shipper for the following Gas Month under this Contract.
- (b) Shipper must, no later than 3 days before the start of a month, pay to Operator in advance all Capacity Reservation Charges payable by it for the following Gas Month as specified in the Tax Invoice referred to in clause 21.1(a).

21.2 Monthly invoicing

- Operator must, within 5 Working Days after the end of a month, provide Shipper a Tax Invoice or Tax Invoices for the Gas Month just ended showing:
- (a) the quantity of Gas Delivered by Shipper at each inlet point and the quantity of Gas Delivered by Operator at each outlet point on each Gas Day in the month;
 - (b) the Commodity Charges for the month;
 - (c) all Other Charges payable for that month;

- (xi) interest costs during construction and after commissioning;
- (xii) departmental overheads;
- (xiii) project management, including all aspects of managing the Looping Expansion from decision to conduct Looping Expansion to completion of Looping Expansion and including the project management costs of contractors;
- (xiv) insurance; and
- (xv) project document compilation and handover, including compilation and handover to Operator in hardcopy and electronic form of all the relevant documentation associated with the Looping Expansion;

Discount Rate is the real pre-tax rate of return approved by the Regulator as the weighted average of the returns applicable to debt and equity for the purposes of the cost of service method applying under the Access Arrangement, which real pre-tax rate of return for the period 1 January 2000 to 1 January 2005 is 7.4% and which rate of return is expected to be redetermined as at January 2005, 1 January 2010 and on 1 January 2015; and

\$2004 means the value of Australian dollars as at 1 July 2004.

- (d) The Aggregate Tariff Adjustment Factor shall be adjusted each year with effect from 08:00 hours on 1 January of each year during the Period of Supply in accordance with CPI on the following basis:

$$ATAF_n = ATAF_{pb} \times \frac{CPI_n}{CPI_{pb}}$$

Where:

$ATAF_n$ = the adjusted Aggregate Tariff Adjustment Factor;

$ATAF_{pb}$ = the Aggregate Tariff Adjustment Factor comprising the Tariff Adjustment Factors calculated on the basis of clause 20.8(c) where both the budgeted costs and actual costs are expressed in \$2004;

CPI_n = the CPI for the quarter ending on 30 September before the year for which the Aggregate Tariff Adjustment Factor is being adjusted; and

CPI_{pb} = the CPI for the quarter ending on 31 March 2004.

- (e) Where this clause 20.8 refers to costs of an Expansion being **verified**, the total of these costs shall be either:

- (i) accepted by the Regulator as the amount by which the Capital Base of the DBNGP is increased for the purposes of the Gas Pipeline Access Law; or
 - (ii) audited and verified by an independent accounting firm appointed by Operator as being the actual total Capital Costs of the Expansion.
- (f) Operator is to seek to minimise the Capital Costs of Expansions of the DBNGP without derogating from its obligation to act as a Reasonable And Prudent Person and to follow Good Gas Industry Practice.

- (d) any other amounts which under this Contract are payable in arrears or refundable for the month;
- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous months and the interest payable thereon;
- (f) in the case of the Tax Invoice for the final Gas Month in a Gas Year, any funds payable to Shipper for that Gas Year by reason of any Curtailment of Shipper's T1 Service; and
- (g) such other information as may be agreed between the Parties.

21.3 Payment within 10 Working Days

Subject to clause 21.1(b), Shipper must, within 10 Working Days of receipt of a Tax Invoice, pay to Operator in the manner shown on the Tax Invoice all amounts shown on the Tax Invoice as payable under this Contract.

21.4 Default in payment

- (a) If Shipper fails by the relevant due date to make full payment of any:
 - (i) Capacity Reservation Charge;
 - (ii) Commodity Charge;
 - (iii) Other Charges; or
 - (iv) any other amount or amounts payable by it under this Contract and shown on a Tax Invoice,

then, without prejudice to Operator's other rights and remedies under this Contract or in equity, Shipper must (unless Operator in its absolute discretion waives this requirement) pay interest on the unpaid amount (after as well as before judgment), calculated daily at the Prescribed Interest Rate from the due date until payment.

- (b) The Prescribed Interest Rate calculated for a day from which interest is to be payable on an amount referred in clause 21.4(a) or clause 21.5 is to apply until payment of that amount, and is not to be recalculated despite any change in the Bank Bill Rate during that period.
- (c) This clause 21.4 applies with appropriate changes to a default by Operator in paying or allowing any credit, rebate or other sum under this Contract.

21.5 Disputed Tax Invoices

- (a) If Shipper disputes any amount or amounts set out in a Tax Invoice to be due or payable, then Shipper must pay the undisputed portion (if any) of the amount shown on the Tax Invoice in accordance with clause 21.3, and must, within 10 Working Days of the date of the Tax Invoice, give notice in writing to Operator that it disputes the amount or amounts and full details of the dispute.
- (b) Any amount withheld by Shipper under this clause but subsequently found to have been payable is, without prejudice to Operator's other rights, to attract interest calculated daily at the Prescribed Interest Rate from 10 Working Days after the date of the Tax Invoice until payment. Shipper must pay any interest payable under this clause at the same time as it pays the amount withheld.

21.6 Correction or payment errors

- (a) If a Party detects any underpayment or overpayment by a Party of any amount and clause 20.6(f) does not apply (including under clause 21.5), then the detecting Party must within a reasonable time give notice to the other Party of the underpayment or overpayment, and an adjusting payment is to be made by the appropriate Party within 10 Working Days of that notice, which adjusting payment is, without prejudice to the Parties' other rights, to attract interest calculated daily at the Prescribed Interest Rate from the date of underpayment or overpayment until payment.
- (b) Subject to clauses 21.4 and 21.5, in circumstances where there has been an underpayment or overpayment to which clause 21.6(a) applies and the underpayment or overpayment did not result from a failure of the Party which is obliged to pay interest under clause 21.6(a) to perform its obligation under this Contract, the Prescribed Interest Rate for the purposes of clause 21.6(a) is to be the Bank Bill Rate plus an annual interest rate of 1 percent per annum.

21.7 Set off

Shipper may set off against amounts owing by it under Tax Invoices provided to it under this clause 21 any amounts payable by Operator to Shipper for Liquidated Damages.

22. Default and Termination

22.1 Default by Shipper

Shipper is in default under this Contract only if:

- (a) Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract;
- (b) Shipper defaults in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in this Contract and such default is material in the context of the Contract as a whole;
- (c) without Operator's prior consent, Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking;
- (d) Shipper suffers an Insolvency Event;
- (e) there is any adverse change in the business or financial condition of Shipper or any event occurs which could, in the reasonable opinion of Operator, in any way jeopardise the ability of Shipper to meet its obligations to Operator under this Contract; or
- (f) Shipper is found to be materially in breach of any warranty given to Operator in this Contract, or if any statement or representation made by any means or in any document by Shipper to Operator, is found to be false or misleading in any material particular.

and Shipper fails to remedy that event within the relevant period determined in accordance with clause 22.3(b) following the giving of a Shipper Default Notice by Operator.

22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then Operator may give notice in writing by certified mail to Shipper specifying the nature of the default and requiring Shipper to rectify the default (**Shipper Default Notice**).

22.3 When Operator may exercise remedy

- (a) Subject to clause 22.3(b), Operator may exercise a remedy under clause 22.4 at any time during which Shipper remains in default under this Contract.
- (b) Shipper is not in default under this Contract and Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):
 - (i) in respect of an event described in clause 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days have elapsed after Shipper receives that Shipper Default Notice; and
 - (ii) in respect of an event described in clauses 22.1(b), 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after Shipper receives that Shipper Default Notice,and the event has not been remedied within the relevant period specified in (i) or (ii) above.
- (c) A default of the kind referred to in clause 22.1(d) will be deemed to be remedied when the relevant Insolvency Event is no longer continuing.

22.4 Remedies for Shipper's default

Subject to clause 22.3, if Shipper is in default under this Contract, then Operator may in its sole discretion:

- (a) refuse to Receive Gas from Shipper at an inlet point or refuse to Deliver Gas to Shipper at an outlet point until such time as:
 - (i) all amounts the failure to pay which constitutes the event described in clause 22.1(a), plus interest on those amounts at the Prescribed Interest Rate, have been paid in full; and
 - (ii) all other events described in clause 22.1 have been remedied, ceased or removed; or
- (b) by notice in writing to Shipper terminate this Contract which termination takes effect immediately upon receipt of such notice.

22.5 Default by Operator

Operator is in default under this Contract only if:

- (a) Operator repudiates, disclaims or defaults in the performance of, any obligation under this Contract and such repudiation, disclaimer or default is material in the context of the Contract as a whole; or
- (b) an Insolvency Event occurs in respect of Operator, and Operator fails to remedy that event within the relevant period determined in accordance with clause 22.7 following the giving of a Operator Default Notice by Shipper.

22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then Shipper may give notice in writing by certified mail to Operator specifying the nature of the default and requiring Operator to rectify the default (**Operator Default Notice**).

22.7 When Shipper may exercise remedy

- (a) Subject to clauses 22.7(b) and 22.7(c), Shipper may exercise a remedy under clause 22.8 or 22.9 at any time during which Operator remains in default under this Contract.
- (b) Operator is not in default under this Contract and Shipper may not terminate this Contract under clause 22.8 or 22.9 or commence the exercise of any remedy under clause 22.9 for a default under this Contract:
 - (i) in respect of an event described in clause 22.5(a), unless it has given an Operator Default Notice, and until 40 Working Days have elapsed after Operator receives that Operator Default Notice; and
 - (ii) in respect of an event described in clause 22.5(b), unless it has given an Operator Default Notice, and until 5 Working Days have elapsed after Operator receives that Operator Default Notice,and the event has not been remedied within the relevant period specified in (i) or (ii) above.
- (c) Shipper may not terminate this Contract under clause 22.8 or clause 22.9(b) in respect of a default by Operator of its obligations under clause 16 until Shipper has been entitled to Liquidated Damages under clause 22.9(a) for a period of 40 Working Days.
- (d) A default of the kind referred to in clause 22.5(b) above will be deemed to be remedied when the relevant Insolvency Event is no longer continuing. A default of the kind referred to in clause 22.5(a) above that relates to the repudiation or disclaimer of a contract, agreement or deed will be deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.
- (e) In determining whether Operator is in default under this Contract in a way described in clause 22.5(a) above of its obligations under clause 16 (Additional T1 Capacity), any applicable extension of time or other limitation agreed between the Parties is to be taken into account.

22.8 Remedies for Operator's default

Subject in all cases to clauses 22.7 and 22.9, if Operator is in default under this Contract (other than in respect of an event described in clause 22.5(a), of its obligations under clause 16 (Additional T1 Capacity)) and:

- (a) Shipper elects to terminate this Contract in respect of a default described in clause 22.5(b), then Shipper may in its sole discretion by notice in writing to Operator terminate this Contract, which termination shall take effect at the start of the Gas Day immediately following Operator's receipt of the notice of termination; or
- (b) Shipper elects to terminate this Contract in respect of a default described in clause 22.5(a), then Shipper may, in its sole discretion, by notice in writing to Operator terminate this Contract, which termination shall take effect at the time Shipper

specifies in the notice of termination not exceeding 3 years after Operator receives the notice of termination.

22.9 Operator's Liability for a failure to expand

If Operator is in default under this Contract, in a way described in clause 22.5(a), of its obligations under clause 16, then Shipper may:

- (a) notify Operator that it must pay Liquidated Damages, in which case Operator shall pay to Shipper from the date the notice is given to Operator, for each Gas Day during which the default continues but subject to clause 22.13, the Liquidated Damages, calculated for that Gas Day. Operator must pay the Liquidated Damages within 10 Working Days after receipt of a Tax Invoice (provided under clause 21.2 with appropriate changes) in respect of the Liquidated Damages accrued during the previous Gas Month; and
- (b) give a notice of termination, in lieu of a notice of termination under clause 22.8, which specifies the time the termination takes effect as being any time not exceeding 3 years after:

- (i) the date when the Requested T1 Capacity was first due to be provided by Operator in accordance with clause 16 and was not so provided; or
- (ii) the obligation to provide the Requested T1 Capacity which Operator repudiates or disclaims would have fallen due but for the repudiation or disclaimer.

Subject to clause 22.13(c), if Shipper terminates this Contract under this clause 22.9(b) Shipper will only be entitled to recover Direct Damages from Operator suffered by Shipper as a result of the default by Operator of its obligations under clause 16.1.

22.10 No General Damages

Subject to clause 22.13(c), the right to Liquidated Damages and the right of termination (with the right to recover Direct Damages) under the preceding clauses, will be Shipper's sole and exclusive remedy in respect of a repudiation, disclaimer or default under clause 16 and Operator (despite any provision of clause 23) will not be liable to Shipper for any other Indirect Damage arising in respect of a repudiation, disclaimer or default under clause 16.

22.11 Saving of other remedies

Except where expressly excluded or limited by this Contract, the right to terminate this Contract under this clause 22 is in addition to and is not in substitution for any other rights and remedies available to a Party, whether under any law, or this Contract or in equity.

22.12 Effect of termination

- (a) Termination of this Contract by Operator under clause 22.4(b) or Shipper under clause 22.8 or 22.9:
 - (i) does not prejudice the rights or remedies accrued to either Party at the date of termination or any of the provisions of clause 17.2 or 17.3, clauses 23.1 to 23.7 (inclusive), and clause 29; and

- (ii) subject to clause 22.12(b), relieves each Party of all further obligations under this Contract to the other Party.
- (b) Termination of this Contract by Operator under clause 22.4(b) does not relieve Shipper of its obligations under this Contract to (subject to clause 22.12(d)) pay the Capacity Reservation Charges for the balance of the Remaining Period of Supply (but for the termination of this Contract) and to pay all amounts outstanding (and then due and payable) at the time of termination, and termination of this Contract by Shipper under clause 22.8 does not relieve Operator of its obligations to pay all amounts outstanding (and then due and payable) at the time of termination.
- (c) Termination of this Contract by Shipper under clause 22.9 does not relieve Operator of its liability for Direct Damage suffered by Shipper as a result of the default by Operator of its obligations under clause 16.1.
- (d) Shipper is relieved of its obligation under clause 22.12(b) to continue to pay an amount if and to the extent that Operator subsequently enters into a contract for Capacity Services, and receives payment from Shipper or any other shipper for, some or all of the Contracted Capacity (*Terminated Capacity*) made spare by the termination of this Contract.
- (e) For the purposes of clause 22.12(d), Terminated Capacity in any Capacity Service is to be assumed to be the last Capacity available to be committed under a contract for Gas Transmission Capacity, and any amounts received by Operator under such contract are to be assumed to be applied last to any Terminated Capacity committed under that contract.

22.13 Maximum amount of Liquidated Damages

- (a) Unless Operator willfully defaults in the performance of, or repudiates, its obligations under clause 16 or irrevocably abandons the Expansion required to provide that Requested T1 Capacity, the maximum amount for which Operator can be liable to Shipper under clause 22.9 for Liquidated Damages is, subject to clause 22.13(b), the aggregate amount which Operator recovers:
 - (i) from the Expansion Works Contractor in relation to the Expansion Works Contractor's delay in completing the Expansion by the time specified in the contract between the Operator and the Expansion Works Contractor for the Expansion including liquidated damages, unliquidated damages and amounts payable under any indemnities; and
 - (ii) under policies of insurance effected by Operator or the Expansion Works Contractor insuring against the risks of delays in completing the Expansion or against Operator's liability for Liquidated Damages to shippers for failing to provide Requested T1 Capacity to shippers by the Requested T1 Capacity Start Date for that Expansion or both, which are available to Operator.
- (b) If the Expansion is providing Requested T1 Capacity for Shipper and other shippers, the maximum amount for which Operator can be liable to Shipper under clause 22.9 for Liquidated Damages is that proportion of the aggregate amount determined under clause 22.13(a) which the amount of Shipper's Requested T1 Capacity that is being provided by that Expansion bears to the total Capacity of all shippers that is being provided by that Expansion.

- (c) If Operator willfully defaults in the performance of, or repudiates, its obligations under clause 16 or irrevocably abandons the Expansion required to provide that Requested T1 Capacity, Shipper may give Operator a notice terminating Shipper's requirements for the Requested T1 Capacity and Operator shall be liable to Shipper for all loss or damage incurred by Shipper as a result of Operator's failure to provide the Requested T1 Capacity and the exclusion of Indirect Damage in clause 23.3 shall not apply.
- (d) To avoid doubt, the Parties do not intend:
 - (i) clause 22.13(a)(i) to limit Operator's ability to recover any amount from the Expansion Works Contractor; or
 - (ii) clause 22.13(a)(ii) to limit a party's ability to recover any amount under an insurance policy.
- (e) Operator undertakes that it will use reasonable endeavours to recover all sums legally recoverable from the Expansion Works Contractor and insurer (as the case may be) referred to in clauses 22.13(a)(i) and (ii).

23. Liability

23.1 Liability for negligence and default limited to Direct Damage

Subject to the terms and conditions of this Contract, a Party who:

- (a) is negligent; or
- (b) defaults in respect of its obligations to the other Party under this Contract, is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and is to indemnify the other Party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage caused by or arising out of the negligence or default.

23.2 Liability for fraud

A Party who is fraudulent in respect of its obligations to the other Party under this Contract is to be liable to the other Party for, and is to indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of the fraud and the exclusion of Indirect Damage in clause 23.3 shall not apply.

23.3 No liability for Indirect Damage

- (a) Subject to clause 23.3(c), neither Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.
- (b) Subject to clause 23.3(c), Operator hereby releases Shipper from, and agrees to indemnify Shipper against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by Operator and Shipper hereby releases Operator from, and agrees to indemnify Operator against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by Shipper.
- (c) Where this Contract states that "the exclusion of Indirect Damage in clause 23.3(a) does not apply", or words to the same effect, in relation to a matter, then:
 - (i) the exclusion of Indirect Damage in clause 23.3(a) and the release and indemnity in clause 23.3(b) do not apply in relation to that matter; and

- (ii) the Parties' respective liability in relation to the matter is to be determined by law, and to avoid doubt the definition of "Indirect Damage" in this Contract is to be disregarded for the purposes of that determination.

23.4 No liability arising out of any approval by Operator

Without limiting the generality of clause 23.3, Operator is not, except as provided in clauses 23.1 and 23.2, in any circumstances to be liable to Shipper for any Direct Damage or Indirect Damage arising out of any approval by Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the DBNGP.

23.5 Saving of contractual payments

Nothing in this clause 23 limits the liability of either Party to make all payments due under this Contract.

23.6 Shipper is responsible for its and its contractors' personnel and property

- (a) Subject to clause 23.1, Shipper alone is liable for any:
 - (i) injury to or death of any person employed by Shipper or by any person (except Operator) contracting with Shipper; and
 - (ii) loss of or damage to any property of Shipper or of any person (except Operator) contracting with or employed by Shipper,
 however caused, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP, or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to Shipper or where Operator's property or directors, servants, consultants, independent contractors or agents and Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.
- (b) Shipper must indemnify Operator and any person (except Shipper) contracting with Operator, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.6(a).

23.7 Operator is responsible for its and its contractors' personnel and property

- (a) Subject to clause 23.1, Operator alone is liable for any:
 - (i) injury to or death of any person employed by Operator or by any person (except Shipper) contracting with Operator; and
 - (ii) loss of or damage to any property of Operator or of any person (except Shipper) contracting with or employed by Operator,
 however caused, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to Shipper or where Operator's

property or directors, servants, consultants, independent contractors or agents and Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) Operator must indemnify Shipper and any person (except Operator) contracting with Shipper, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.7(a).

23.8 Each limitation separate

Each limitation or exclusion created by this clause 23 and each protection given to Operator or Shipper or to their respective directors, servants, consultants, independent contractors and agents by this clause 23 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 23 is held inapplicable in any circumstances.

24. Dispute Resolution and Independent Experts

24.1 Method of Resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause.

24.2 Acknowledgment

The Parties acknowledge that while Disputes may arise from time to time, their common intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

24.3 Service of Notice

If a Dispute arises at any time which is between the Parties, then either Party may give the other Party a notice in writing which is dated, signed, and must specify the precise nature of the Dispute (*Dispute Notice*).

24.4 Meeting

Within 5 Working Days of service of a Dispute Notice, the Parties must meet and use their all reasonable efforts to resolve the Dispute (by negotiation or otherwise).

24.5 Senior Officers

If the Dispute is not resolved within 10 Working Days after the meeting between the Parties under clause 24.4, the Parties must immediately refer the Dispute to their respective senior executive officers who must meet within 5 Working Days and use all reasonable efforts to resolve the Dispute.

24.6 Failure to Resolve Dispute

If the Parties are unable to resolve the Dispute in accordance with clause 24.5, and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 24.7), then either Party may require that the Dispute be determined by an independent expert (*Independent Expert*) under clauses 24.8, 24.9 and 24.10 and if the

Dispute is not a Technical Matter or a Financial Matter then either Party may commence proceedings in a court of competent jurisdiction in Western Australia.

24.7 Technical and Financial Matters

In this clause 24:

- (a) a **Technical Matter** means a matter involving issues relating to the receipt, transportation and delivery of Gas under this Agreement which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which Operator has issued an Unavailability Notice); and
- (b) a **Financial Matter** means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

24.8 Appointment of Independent Expert

- (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
- (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then either Party may refer the matter:
- (i) if it is a Technical Matter, to the President for the time being of the Institute 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 24.8(b)(i) or 24.8(b)(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, or, if there is no successor body or association:

(A) in the case of a Technical Matter, to the President or Chairman for the time being or his/her nominee of a body representing engineers in the State; and

(B) in the case of a Financial Matter, to the President or Chairman for the time being or his/her nominee of a body representing chartered accountants in the State,

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

24.9 Expert not an Arbitrator

The Independent Expert appointed under clause 24.8:

- (a) will act as an expert and not as an arbitrator;
- (b) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) will not be a current or former employee or representative of, or a person who provides consultancy services on a regular basis to, a Party or to a Related Body Corporate of a Party; and

- (d) must disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which may conflict with his or her position.
- 24.10 Representation, Evidence, Confidentiality, Powers and Costs**
- (a) Each Party may be legally represented at any hearing before the Independent Expert.
- (b) Each Party will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute.
- (c) Each Party will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (d) The Independent Expert will not be bound by the rules of evidence and, subject to abiding by the rules of natural justice, the Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent Expert is to determine the procedures to be followed in resolving the Dispute (including whether or not any hearing will take place) and the Parties must co-operate promptly with those procedures, but the Independent Expert shall in any event:
- (i) provide the Parties with a fair opportunity to make written submissions;
 - (ii) provide written reasons for the Independent Expert's determination;
 - (iii) prior to handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity to lodge written submissions concerning the proposed determination which the Independent Expert must consider before settling and handing down the Independent Expert's determination.
- (f) Subject to clause 24.10(f)(ii), all information, material and evidence obtained or made available in the course of or for the purpose of the determination will be kept confidential by the Independent Expert and all the Parties.
- (ii) Clause 24.10(f)(i) does not apply if:
- (A) all the Parties otherwise agree; or
 - (B) the disclosure is authorised by law or the disclosure is required by or under a law of the State or the Commonwealth.
- (iii) If either Party becomes legally compelled to disclose information, material or evidence obtained in the course of or for the purpose of the determination, that person must immediately provide the other Party with written notice so that the other Party may seek appropriate relief and may only disclose information, material or evidence which is legally required to be disclosed.
- (iv) This clause does not make confidential, information, material or evidence which is in the public domain at the time it is obtained in the course of or for the purpose of the determination.

- (v) The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available at law or in equity.
- (g) Subject to any time prescribed anywhere else in this Contract, the Independent Expert will make a determination on the Dispute within a reasonable period of his/her appointment.
- (h) The determination of the Independent Expert:
- (i) will be final and binding upon the Parties so far as the law allows, except where a Party has been denied natural justice; and
 - (ii) will determine what, if any, adjustments may be necessary between the Parties.
- (i) The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:
- (i) unless the Parties otherwise agree before the reference of the Dispute, the remuneration of the Independent Expert will be finally determined by the President for the time being of the appropriate body referred to in clause 24.8(b) who will have the power to fix the remuneration of the Independent Expert at the conclusion of the determination or, if requested by the Independent Expert, to determine a fair rate at which the Independent Expert will be remunerated at any time during the conduct of the determination process;
 - (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of:
 - (A) the determination;
 - (B) each Parties' own costs (including out of pocket costs) incurred in the preparation and presentation of any submissions or evidence to the Independent Expert;
 - (C) and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.

24.11 Urgent Relief Condition Precedent to litigation

- (a) A Party must not commence any proceedings before any court in respect of a Dispute which a Party requires to be determined by an Independent Expert under clause 24.6 unless the Dispute has first been referred to an Independent Expert and the Independent Expert does not determine the Dispute within 6 months of the date of the dispute being referred to the Independent Expert.
- (b) Nothing in this clause 24.11 will preclude either Party from seeking any urgent interlocutory, injunctive or declaratory relief, or from commencing proceedings before any court to prevent its claim from being statute barred under the *Limitation Act 1935* (WA) or any other relevant statute of limitation.

25. Assignment

25.1 No assignment except under this clause

Subject to this clause 25, neither Party may assign any right, interest or obligation under this Contract (but this clause 25 does not prevent the creation of an interest for Shipper or its nominee under clause 16.10).

25.2 Charges

- (a) A Party may without the consent of the other Party (but subject to all other necessary consents and approvals) charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the chargee enters into a tripartite agreement with the other Party substantially in the form of Schedule 7. If Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite agreement in the form of Schedule 7 is to be modified in the manner necessary to change the charging Party from Operator to Shipper.
- (b) The granting of a charge under this clause 25.2 does not constitute the assignment of a right, interest or obligation referred to in this clause 25.

25.3 Assignment

- (a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:
- (i) such assignment does not release the assignor from liability; and
 - (ii) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.
- (b) Subject to clauses 25.3(c), 25.3(d), and 25.4, either Party may, with the prior written consent of the other Party, which may not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.
- (c) Without limitation, Operator may withhold its consent to an assignment by Shipper if Operator reasonably considers that the proposed assignee is not in a position to meet Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to Operator, acting reasonably.
- (d) Without limitation, Shipper may withhold its consent to an assignment of Operator's obligations under this Contract if Shipper reasonably considers that the proposed assignee does not have:
- (i) contractual or ownership rights to access the DBNGP for the purposes of performing all of Operator's obligations under this Contract; or
 - (ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNGP and to perform all of Operator's obligations under this Contract, including the obligations under clause 16.

25.4 Assignment: void of assumption

- (a) A Party (in this clause 25.4 called the **Assignor**) shall not assign all or part of its rights and interests under this Contract without requiring the assignee to enter into a deed of assumption to the reasonable satisfaction of the other Party under which the assignee assumes all, or the relevant portion, of the Assignor's obligations under this Contract and becomes a party to the Settlement Deed – Section 20 Dispute dated on or about the date of the Deed of Amendment and Restatement (**Shipper Contract**) between Operator and Shipper.
- (b) Upon the fulfilment of the relevant conditions specified in clause 25.3 and the entry into of a deed of assumption contemplated by clause 25.4(a), the Assignor shall be released from all future liability and obligations under this Agreement to the extent that the assignee has agreed to perform them under the deed of assumption, but this release shall not apply to an assignment to a Related Body Corporate under clause 25.3(a) without the written consent of the other Party.
- ### 25.5 Pipeline Trustee's Acknowledgments and Undertakings
- (a) The Pipeline Trustee in its capacity as trustee of the Epic Energy WA Pipeline Trust (**Pipeline Trust**) undertakes to Shipper that the Pipeline Trustee assumes and shall duly and punctually observe, perform and discharge all of the obligations of Operator under:
- (i) this Contract; and
 - (ii) any other contract with Shipper entered into by, or undertaking given in favour of Shipper by, Operator which requires the use or application of any asset owned by the Pipeline Trust, including the DBNGP, in order to be able to perform the contract or comply with the undertaking,
- except to the extent that such obligations are observed, performed or discharged by Operator.
- (b) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to Shipper, that if for any reason the DBNGP Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNGP (whether imposed on Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by Operator had the DBNGP Operating Agreement not been terminated.
- (c) The Pipeline Trustee, in its capacity as Trustee of the Pipeline Trust, acknowledges and agrees the Pipeline Trustee's undertaking in clause 25.5(a) and 25.5(b) for the benefit of Shipper extends to and includes each and every amount of Requested T1 Capacity requested by Shipper pursuant to clause 16 of this Contract.
- (d) Shipper acknowledges and agrees that:
- (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.5(a), 25.5(b) and 25.5(c) (**Relevant Agreements**) to the same extent that Operator would have had to comply with those obligations under the Relevant Agreements;

- (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement for the benefit of Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25.5(a), 25.5(b) and 25.5(c); and
- (iii) nothing in clauses 25.5(a), 25.5(b) and 25.5(c) gives Shipper any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that Shipper would have been entitled to against Operator for that failure.
- (e) The Pipeline Trustee represents and warrants that it is the legal owner of the DBNGP and owns the DBNGP in its capacity as trustee of the Epic Energy WA Pipeline Trust.
- (f) Other than to the extent relating to the transaction documentation entered into on or about the Contract Commencement Date, the Pipeline Trustee shall not dispose of the whole or any part of its right, title or interest in the DBNGP without requiring the donee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:
- (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be released to the extent that the Pipeline Trustee's obligations are assumed); and
- (ii) acknowledges that its obligations under such assumption of obligations extend to Operator's obligations under the Relevant Agreements, consistent with this clause 25.5.
- (g) Subject to clause 25.5(h), if the donee is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the donee, execute the deed of assumption in terms of clause 25.5(f).
- In this clause 25.5, **dispose** means, in relation to the DBNGP, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the DBNGP (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee:
- (i) acquiring any equitable interest in the DBNGP, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the DBNGP; or
- (ii) otherwise acquiring legal or equitable rights against the DBNGP which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the DBNGP itself.
- (h) If the donee is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.5(g) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the donee. Nothing in

clause 25.5(g) or this clause 25.5(h) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

25.6 DBNGP Trustee undertakings

- (a) The DBNGP Trustee in its capacity as trustee of the DBNGP Trust (**DBNGP Trust**) undertakes to Shipper that the DBNGP Trustee assumes and shall duly and punctually observe, perform and discharge all of the obligations of Operator under:
- (i) this Contract; and
- (ii) any other contract with Shipper entered into by, or undertaking given in favour of Shipper by, Operator which requires the use or application of any asset owned by the DBNGP Trust in order to be able to perform the contract or comply with the undertaking,
- except to the extent that such obligations are observed, performed or discharged by Operator.
- (b) The DBNGP Trustee, in its capacity as Trustee of the DBNGP Trust, acknowledges and agrees the DBNGP Trustee's undertaking in clause 25.6(a) for the benefit of Shipper extends to and includes each and every amount of Requested T1 Capacity requested by Shipper pursuant to clause 16 of this Contract.
- (c) Shipper acknowledges and agrees that:
- (i) the DBNGP Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.6(a) and 25.6(b) (**Relevant Agreements**) to the same extent that Operator would have had to comply with those obligations under the Relevant Agreements;
- (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement for the benefit of Operator will also apply to the same extent for the benefit of the DBNGP Trustee in respect of its obligations under clauses 25.6(a) and 25.6(b); and
- (iii) nothing in clauses 25.6(a) and 25.6(b) gives Shipper any greater right or remedy against the DBNGP Trustee arising from a failure to perform an obligation under a Relevant Agreement by the DBNGP Trustee than the right or remedy that Shipper would have been entitled to against Operator for that failure.
- (d) Other than to the extent relating to the transaction documentation entered into on or about the Contract Commencement Date, the DBNGP Trustee shall not dispose of the whole or any part of its right, title or interest in the Pipeline Trust without requiring the donee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:
- (i) assumes all, or the relevant portion, of the DBNGP Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the DBNGP Trustee will be released to the extent that the DBNGP Trustee's obligations are assumed); and
- (ii) acknowledges that its obligations under such assumption of obligations extend to Operator's obligations under the Relevant Agreements, consistent with this clause 25.6.

(e) Subject to clause 25.6(f), if the donee is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the donee, execute the deed of assumption in terms of clause 25.6(d).

In this clause 25.6, **dispose** means to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the Pipeline Trust (or any interest therein) and includes a transaction which results in a person other than the DBNGP Trustee:

- (i) acquiring any equitable interest in the Pipeline Trust, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the Pipeline Trust; or
- (ii) otherwise acquiring legal or equitable rights against the Pipeline Trust which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the Pipeline Trust itself.

(f) If the donee is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.6(e) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the donee. Nothing in clause 25.6(e) or this clause 25.6(f) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

25.7 Non complying assignment

Any purported sale, transfer or assignment in breach of the requirements of any of the provisions of this clause 25 is void ab initio.

25.8 Utilising other shippers' Daily Nominations

Neither clause 25.1 nor clause 27.1 prevent Shipper agreeing to utilize its Daily Nominations on behalf of an Other shipper or an Other shipper agreeing to utilize its Daily Nominations on behalf of Shipper.

26. General Right of Relinquishment

26.1 Shipper may make Relinquishment Offer

- (a) In addition to its rights under this Contract to relinquish Contracted Capacity in certain circumstances, Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to Operator (**Relinquishment Offer**).
- (b) The Relinquishment Offer must specify the amount of Contracted Capacity under this Contract to be relinquished (**Relinquishable Capacity**) at an Inlet Point, and at an Outlet Point.
- (c) The Relinquishment Offer may specify how a Relinquishment Acceptance is to apportion any Relinquished Capacity between Shipper's Contracted Capacities for each Period.

(d) A Relinquishment Offer, unless accepted under clause 26.3(a), has no effect on this Contract.

26.2 Withdrawal of Relinquishment Offer

Shipper may at any time before Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to Operator that it wishes:

- (a) to withdraw that Relinquishment Offer; or
 - (b) to amend that Relinquishment Offer.
- and that Relinquishment Offer is by force of this clause 26.2 withdrawn or amended, as the case requires, from the time when that notice is received by Operator.

26.3 Operator may accept Relinquishment Offer

(a) (i) Operator may at any time give notice in writing to Shipper accepting a Relinquishment Offer (**Relinquishment Acceptance**).

(ii) A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.

(iii) A Relinquishment Acceptance must not apportion Relinquished Capacity between Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(d).

(b) A Relinquishment Acceptance must specify:

- (i) the amount of Relinquishable Capacity that Operator has agreed to relinquish (**Relinquished Capacity**);
- (ii) the changes to Schedule 1 which are required to give effect to the relinquishment of the Relinquished Capacity; and
- (iii) the date the relinquishment is to take effect.

(c) Subject to clause 26.3(b), Operator's discretion in determining:

- (i) whether or not to give a Relinquishment Acceptance;
- (ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and
- (iii) the order in which it accepts offers of relinquishment from:

(A) Shipper under this clause 26; and

(B) if another shipper or shippers have rights of relinquishment of T1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,

is to be absolute and unfettered.

(d) Operator's discretion is not to be limited by:

- (i) any circumstances of Shipper;
- (ii) the current or projected level of utilization of capacity of the DBNGP;
- (iii) the number or magnitude of current or anticipated offers of relinquishment from:

(A) Shipper under this clause 26; and

- (B) if another shipper or shippers have rights of relinquishment of T1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or
- (iv) the order in which offers of relinquishment are received by Operator from:
- (A) Shipper under this clause 26; and
- (B) if another shipper or shippers have rights of relinquishment of T1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

26.4 Effect of Relinquishment Acceptance

- (a) Upon receipt by Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:
- (i) Shipper's Contracted Capacity is amended in accordance with the Relinquishment Acceptance;
- (ii) if, as a result of a reduction under clause 26.4(a)(i), Shipper's Contracted Capacity is reduced to zero, then this Contract is terminated; and
- (iii) if the Relinquishment Acceptance is given in respect of:
- (A) part only of the Relinquishable Capacity, the Relinquishment Offer remains in effect, subject to clause 26.2, in respect of the Relinquishable Capacity which has not become Relinquished Capacity; or
- (B) all of the Relinquishable Capacity, the Relinquishment Offer ceases to have effect.
- (b) Subject to clause 26.4(a)(ii), this Contract, as amended under clause 26.4(a)(i), remains in effect after receipt by Shipper of the Relinquishment Acceptance, and Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by Shipper.

26.5 Notification of relinquishment of capacity by other shippers

If another shipper or shippers have rights of relinquishment of T1 Service under clauses materially equivalent to this clause 26, Operator must, whenever requested by Shipper to do so, provide Shipper, at Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26.

26.6 Administrative expenses

- Shipper must, when requested by Operator to do so, reimburse Operator for all reasonable expenses incurred by Operator by reason of any:
- (a) Relinquishment Offer;
- (b) notice given under clause 26.2(a); or
- (c) Relinquishment Acceptance.

26.7 Relinquishment right from 2016

- (a) At any time after 08:00 hours on 1 January 2016 Shipper may give a notice to Operator (**Relinquishment Notice**) that it wishes to relinquish T1 Capacity in accordance with this clause 26.7.
- (b) A Relinquishment Notice may not be given less than 12 months after the giving of a previous Relinquishment Notice and if Shipper wishes to relinquish Requested T1 Capacity granted to it in accordance with the provisions of clause 16, it may not give a Relinquishment Notice earlier than 10 years of the grant to it of the Requested T1 Capacity it wishes to relinquish.
- (c) A Relinquishment Notice under clause 26.7(a) must specify:
- (i) the amount of Contracted Capacity under this Contract to be relinquished. The amount of Contracted Capacity to be relinquished must be the same for each Gas Day and cannot be more than 10% of the aggregate of:
- (A) the Shipper's Total Contracted Capacity as at the Contract Commencement Date; and
- (B) the sum of all Requested T1 Capacity granted to Shipper under clause 16 of this Contract that has been granted to shipper for at least 10 years;
- (ii) the changes to Schedule 1 which are required to give effect to the relinquishment; and
- (iii) the Gas Day on which the relinquishment is to take effect, which cannot be earlier than 60 days after the Relinquishment Notice has been given to Operator.
- (d) This Contract is amended at 08:00 hours on the date the relinquishment takes effect in accordance with clause 26.7(c)(iii) by amending Schedule 1 in accordance with the changes to Schedule 1 specified in the Relinquishment Notice.

26.8 Relinquishment right prior to expansion

- (a) Prior to commencing works to expand the T1 Capacity in the Gas Transmission Capacity of the DBNGP:
- (i) Unless Shipper has given a T1 Capacity Notice which requires the Operator to commence the works to expand the T1 Capacity in the Gas Transmission Capacity of the DBNGP, Operator must notify Shipper of the proposed expansion and the amount of Gas Transmission Capacity the subject of the proposed expansion (in this clause 26.8 called the **expansion amount**), the likely time the additional Gas Transmission Capacity will become available and a date (**Effective Date**) on which Operator as a Reasonable And Prudent Person proposes any relinquishment under this clause 26.8 should become effective; and
- (ii) Shipper may, by written notice to Operator given no later than 30 days after receipt of notice under clause 26.8(a)(i), offer to relinquish Contracted Capacity under this Contract in an amount up to the expansion amount and, if at the time of a proposed expansion another shipper or shippers have rights of relinquishment of Contracted Firm Capacity under clauses materially equivalent to this clause 26.8, the amount of capacity that can be

relinquished by Shipper and the other shipper or shippers is to be determined in accordance with the following formula:

$$CR = EA \times \frac{SRR}{TRR}$$

where:

CR is the amount of T1 Capacity that can be relinquished by Shipper in T.J/d;

EA is the amount of T1 Capacity by which the DBNGP is to be expanded in T.J/d;

SRR is the amount of T1 Capacity Shipper has requested to relinquish in T.J/d; and

TRR is the amount of T1 Capacity and Alcoa's Exempt Capacity all shippers (including Shipper and Alcoa) have requested to relinquish in T.J/d.

In calculating CR, the amount is to be rounded to 1 decimal place.

(b) Operator must within a reasonable period after receiving the offer notice under clause 26.8(a)(ii) give Shipper a relinquishment notice specifying:

(i) the quantity of Contracted Capacity relinquished, which must equal the amount specified by Shipper in the notice under clause 26.8(a)(ii) unless the amount available for relinquishment is reduced under clause 26.8(a)(ii), taking into account Shipper's offer notice and the offer notices submitted by other shippers. For the avoidance of doubt, notwithstanding anything else in clause 26.8, in no case will Operator be obliged to allow shippers to relinquish an amount of capacity in aggregate, across all shippers, exceeding the expansion amount. The amount of Contracted Capacity relinquished must be the same for each Gas Day; and

(ii) the changes to Schedule 1 which are required to give effect to the relinquishment.

(c) A relinquishment notice under clause 26.8(c):

(i) must comply with the other provisions of this clause 26.8; and

(ii) takes effect at 08:00 hours on the Effective Date.

27. Trading or Transferring Contracted Capacity

27.1 No transfer of Shipper's Contracted Capacity other than by this clause

(a) Shipper may not Transfer any of its Contracted Capacity other than in accordance with this clause 27 (or clause 25 as the case may be).

(b) Neither clause 27.1(a) nor clause 25.1 prevent Shipper agreeing to utilize its Daily Nominations on behalf of an Other shipper or an Other shipper agreeing to utilize its Daily Nominations on behalf of Shipper.

27.2 Replacement Shipper must be a shipper or Approved Prospective Shipper

Shipper may Transfer Contracted Capacity only to a person who is, prior to the Transfer, an Other shipper or an Approved Prospective Shipper (**Replacement Shipper**).

27.3 Transfer of Capacity by Shipper - Approval of transfer terms

(a) If Shipper desires to transfer all or part of its Contracted Capacity to a Replacement Shipper for a duration less than or equal to the remaining duration of the Period of Supply, Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (**Tradeable Capacity**), make a written request to Operator for the approval of the Transfer of that Tradeable Capacity (**Request For Approval**).

(b) A Request For Approval must set out in detail the terms and conditions on which Shipper is prepared to Transfer the Tradeable Capacity to a Replacement Shipper, including:

(i) the duration of the Transfer;

(ii) the Inlet Point or Inlet Points and the Outlet Point or Outlet Points at which the Tradeable Capacity is to be Transferred;

(iii) the circumstances in which, and the terms on which, Shipper may interrupt a Replacement Shipper;

(iv) the quantity of Tradeable Capacity; and

(v) whether there are any rights reserved in respect of the Tradeable Capacity by Shipper.

(c) Shipper may retain a right in specified circumstances to Resume the Traded Capacity, either permanently or temporarily.

(d) Operator must, within 5 Working Days of receipt of the Request For Approval, notify Shipper that it either approves, or rejects, the Transfer Terms. Operator may reject the Transfer Terms if Operator as a Reasonable And Prudent Person considers for any reason that its operation of the DBNGP cannot accommodate:

(i) the Transfer of the Tradeable Capacity on the Transfer Terms; or

(ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.

(e) Operator must not unreasonably withhold its approval of Transfer Terms if the Transfer is to an existing shipper who is not in default of any of its contracts for Capacity Services and Spot Transactions and, Operator (acting as a Reasonable And Prudent Person) believes the DBNGP can accommodate:

(i) the Transfer of the Tradeable Capacity on the Transfer Terms; and

(ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.

(f) If Operator does not notify Shipper that it rejects the Transfer Terms in the terms and within the time stipulated in clause 27.3(d), then the Transfer of the Tradeable Capacity on the Transfer Terms shall be taken to have been approved by Operator.

(g) if:

- (i) Operator notifies Shipper that it approves the Transfer of the Tradeable Capacity; or
 - (ii) Operator is taken to have approved the Transfer of the Tradeable Capacity,
- (in either case **Approved Tradeable Capacity**) on the Transfer Terms, then (subject to clause 27.5) Shipper may Transfer the Tradeable Capacity to a Replacement Shipper on those terms.

27.4 Posting of Tradeable Capacity

- (a) Operator must, if requested by Shipper, use reasonable endeavours to ensure that all other shippers of which Operator is aware who are or may be interested in taking a Transfer of Tradeable Capacity are notified of details of Approved Tradeable Capacity in such a way that they all receive notice (by the CRS or otherwise) at approximately the same time as Operator makes available to the shippers any bulletin dealing with the amount of Capacity available for Nomination or Renomination on a Gas Day.
- (b) Operator must provide a statement of the current details of all other shippers' Approved Tradeable Capacity at Shipper's request.

27.5 Notification of traded capacity

Shipper is to notify Operator of a Transfer of Approved Tradeable Capacity to a Replacement Shipper at least 2 Working Days before the Transfer of Approved Tradeable Capacity is to take effect.

27.6 Replacement Contract

- (a) A Transfer of Approved Tradeable Capacity to a Replacement Shipper shall be taken to be a contract between Operator and the Replacement Shipper in respect of the Approved Tradeable Capacity.
- (b) A Replacement Contract is governed by the terms and conditions of this Contract only so far as is necessary to accommodate the Transfer Terms.
- (c) A Replacement Contract shall include a provision that the Traded Capacity is subject to all Operator's rights over that Traded Capacity under this Contract.
- (d) Prior to Operator exercising any rights to terminate the Replacement Contract as a result of the Replacement Shipper's default, Operator must give at least 5 Working Days notice to Shipper specifying the nature of the default, and Operator must not terminate the Replacement Contract if within that period Shipper:

- (i) cures the default; or
- (ii) resumes the Tradeable Capacity (having cured the default).

27.7 Shipper's Contract

- (a) Subject to this clause, this Contract remains in full force and effect following any Transfer of Traded Capacity and Operator is not obliged to release any deposit, bond, security or other form of assurance provided by Shipper.
- (b) For the duration of the Replacement Contract, this Contract shall be taken to be amended so that Shipper's Contracted Capacity in respect of the relevant inlet

point or inlet points or outlet point or outlet points is reduced by the amount of the Traded Capacity.

27.8 Resumption of Traded Capacity by Shipper

- (a) If Shipper wishes to exercise a right under the Transfer Terms to resume the Traded Capacity, Shipper must give a Resumption Notice to Operator and the Replacement Shipper, specifying the amount of Capacity Resumed and the duration of the Resumption.
- (b) Operator, on receipt of a Resumption Notice, must as soon as practicable confirm to Shipper and the Replacement Shipper that the Capacity has been Resumed.
- (c) In any proceedings brought against Operator in relation to a Resumption, a Resumption Notice is conclusive proof of the validity of its issue and of its contents.
- (d) To the extent that a Resumption Notice is invalidly issued or a purported Resumption is not authorised by the Transfer Terms, a Replacement Shipper's remedy lies against Shipper.
- (e) For the duration of a Resumption, this Contract and the Replacement Contract shall be taken to be amended to the extent necessary to reflect the Resumption of Traded Capacity and the duration and terms of that Resumption.
- (f) Traded Capacity which is resumed by Shipper, or Capacity which is otherwise transferred or reverts to Shipper, is to be subject to the terms of this Contract and treated as the same Capacity Service that applied prior to its Transfer, regardless of the terms applying to it prior to the resumption.

27.9 Administrative expenses

Shipper must, when requested by Operator, reimburse Operator for all reasonable expenses incurred or suffered by Operator by reason of the Request For Approval and any Resumption.

27.10 Further marketing service

- (a) Operator may, if requested by Shipper, to the extent that it considers it practicable and prudent to do so, take steps to market (as a broker, but not as a buyer and reseller) Tradeable Capacity in ways other than the posting contemplated by clause 27.4.
- (b) Operator and Shipper may agree on the remuneration of Operator in respect of any additional marketing service Operator agrees to provide, and Operator may refrain from providing that additional marketing service until such agreement is reached.

27.11 Relinquishment

- (a) Where under this Contract Shipper has given a Relinquishment Notice or a notice indicating that it wishes to relinquish capacity, Operator may request that Shipper instead Transfer the relevant capacity to a third party specified by Operator in the request in accordance with this clause 27.
- (b) Operator must procure that the specified third party releases and indemnifies Shipper from any liability which Shipper may incur arising out of the Transfer.
- (c) If Operator makes a request under clause 27.11(a), and the third party releases Shipper from liability in accordance with clause 27.11(b), then: