



Standard Shipper Contract - Part Haul P1
Dampier to Bunbury Natural Gas Pipeline

DBNGP Holdings Pty Ltd

ABN 16 110 721 081

DBNGP Trustee

DBNGP (WA) Nominees Pty Ltd

ABN 78 081 609 289

Pipeline Trustee

DBNGP (WA) Transmission Pty Ltd

ABN 69 081 609 190

Operator

Level 6

12-14 The Esplanade, Perth WA 6000

Contact: Manager Commercial

Telephone: (08) 9223 4300

[Insert name of Shipper]

ABN [insert]

Shipper

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This Agreement dated

is made at Perth

between:

DBNGP Holdings Pty Ltd ABN 16 110 721 081 of Level 6, 12-14 The Esplanade, Perth, Western Australia in its capacity as the trustee of the DBNGP Trust (**DBNGP Trustee**);

DBNGP (WA) Nominees Pty Ltd ABN 78 081 609 289 of Level 6, 12-14 The Esplanade, Perth, Western Australia in its capacity as the trustee of the DBNGP WA Pipeline Trust (**Pipeline Trustee**);

DBNGP (WA) Transmission Pty Ltd ABN 69 081 609 190 of Level 6, 12-14 The Esplanade, Perth, Western Australia (**Operator**); and

[Insert name of Shipper] ABN [insert] of [insert Shipper's address] (**Shipper**).

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.

Access Arrangement Information means the access arrangement information submitted by the Operator to the Regulator from time to time in accordance with the provisions of the National Gas Access (Western Australia) Law.

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

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 has the meaning given 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 TJ/d or greater; and
- (b) plus or minus 3% for Metering Equipment with a design flow of less than 5 TJ/d.

Actual Mass Flow Rate means either:

- (a) a directly measured variable; or
- (b) a Derived Variable computed by multiplying the instantaneous actual volume flow of Gas, as measured by the Primary Metering Equipment, by the density of the Gas, the density being either:

- (i) measured as the instantaneous measured density of the Gas; or
- (ii) calculated in accordance with the American Gas Association's Report No. 8 (Natural Gas Density and Compressibility Factor), as the Operator determines, or in accordance with 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 the Shipper under clause 8.19.

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

Aggregated Service Scheduled Daily Nomination means, in relation to a particular shipper, the Daily Nomination for Aggregated P1 Service actually scheduled to that shipper for the relevant Gas Day plus the material equivalent to such scheduled amount for the relevant Gas Day in respect of Aggregated P1 Service under any other contract for Capacity Service with that shipper.

Aggregated P1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's P1 Service:

- (a) at an Inlet Point or an Outlet Point at which the shipper does not have contracted capacity for P1 Services; and
- (b) in excess of that shipper's contracted capacity for P1 Services at an Inlet Point or Outlet Point,

and in respect to the Capacity Services available under this Contract, has the meaning given in clause 8.17.

Aggregated T1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's T1 Service:

- (a) at an Inlet Point or an Outlet Point at which the shipper does not have contracted capacity for T1 Services; and
- (b) in excess of that shipper's contracted capacity for T1 Services at an Inlet Point or Outlet Point.

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 the Operator is required to Deliver from time to time to Alcoa under the Alcoa Exempt Contract (including Alcoa's Exempt Delivery Entitlement).

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

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

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

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

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

Approved Tradeable Capacity has the meaning given in clause 27.3(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 ASX Limited ABN 98 008 624 691.

Associate has the meaning given in section 11 of the Corporations Act as at 30 June 2014.

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.

authorisation means:

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

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

B1 Service means a Back Haul service which, under the terms of a contract for the Back Haul Service, is specified to rank equally to a T1 Service in the Curtailment Plan.

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

Bank Bill Rate means, for the day of calculation, the average mid rate for bills having a tenor closest to 90 days, as displayed on the "BBSY" page of the Reuters Monitor System on that day. However, if the average mid rate is not displayed by 10:30am (Sydney time) on that Day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate (expressed as a yield to maturity) set by the Operator in good faith and acting reasonably at approximately 10:30am on that day, having regard,

to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the "BBSW" page of the Reuters Monitor System). The rate set by the Operator must be expressed as a percentage rate per annum and be rounded up to the nearest sixth decimal place.

Base T1 Tariff means:

- (a) in respect of the period ending at 08:00 hours on 1 January 2021, the New 2014 Tariff (set as at 1 July 2014), as adjusted in accordance with clauses 20.5 and 20.8; and
- (b) in respect of the period commencing at 08:00 hours on 1 January 2021, the amount calculated in accordance with clause 20.5(b).

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

Blended Specifications has the meaning given in clause 7.13.

Capacity means:

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

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

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

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

Capacity Service means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided, other than under a Spot Transaction.

Capacity Shortfall is the amount of Requested T1 Capacity nominated by the 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 the Operator fails to provide on that Gas Day in breach of clause 16 and, for the avoidance of doubt, no allowance may be made for any Other Mitigation Amount of which the Shipper is able to avail itself on that Gas Day in calculating the amount of Requested T1 Capacity that the Operator fails to provide on that Gas Day.

Capacity Start Date has the meaning given to it in clause 4.1.

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.

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 from time to time 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 in respect of a particular contract in respect of a particular Capacity Service has the meaning given in that contract, and in respect of a P1 Service under this Contract has the meaning given in clause 3.3 (as amended by any relinquishment under clause 26).

Contracted Firm Capacity means Alcoa's Exempt Capacity and any contracted Capacity Service.

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

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

Control has the meaning given in the Corporations Act as at 27 October 2004.

Controller has the meaning given in the Corporations Act as at 27 October 2004.

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 the Operator as a Reasonable and Prudent Person may determine.

CRS means the Operator's electronic customer reporting system.

CS7 means compressor station no.7 on the DBNGP.

Cubic Metre or 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.

Curtailed 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.

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

Curtailed 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, the Shipper's Total Inlet Quantity minus:

- (a) the Shipper's Total Outlet Quantity for that Gas Day across all of its Capacity Services and its Spot Transactions; and
- (b) any "System Use Gas" (as such term is defined in the relevant contract) Delivered by the Shipper to the Operator under any contract for Capacity Service provided by the Operator to the Shipper.

Daily Nomination means:

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

and in each case as scheduled under clause 8 for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled 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 Dampier and Bunbury in Western Australia, described in Schedule 4 as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists as at 30 June 2014.

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

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

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

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

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

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

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

Dispute means any dispute or difference concerning:

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

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

Distance Factor means for each Outlet Point at which the Shipper Receives Gas, the distance in kilometres between the Inlet Point I1-01 (Domgas) and the relevant Outlet Point divided by 1400 kilometres.

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

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

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

DUET Group means an ASX listed owner of energy utility assets in Australia operating under the ASX code "DUE" and its Related Bodies Corporate.

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

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

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

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

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

Excess Imbalance Charge means the charge payable by the Shipper identified in clauses 9.5(e) and 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 or will be supplied to the customer at or immediately downstream of an Outlet Point, which was in existence as at the date of the relevant change in Law as contemplated in clause 7.10, and excluding any amendments to that contract having effect after such date.

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

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

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

Existing Station means:

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

all of which are listed in Schedule 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 with 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 expansion project of the easement for the corridor under the DBP Act which was occurring at or about 27 October 2004 or to any Expansion which satisfies clause 16.4(k).

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

Facility has the meaning given in clause 6.14.

Facility Agreement has the meaning given in clause 6.14.

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; and
- (n) collisions or accidents.

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

Full Haul means a Gas transportation service on the DBNGP where the 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 period starting at 08:00 hours on a day and ending at 08:00 hours on the following day and the date of a Gas Day is the date on which it commences.

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

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

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

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

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

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 complied with;
- (b) adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;

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

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

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

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

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

Hourly Peaking Charge means the charge payable under clause 10.3(d) 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 means, in respect of a particular shipper for a Gas Hour, the total quantity (across all Outlet Points in the relevant Pipeline Zone or Zones (as the case may be)) of Gas Received by the shipper from the Operator during that Gas Hour, expressed in terajoules.

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

Independent Expert means an expert chosen under clause 24.8.

Indirect Damage means, in respect of a person:

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

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

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

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

Inlet Point means an inlet point on the DBNGP and, where the context requires, means a flange, joint or other point referred to in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

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

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

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

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

- (a) any execution or other process of any court or authority being issued against or levied upon any material part of the first person's property or assets being returned wholly or partly unsatisfied;
- (b) an order being made or a resolution being passed for the winding up or dissolution without winding up of the first person otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other Party has given consent;
- (c) a Controller being appointed in respect of the whole or a material part of the first person's property, undertaking or assets;
- (d) the first person entering into any arrangement, reconstruction or composition with or for the benefit of its creditors;

- (e) an administrator of the first person being appointed or the board of directors of the first person passing a resolution to the effect of that specified in section 436A(1) of the Corporations Act;
- (f) the first person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand for an amount in excess of \$1 million; or
- (g) an event having a substantially similar effect to an event described in any of paragraphs (a) to (f) (inclusive) which happens in connection with the first person under the law of any jurisdiction.

ISO means an International Standards Organisation standard.

Law:

- (a) means any statute, subsidiary legislation, ordinance, code, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order; and
- (b) includes:
 - (i) the terms and conditions of any licence, permit, consent, certificate, authority, approval or assurance or bond or similar requirements issued under any of the things referred to in paragraph (a); and
 - (ii) all applicable standards and obligations under the common law and Equity; but
- (c) excludes:
 - (i) any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this Contract); and
 - (ii) any requirements of the Regulator (except for requirements which apply by force of law to prevail over any inconsistent clause of this Contract).

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 27 October 2004 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 the 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,

if the period until the provision of the Requested T1 Capacity is less than 3 months, such lesser period), as part of a bona fide attempt by the Operator to reduce its liability for Liquidated Damages under clause 22.9(a), at a price not greater than the Base T1 Tariff and on terms and conditions which, as a whole, are not less favourable to the 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 6.11.

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

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

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

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 P1 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 the Operator.

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

National Gas Access (Western Australia) Law means the provisions applying because of section 7 of the *National Gas Access (WA) Act 2009* (WA), as changed from time to time, or any similar provisions specified in or made in accordance with any amendment or replacement of the *National Gas Access (WA) Act 2009* (WA).

Networks means ATCO Gas Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd).

New 2014 Tariff means \$1.403000.

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

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

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

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

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

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

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

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

Notional Gate Point has the meaning given in clause 6.9.

Operate includes to Maintain, test, or repair.

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

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

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

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

Operator Default Notice has the meaning given in clause 22.6.

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

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

Option has the meaning given in clause 4.3.

Original Capacity has the meaning given in clause 4.3.

Other Charges has the meaning given in clause 20.4.

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

- (a) the aggregate of the amount of Capacity that the Shipper, acting reasonably, could have availed itself of:
 - (i) by using unused Capacity on the Gas Day available to the Shipper under any contract for Capacity Service which the Shipper has not transferred or otherwise made available to another shipper and which the Shipper, either under the terms of the contract or pursuant to a consent actually given by the Operator, can use for Delivery of Gas;
 - (ii) by entering into a contract for Long Term Mitigation Capacity for Delivery of Gas that the Shipper could use in substitution for the Requested T1 Capacity that the Operator is failing to provide; or
 - (iii) by bidding for Spot Capacity if the Shipper had bid rather than not doing so; and
- (b) Spot Capacity which has been scheduled for the Shipper for that Gas Day and which the Operator actually supplies.

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

other shipper means any shipper other than:

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

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

Outlet Point means an outlet point on the DBNGP and, where the context requires, means a flange, joint or other point referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

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

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

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

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

Overrun Gas means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including T1 Service, P1 Service, B1 Service and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

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

P1 Capacity Reservation Tariff means the T1 Capacity Reservation Tariff from time to time multiplied by the Distance Factor.

P1 Commodity Tariff means the T1 Commodity Tariff from time to time multiplied by the Distance Factor.

P1 Contract means any contract between the Operator and a shipper for a P1 Service, and to avoid doubt includes this Contract.

P1 Permissible Curtailment Limit has the meaning given in clause 17.3(c).

P1 Service has the meaning given in clause 3.2(a).

P1 Tariff means the Base T1 Tariff multiplied by the Distance Factor.

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

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

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

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

and for Spot Capacity means the Period of Supply for P1 Service under this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulator means the ERA.

Related Body Corporate has the meaning given in the Corporations Act as at 30 June 2014.

Related Entity has the meaning given to that expression in the Corporations Act as at 30 June 2014.

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

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

Relevant Construction Costs means the Relevant Gate Station Construction Costs and/or Relevant Outlet Station Construction Costs (as the case may require).

Relevant Contracts has the meaning given in clause 7.13.

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.

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.

Remote Data is defined in clause 15.4(d).

Renomination has the meaning given in clause 8.11.

Replacement Contract means the contract which is deemed to arise between the Operator and a Replacement Shipper by clause 27.6 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 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 the Shipper of all or part of Traded Capacity in accordance with the Transfer Terms.

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

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

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

Season means either Summer or Winter.

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

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

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

Shipper Default Notice has the meaning given in clause 22.2.

SI Units means units of *Le Système International d'Unités* established by the *Conférence Générale des Poids et Mesures*.

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

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

State means the State of Western Australia.

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

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

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

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

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

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 the Operator and a shipper for a T1 Service, and to avoid doubt excludes this Contract except to the extent that T1 Capacity is granted under this Contract pursuant to clause 16.

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

T1 Service means the Full Haul Gas transportation service which gives shipper a right to access capacity of the DBNGP and which:

- (a) 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
- (b) 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.

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 terajoules per Gas Day.

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

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

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

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

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

Total Physical Capacity means the Total Current Physical Capacity as at 30 June 2014.

Tp Service is an Other Reserved Service.

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 8.8(b).

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

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

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

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

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

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

2.2 Headings

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

2.3 Rounding to a certain number

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

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

2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including P1 Service, T1 Service, B1 Service, Aggregated T1 Service, Aggregated P1 Service, Other Reserved Service, Contracted Capacity, Total Contracted Capacity and T1 Capacity Notice) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

2.5 System Operator

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

2.6 Access Regime and Regulator's requirements as Laws

To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that apply by force of law to prevail over an inconsistent clause of this Contract are Laws for the purposes of this Contract, 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 affect materially and adversely any of the other Party's rights and obligations under this Contract that are not general rights and obligations applicable to all shippers.

3. Capacity Service

3.1 Operator to provide P1 Service to Shipper

During the Period of Supply, the Operator will provide the P1 Service to the Shipper and the Shipper agrees to accept the P1 Service from the Operator on the terms and conditions of this Contract.

3.2 Capacity Service

- (a) The P1 Service is the Part Haul Gas transportation service which gives the Shipper a right of access to Gas Transmission Capacity and which, subject in all cases to clauses 8.16 and 17.9:
- (i) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - (ii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.
- (b) The Operator acknowledges and agrees:
- (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
 - (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP to any Outlet Point downstream of Compressor Station 9 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, the Operator, acting as a Reasonable and Prudent Person, must 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, the Operator must ensure that the sum of:
 - A. T1 Service, P1 Service (including under this Contract) and B1 Service which it has contracted to provide to the Shipper and all other shippers; and
 - B. Alcoa's Exempt Capacity,does not materially exceed the amount of T1 Capacity in the DBNGP (which shall be calculated on the assumption that all Gas Delivered into the DBNGP has a Higher Heating Value of 37.0 MJ/m³).
- (c) The Shipper acknowledges and agrees that, subject to clause 14, the T1 Service is a Full Haul Service and cannot be:
- (i) Back Haul; or
 - (ii) Part Haul.

- (d) In this clause 3.2, **probability of supply** means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.
- (e) For the avoidance of doubt Alcoa's Exempt Capacity is provided by the Operator out of Tranche 1 Capacity.

3.3 Contracted Capacity

Subject to this Contract, the Shipper's Contracted Capacity for P1 Service for each Gas Day within a Period during the Period of Supply:

- (a) at an Inlet Point specified in item 1 of Schedule 1 - is the amount of P1 Service set out adjacent to that Inlet Point 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 of P1 Service set out adjacent to that Outlet Point in item 2 of Schedule 1 for that Period.

3.4 Operator must deliver Gas up to Contracted Capacity

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

3.5 Spot Capacity

- (a) The Parties agree that, until otherwise agreed, the following principles 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 the Shipper only under this Contract.
- (c) If the Shipper seeks to bid for Spot Capacity for a Gas Day it must, by notice to the Operator at any time no later than 15:00 hours on the Gas Day before that Gas Day, notify the 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) The Operator must, by no later than 16:00 hours on each Gas Day before the relevant Gas Day, schedule Spot Capacity for a Gas Day between Daily Bids on the basis (subject to clause 3.5(f)) that the shipper bidding the highest Daily Spot Bid Price for that Gas Day is scheduled the Spot Capacity it bid for, the shipper bidding the second highest Daily Spot Bid Price for that Gas Day is scheduled the Spot Capacity it bid for, and so on until all Daily Bids are satisfied or until all available Spot Capacity is scheduled to Daily Bids. If two or more shippers bid the same Daily Spot Bid Price and there is insufficient available Capacity to schedule to each of them the full amount of Spot Capacity bid for by each of them, the available Spot Capacity must be scheduled between them 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 Spot Capacity is scheduled to the Shipper for a Gas Day in response to a Daily Bid, the Shipper must pay the Daily Spot Bid Price bid by it for that Spot Capacity for that Gas Day whether or not it uses the Spot Capacity.
- (f) The Operator may set a minimum bid price (**Minimum Bid Price**) for Daily Bids and is not obliged to schedule Spot Capacity to any shipper bidding a

Daily Spot Bid Price which is less than the Minimum Bid Price. The Operator must not set a Minimum Bid Price for Daily Bids which is greater than 115% of the Base T1 Tariff applying on the relevant Gas Day.

- (g) The Shipper is relieved from paying the Daily Spot Bid Price in relation to Spot Capacity scheduled to it for a Gas Day only where:
 - (i) the Operator interrupts or Curtails the Spot Capacity which has been scheduled to the Shipper, and then only to the extent of that interruption or Curtailment; or
 - (ii) the Shipper does not use the Spot Capacity which has been scheduled to it in circumstances where there were no other shippers bidding for Spot Capacity for that Gas Day to which the Spot Capacity scheduled to the Shipper could otherwise have been scheduled.

- (h) The Operator must provide the following information to the 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 scheduled for that Gas Day; and
 - (iii) the Daily Spot Bid Prices for all bids scheduled Spot Capacity for that Gas Day.

- (i) The Operator must not itself bid for Spot Capacity and, if an Operator Entity or Alcoa or a Related Body Corporate of Alcoa bids for and is scheduled Spot Capacity, the Operator must indicate on the CRS that the relevant Spot Capacity has been scheduled to an Operator Entity, but without disclosing the identity of the Operator Entity.

- (j) The Operator must make rules governing the market for Spot Capacity which are designed with a view to achieving a market with the following objectives:
 - (i) the terms and conditions upon which, and the circumstances in which, Spot Capacity is granted to shippers must be non-discriminatory;
 - (ii) the rules must hinder market manipulation and gaming by the Operator, the Shipper and other shippers; and
 - (iii) the rules must be consistent with this clause 3.5.

4. Duration of the Contract

4.1 Capacity Start Date

- (a) The Capacity Start Date is 08:00 hours on [date to be inserted] (and in respect of Requested T1 Capacity, is the Requested T1 Capacity Start Date for that Requested T1 Capacity).
- (b) Requests from the Shipper for any amendment to the Capacity Start Date will be considered by the Operator with terms and conditions for any such amendment to be agreed between the parties giving regard to the Operator's circumstances at the time of the request.

4.2 Term

- (a) Subject to the terms and conditions of this Contract, including clauses 4.3 and 16, the Capacity End Date is 08:00 hours on [date to be inserted].
- (b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates.

4.3 Option to renew Contract

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

4.4 Conditions to be satisfied before exercising an Option

A notice given by the Shipper exercising an Option is not valid unless the Shipper:

- (a) is not, at the time the Shipper gives notice, 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; and
- (b) complies with the requirements of clause 4.5.

4.5 Notice exercising an Option

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

4.6 First Option Period

If the Shipper gives a notice in accordance with clause 4.5 exercising the first Option, then the Period of Supply for the Original Capacity under this Contract is extended to 08:00 hours on [date to be inserted] and:

- (a) the Capacity End Date for the Original Capacity is amended to 08:00 hours on that date;
- (b) the extension of the Period of Supply for the Original Capacity is subject to the condition that, in the period between the giving of a notice under clause 4.5 and 08:00 hours on [insert original Capacity End Date], this Contract is not validly terminated for the Shipper's default (within the meaning of clause 22.1); and

- (c) this clause 4.6 (relating to the exercise of the first Option) has no effect after 08:00 hours on [insert original Capacity End Date], save for any rights accrued hereunder prior to that date.

4.7 Second Option Period

If the Shipper has exercised the first Option and gives a notice in accordance with clause 4.5 exercising the second Option, then the Period of Supply for the Original Capacity under this Contract is extended to 08:00 hours on [date to be inserted] 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 is subject to the condition that, in the period between the giving of the notice under clause 4.5 and 08:00 hours on [insert date from clause 4.6], this Contract is not validly terminated for the 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 second Option) have no effect after 8:00 hours on [insert date from clause 4.6], save for any rights accrued thereunder prior to that date.

4.8 Capacity that is subject to the Options

Where an Option is exercised in respect of Original Capacity, such Option only has the effect specified in this clause 4 in respect of the relevant part of the Original Capacity in existence as at the time of the extension of the Capacity End Date.

5. Receiving and Delivering Gas

5.1 Shipper may Deliver and Receive Gas

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

- (a) may Deliver to the Operator at the Inlet Points a quantity of Gas up to the aggregate of:
 - (i) its Contracted Capacity aggregated across all Inlet Points on the DBNGP; and
 - (ii) any Capacity under a Spot Transaction; and
- (b) may Receive from the Operator at the Outlet Points a quantity of Gas up to the aggregate of:
 - (i) its Contracted Capacity aggregated across all Outlet Points on the DBNGP; and
 - (ii) any Capacity under a Spot Transaction.

5.2 Operator must Receive and Deliver Gas

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

- (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
- (b) must Deliver to the Shipper at the Nominated Outlet Points a quantity of Gas up to the aggregate of:
 - (i) the Shipper's Contracted Capacity aggregated across all Outlet Points on the DBNGP; and
 - (ii) 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 any Law, the Operator may (subject to clause 5.4(a)), without prior notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

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

- (c) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Receive that Gas;
- (d) to the extent that Receipt by the Operator of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure;
- (e) to the extent that the Shipper has not entered into any agreement in relation to that Inlet Point required by clause 6.13; and
- (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) all of the Shipper's Contracted Capacity;
 - (ii) the Shipper's Aggregated Service Scheduled Daily Nomination; and
 - (iii) any Spot Capacity scheduled to the Shipper,if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

5.4 Notification of refusal to Receive Gas

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

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

5.5 Refusal to Receive Gas is a Curtailment in limited circumstances

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

- (a) is a Curtailment for the purposes of this Contract; and
- (b) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

5.6 No liability for refusal to Receive Gas

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

5.7 Operator may refuse to Deliver Gas

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

- (a) to the extent that the Operator is entitled to refuse to Deliver Gas under all or any of:
 - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
 - (ii) clause 9.5(b)(iv) (Accumulated Imbalance Limit);
 - (iii) clause 9.8(c) (Remedies for breach of imbalance limit);
 - (iv) clause 10.3(a)(iv) (Consequences of exceeding Hourly Peaking Limit);
 - (v) clause 10.6(c) (Remedies for breach of Peaking Limits);
 - (vi) clause 11.5 (Operator may refuse to Deliver Overrun Gas);
 - (vii) clause 17.8(c) (Compliance with Curtailment Notice); and
 - (viii) clause 22.4(a) (Remedies for the Shipper's default);
- (b) to the extent that the Operator is relieved from so doing under clause 19 (Force Majeure);
- (c) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point;
- (d) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13; and
- (e) to the extent that the Delivery of that Gas for a Gas Day at an Outlet Point is in excess of the aggregate of the following in respect of that Outlet Point for that Gas Day:
 - (i) all of the Shipper's Contracted Capacity;
 - (ii) the Shipper's Aggregated Service Scheduled Daily Nomination; and
 - (iii) any Spot Capacity scheduled to the Shipper,if the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

5.8 Notification of refusal to Deliver Gas

When the Operator refuses to Deliver Gas to the Shipper under clause 5.7, the Operator must:

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

5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances

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

- (a) is a Curtailment for the purposes of this Contract; and
- (b) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

5.10 No liability for refusal to Deliver Gas

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

5.11 Not Used

5.12 Not Used

5.13 Not Used

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 this Contract or under any Law, if:
 - (i) the Governor or any other person, regulatory authority or body declares a state of emergency under the *Fuel, Energy and Power Resources Act 1972 (WA)* or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP;
 - (ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the *Energy Coordination Act 1994 (WA)* or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or
 - (iii) the Minister or any other person, regulatory authority or body declares a state of emergency under the *Emergency Management Act 2005 (WA)* or any successor, supplementary or similar Law and the Minister or any other person, regulatory authority or body makes regulations or exercises any power under that act which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP,

(any and all of these being a **Declaration**), then the Operator may, with prior notice to the Shipper wherever practicable, refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point (or both) to the extent that the Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.

- (b) To the extent that the exercise of rights and remedies under clause 5.14(a) would not have occurred had the Operator taken the steps expected of a Reasonable and Prudent Person to prevent the relevant event occurring, or failing such prevention, to minimise the magnitude and duration of the need to refuse to Receive or Deliver Gas, the exercise of rights and remedies under clause 5.14(a):
 - (i) is a Curtailment for the purposes of this Contract; and
 - (ii) must be taken into account in determining whether Curtailments aggregated over a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.
- (c) If the Operator exercises any rights under clause 5.14(a), it must:
 - (i) promptly give notice to the Shipper of the occurrence giving rise to the right of the Operator to exercise such rights, and the steps that the Operator intends to take under clause 5.14(a); and
 - (ii) resume full performance of its obligations under this Contract as soon as reasonably practicable.

5.15 Shipper's gas installations

- (a) The terms "inspector", "gas installation" and "Type B gas appliance" used in this clause 5.15 have the meanings given in the *Gas Standards Act 1972* (WA) or other relevant Law.
- (b) The Shipper must, at its cost:
 - (i) in accordance with the *Gas Standards Act 1972* (WA), appoint an inspector to inspect:
 - A. any gas installation used or to be used by it, or any of its Related Bodies Corporate, to which gas from the DBNGP flows or may flow, prior to the commencement of any Delivery, by the Operator, of Gas which flows or may flow to such gas installation; or
 - B. any gas installation that has been altered by or on behalf of it, or any of its Related Bodies Corporate, by the installation of a Type B gas appliance, prior to any further Delivery, by the Operator, of Gas which flows or may flow to such gas installation;
 - (ii) provide evidence of the completion of an inspection under clause 5.15(b)(i) to the Operator; and
 - (iii) ensure that gas installations used by it, or any of its Related Bodies Corporate, comply with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972* (WA) and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA).
- (c) If, on an inspection under clause 5.15(b)(i), the inspector makes an order under section 18(2)(a) of the *Energy Coordination Act 1994* (WA) or issues a notice under the *Gas Standards Act 1972* (WA), the Shipper must provide a copy of such order or notice to the Operator within 10 days of the completion of the inspection.

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

6.2 Multi-shipper Agreement

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

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

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

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

- (ii) REMCo providing the Operator a notice by electronic means within a reasonable period after each Gas Hour and after the end of each Gas Day.
- (g) Any Dispute relating to clause 6.3(e) may be referred by any Party to an Independent Expert under clause 24, and such Dispute shall be deemed to be a Dispute on a Technical Matter.

6.4 Allocation of Gas at Inlet Points

- (a) On any Gas Day when the Shipper is the only shipper Delivering Gas to the Operator at an Inlet Point, the Shipper is deemed to have Delivered all Gas Received by the Operator at the Inlet Point for that Gas Day and clauses 6.4(b) and 6.4(c) do not apply.
- (b) If the Shipper and any other shipper Delivers Gas to the Operator at an Inlet Point on a Gas Day, and:
 - (i) there is a relevant Multi-shipper Agreement then the Shipper's proportional share of Gas at the Inlet Point must be determined by that Multi-shipper Agreement; or
 - (ii) the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper which delivers Gas to that Inlet Point on that Gas Day by no later than 08:30 hours on the following Gas Day of the quantity of Gas supplied by those shippers at that Inlet Point for each Gas Hour in that Gas Day then, in the absence of evidence to the contrary, that confirmation is deemed to show the quantity of Gas Delivered by the Shipper to the Operator at that Inlet Point for each such Gas Hour.
- (c) If there is no Multi-shipper Agreement in relation to an Inlet Point or the 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 the Shipper's proportionate share of Gas Received at that Inlet Point for that Gas Day must be determined by the 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 the Shipper is deemed to have Delivered the proportionate share so determined of the Gas Received at that Inlet Point on that Gas Day at a constant rate over the course of that Gas Day.
- (d) Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:
 - (i) first, Gas for any available P1 Service (which includes Gas for any available Aggregated P1 Service);
 - (ii) second, Gas for any available Capacity Services (other than P1 Service) in the order set out in clause 8.8(a);
 - (iii) third, Gas for any available Capacity under any Spot Transaction; and
 - (iv) fourth, other gas.

6.5 Allocation of Gas at Outlet Points

- (a) On any Gas Day when the Shipper is the only person taking Delivery of Gas from the Operator at an Outlet Point, the Shipper is deemed to have taken

Delivery of all Gas Delivered by the Operator at the Outlet Point for that Gas Day and clauses 6.5(b) and 6.5(c) do not apply.

- (b) If the Shipper and any other shipper take Delivery of Gas from the Operator at the Outlet Point on a Gas Day, then if there is a Multi-shipper Agreement in relation to the Outlet Point the 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 the 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 the 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 the Shipper's proportionate share of Gas Delivered at the Outlet Point for that Gas Day must be determined by the 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 the Shipper is deemed to have Received the proportionate share so determined of the Gas Delivered to that Outlet Point on that Gas Day at a constant rate over the course of that Gas Day.
- (d) Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:
 - (i) first, Gas for any available P1 Service (which includes Gas for any available Aggregated P1 Service);
 - (ii) second, Gas for any available Capacity Services (other than P1 Service) in the order set out in clause 8.8(a);
 - (iii) third, Gas for any available Capacity under any Spot Transaction;
and
 - (iv) fourth, other gas.

6.6 Design and installation of Inlet Stations

- (a) The Shipper must, at its own expense, design and install or procure the design and installation of any required Inlet Station.
- (b) If and whenever the Shipper and other shippers Deliver Gas to the Operator at an Inlet Point on the DBNGP, the Shipper and those other shippers must, at their joint expense allocated on such basis as they may agree, collectively design and install or procure the design and installation of the Associated Inlet Station.
- (c) The Shipper or, where applicable, the Shipper and other shippers must ensure that an Inlet Station meets the requirements set out in clauses 6.8(a) to 6.8(f).

6.7 Design and installation of Outlet Stations

- (a) The Operator must, at the Shipper's request, procure the design and installation by a third party contractor or third party contractors engaged by the Operator of any required Outlet Station that is not a Gate Station. The Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an **Outlet Station Works Agreement**) by which the Shipper must agree either:
 - (i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring

and installing all relevant components of the Outlet Station, plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (**Relevant Outlet Station Construction Costs**); or

- (ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station.
- (b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Outlet Station Works Agreement, but otherwise an Outlet Station Works Agreement may be on such terms as the Operator and the Shipper agree.
- (c) The Operator must ensure that an Outlet Station meets the requirements set out in clauses 6.8(a) to 6.8(f).
- (d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Outlet Station, to which the Operator has no rights of access, for the purpose of maintaining and operating that Outlet Station.

6.8 Requirements relating to Inlet Stations and Outlet Stations

- (a) (i) The site for an Inlet Station or Outlet Station must:
 - A. be within a security fenced enclosure;
 - B. provide suitable vehicular access and an alternative means of personnel access;
 - C. provide adequate space for the installation of all equipment; and
 - D. have a concrete, sealed, or gravel surface to enable access in all weather conditions.
- (ii) Telemetry, power supply and other sensitive equipment at an Inlet Station or Outlet Station must be located in a weatherproof, secure and ventilated enclosure, with provision to allow for maintenance of equipment in all weather conditions.
- (b) (i) Every Inlet Station or Outlet Station must provide a means, to a standard acceptable to a Reasonable and Prudent Person, of automatically:
 - A. preventing the reverse flow of Gas through the Inlet Station or Outlet Station; and
 - B. stopping or restricting Gas flow in the event of any excessive pressure upstream of, or any failure, leak or rupture within or downstream of, the Inlet Station or Outlet Station.
- (ii) The Operator, whenever it is permitted by any written Law or a contract to stop or reduce Gas flow (and whether or not there has been a failure, leak or rupture), may utilise for that purpose any mechanism installed under clause 6.8(b)(i).
- (iii) The Operator may at any time, for, or in anticipation of, the purposes of clause 6.8(b)(i), make any necessary connections, modifications or additions to any mechanism installed under

clause 6.8(b)(i) to enable it to be utilised for the purposes of clause 6.8(b)(ii).

- (iv) The Operator must not charge the Shipper for any mechanism installed under clauses 6.8(b)(i) or 6.8(b)(iii).
- (c)
 - (i) Every Inlet Station must include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
 - (ii) An Outlet Station must, whenever the Operator as a Reasonable and Prudent Person determines it to be necessary, include filters or separators, or both, to a standard acceptable to a Reasonable and Prudent Person.
 - (iii) The Operator may make a determination under clause 6.8(c)(ii) at any time, including after an Outlet Station is commissioned.
 - (iv) For the purposes of clause 15.4, neither filters nor separators may be regarded as Metering Equipment.
- (d) All facilities upstream of an Inlet Point or downstream from an Outlet Point must be electrically isolated from the DBNGP by an isolating joint or flange located either:
 - (i) at the Inlet Point or Outlet Point; or
 - (ii) sufficiently close to the Inlet Point or Outlet Point so as to achieve the same operational effect as if the joint or flange were located in accordance with clause 6.8(d)(i),which joint or flange must be fitted with a surge diverter or other approved means of discharging excessive potentials.
- (e) All facilities at an Inlet Station or Outlet Station must be connected to an effective earthing system of a type acceptable to a Reasonable and Prudent Person.
- (f) Any new equipment installed at an Inlet Station or Outlet Station must be compatible with existing equipment and systems.
- (g)
 - (i) The quantity of Gas passing through a Notional Gate Point in any period of time is taken to be the sum of the quantities metered as passing through all associated Physical Gate Points in that period of time.
 - (ii) Nothing in clause 6.8(g)(i) prevails over the deeming in clause 6.5 of the quantity of Gas taken by the Shipper or any other shippers at a Notional Gate Point.

6.9 Notional Gate Point

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

6.10 Design and installation of Gate Stations

- (a) The Operator must, at the collective request of all shippers who have Contracted Capacity at the Notional Gate Point for a Sub-network, procure the design and installation by a third party contractor or third party contractors engaged by the Operator of any required Gate Station associated with that Sub-network, other than an Existing Station.
- (b) The costs incurred by the Operator in connection with the design and installation of any Gate Station (which includes the capital cost of acquiring and installing all relevant components of the Gate Station, plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (**Relevant Gate Station Construction Costs**)), must be amortised as part of the Maintenance Charge relating to the Gate Station payable by all shippers who receive Gas from the Operator at the Notional Gate Point for that Sub-network.

6.11 Maintenance Charge for Outlet Stations and Gate Stations

- (a) For the purposes of this clause 6.11, **Maintenance Charge** means, with respect to a particular Outlet Station or Gate Station Associated with a Sub-network, a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who pay a charge for substantially the same purpose) to amortise, over the life of the Outlet Station or Gate Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clause 6.6 or 6.7(a)(i) (or the material equivalent in any other contract), and the costs of:
 - (i) maintaining;
 - (ii) operating; and
 - (iii) decommissioning,the Outlet Station or Gate Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Outlet Station or Gate Station.
- (b) At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.
- (c) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that:
 - (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause 6.11(c)(ii); and
 - (ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper does not have Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the

sum of all shippers' delivery of Gas (across all Capacity Services)
at such Outlet Point, during the previous calendar month.

- (d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a Gate Station that is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point for the time being bears to the sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point for the time being.
- (e) Without limiting the generality of clause 6.10(b), whenever a new Gate Station or Outlet Station is installed, or a Gate Station or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Gate Station or Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who receive Gas from the Operator at the Notional Gate Point or Outlet Station, including shippers with grants of Capacity at the Notional Gate Point or Outlet Station made before the date of installation or enhancement.
- (f) 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, the Operator may have regard to the likely impact of clause 6.11(e).

6.12 Provisions relating both to Relevant Construction Costs and Maintenance Charge

- (a) Nothing in clause 6.6, 6.7 or 6.11 affects or derogates from charges payable under any other agreement between the Operator and the Shipper with respect to the installation, operation and maintenance of Inlet Stations, Outlet Stations and Gate Stations and any upgrades, modifications and expansions to Inlet Points or Outlet Points.
- (b) The Operator is not entitled to impose any charges under clause 6.6, 6.7 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995 and which increased or increases the Capacity of that Existing Station. Where such incremental costs are incurred, the Operator is entitled to impose charges on the Shipper and other shippers who use that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause 6.11(c).

6.13 Contribution Agreement

- (a) The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point, to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date if:
 - (i) the Inlet Point or Outlet Point is Associated with an Existing Station;
 - (ii) in the case of an Outlet Point, it is:
 - A. owned by the Operator or an Operator Entity; or
 - B. leased by the Operator or an Operator Entity under an equipment lease,

and the Shipper has entered into a Contribution Agreement in respect of that Outlet Point; or

- (iii) the Inlet Point or Outlet Point is not of a type referred to in clauses 6.13(a)(i) or 6.13(a)(ii)A or 6.13(a)(ii)B and the Shipper has reached an agreement, arrangement or understanding with the owner of the Inlet Point or Outlet Point, whether or not in writing, to use that Inlet Point or Outlet Point.

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

(b)

- (i) A **Contribution Agreement** in respect of an Outlet Point is an agreement between the Operator and the Shipper by which the Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point, determined in accordance with clause 6.11;
 - (ii) the Shipper's proportion of the Maintenance Charge is determined under clause 6.11(c), or is otherwise agreed in the Contribution Agreement; and
 - (iii) the Shipper agrees that another shipper (**New Shipper**) may Receive Gas from the relevant Outlet Point, if:
 - A. the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause 6.11(c); and
 - B. the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper under clause 6.13(b)(iii)A so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.
- (c) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, a Contribution Agreement.
- (d) Nothing in this clause 6.13 requires the Shipper to enter into an agreement with any person other than the Operator.

6.14 Shipper Specific Facility Agreement

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

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

6.15 Total Physical Capacity

- (a) The Operator must not reduce or allow the reduction of the Total Physical Capacity of an Inlet Point or an Outlet Point, or a New Inlet Point or a New

Outlet Point or any Inlet Point or Outlet Point to which or from which the Shipper is regularly Receiving Gas.

- (b) Subject to the terms of any Multi-shipper Agreement, and subject to the rights of other shippers with a contracted Capacity Service at an Inlet Point or Outlet Point, the Shipper may use all the Total Current Physical Capacity of an Inlet Point or Outlet Point.

6.16 Certain installations taken to comply

Despite any other provisions of this Contract:

- (a) each Existing Station;
- (b) all facilities, ancillary equipment and services at each Existing Station; and
- (c) the metering arrangements entered into with the State Energy Commission of Western Australia prior to 1 January 1995 in respect of each Existing Station,

are taken to comply in all respects with the provisions of this Contract, including clauses 6.6 to 6.10.

7. Operating Specifications

7.1 Gas must comply with Gas specifications

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

7.3 Gas to be free from objectionable odours

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

7.4 Gas temperature and pressure

- (a) The minimum and maximum temperatures and the minimum and maximum pressures at which the Shipper may Deliver Gas to the Operator at the Inlet Points, and the Operator may Deliver Gas to the Shipper at the Outlet Points, are those set out in Item 2 of Schedule 3.
- (b) The Parties may at any time agree in writing to vary any one or more of the pressures and temperatures set out in Item 2 of Schedule 3.
- (c) If at any time:
 - (i) the minimum and the maximum temperature and the minimum and maximum pressure of an Inlet Point or an Outlet Point are not set out in Item 2 of Schedule 3; and
 - (ii) the Shipper Delivers Gas to the Operator at that Inlet Point or the Shipper Receives Gas from the Operator at that Outlet Point,

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

7.5 Notice of Out-of-Specification Gas

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

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

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

7.7 Operator may Receive Out-of-Specification Gas

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

7.8 Shipper's Liability for Out of Specification Gas

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

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

7.9 Shipper may Receive Out-of-Specification Gas

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

7.10 Change of Law

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

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

- (ii) there is no shipper with an Inconsistent Existing Contractual Specification; and
- (iii) the Operator actually Receives Gas outside the Operating Specifications but within the Permissible Specifications to such an extent that it is unable to comply with the Operating Specifications for an Outlet Point set out in Schedule 3,

then the Operator must notify the Shipper that:

- (iv) the Inlet Point Operating Specifications (and Item 1 of Schedule 3) are amended so as to substitute each operating specification of the Permissible Specification which is broader than that component of the Inlet Point Operating Specification, for the operating specification of that component of the Inlet Point Operating Specification; and
- (v) the Outlet Point Operating Specifications (and Item 1 of Schedule 3) is amended so as to broaden the specification for each component which has been amended in respect of the Inlet Point Operating Specification, by the same amount as the Inlet Point Operating Specification has been broadened by the operation of this clause 7.10.

(b) In this clause 7.10 **Inconsistent Existing Contractual Specification** means:

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

7.11 Amendment Notice

The notice under clause 7.10 must:

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

7.12 Odourisation

The Operator will Deliver Gas to the Shipper at each Outlet Point at which odourising occurred as at 27 October 2004 odourised to the specification set out in the *Gas Standards (Gas Supply and System Safety) Regulations 2000 (WA)*.

7.13 Weighted average gas flows

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

8. Nominations

8.1 Shipper may delegate to a Producer or an Appointed Agent

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

8.2 Requests for advance information

- (a) To assist in its planning and forecasting, the Operator may from time to time, acting as a Reasonable and Prudent Person, request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) in good faith of:
- (i) the Shipper's likely Nominations; and
 - (ii) the Shipper's likely requirement for any, or additional, T1 Capacity under clause 16,

which information will be governed by the provisions of clause 28.

- (b) The Shipper must in good faith make reasonable endeavours to comply with any request made by the Operator under clause 8.2(a).
- (c) Except as provided in clause 8.2(d) below, the Shipper may, without penalty, make (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 the Shipper if the Shipper fraudulently or negligently provides materially false information to the Operator under clause 8.2(a).

8.3 Shipper's Daily Nominations do not affect Contracted Capacities

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

8.4 Nominations and Renominations must be in good faith

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

8.5 Operator to make available bulletins of available Capacity

- (a) The Operator must, on regular occasions during each Gas Day (sufficient to assist the Shipper in making its Initial Nomination, and any Renomination), make available on the CRS a bulletin specifying:

- (i) for at least that Gas Day and the following Gas Day, the amount of Capacity available or anticipated to be available for Nomination or Renomination; 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 schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's P1 Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

8.6 Shipper's Initial Nomination

- (a) The Shipper may, by notice to the Operator given no later than 14:00 hours on any Gas Day, nominate for the following Gas Day the quantity of Gas that the Shipper requires to Deliver to the Operator at each Nominated Inlet Point and the quantity of Gas that the Shipper requires to Receive from the Operator at each Nominated Outlet Point in the P1 Service (***Initial Nomination***).
- (b) In addition to the information required by clause 8.6(a), the Shipper's Initial Nomination must:
- (i) set out:
 - A. the sum of those Nominations across all Inlet Points; and
 - B. the sum of those Nominations across all Outlet Points,which sums must be equal, except where the Shipper seeks to reduce any Accumulated Imbalance in accordance with clause 9.
 - (ii) for each Nominated Inlet Point, identify the Producer or Producers which is or are to supply Gas to the Shipper for Delivery to the Operator and, if there is more than one, the quantity to be provided by each.

8.7 Default provision for Daily Nomination

If the Shipper does not make an Initial Nomination complying with clause 8.6 or an Advance Nomination complying with clause 8.19 for a Gas Day for Capacity at an Inlet Point or at an Outlet Point, then the Shipper's Daily Nomination for that Gas Day for the Inlet Point or the Outlet Point (as the case may be) is taken as equal to the Shipper's Contracted Capacity at that Inlet Point or Outlet Point (as the case may be).

8.8 Nominations priority

- (a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services 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***.

8.9 Scheduling of Daily Nominations

- (a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9, for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 Capacity for each Nominated Inlet Point:
 - (i) must not exceed the Shipper's Initial Nomination for P1 Service at that Inlet Point;
 - (ii) subject to clauses 8.9(b)(iii), 8.9(c), 8.9(h) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Inlet Point; and
 - (iii) subject to clauses 8.9(c), 8.9(h) and 8.10, may exceed the Shipper's Contracted P1 Capacity for that Inlet Point.
- (c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service across all Inlet Points exceed the Shipper's Total Contracted P1 Capacity across all Inlet Points.
- (d) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service may exceed the Shipper's Total Contracted P1 Capacity across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.
- (e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 Capacity at each Nominated Outlet Point:
 - (i) must not exceed the Shipper's Initial Nomination for P1 Service at that Outlet Point;
 - (ii) subject to clauses 8.9(e)(iii), 8.9(f), 8.9(h) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Outlet Point; and
 - (iii) subject to clauses 8.9(f), 8.9(h) and 8.10, may exceed the Shipper's Contracted P1 Capacity for that Outlet Point.
- (f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service across all Outlet Points exceed the Shipper's Total Contracted P1 Capacity across all Outlet Points.
- (g) The scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service may exceed the Shipper's Total Contracted P1 Capacity across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

- (h) Subject to the terms of any Multi-shipper Agreement, unless the Parties otherwise agree, in scheduling Capacity Services in respect of a Daily Nomination for Aggregated P1 Services at an Inlet Point or at an Outlet Point, the Operator must, to the extent that:
- (i) it is Operationally Feasible (including that it does not, when aggregated with other shippers' Nominations, exceed the Total Current 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 8.9(c), 8.9(f) and 8.10(a),

endeavour as a Reasonable and Prudent Person to ensure that the scheduled Capacity Services in respect of Daily Nominations for P1 Service is either equal to the Shipper's Initial Nomination (calculated across all of the Shipper's P1 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 the Shipper's P1 Contracts) by the smallest amount possible.

8.10 Scheduling where there is insufficient available Capacity

- (a) In all cases, subject to it being Operationally Feasible, and unless this Contract provides otherwise (for example without limitation in clauses 8.9(b)(i), 8.9(b)(ii), 8.9(e)(i) and 8.9(e)(ii)), if for any Gas Day more than one shipper has made Nominations under different Types of Capacity Service or under the same Type of Capacity Service for delivery or receipt of Gas at an Inlet Point or an Outlet Point and the Operator determines that it is not Operationally Feasible to meet all those Nominations, the Operator must Curtail the shippers' Contracted Capacities and the available Capacity (if any, as determined by the Operator, acting as a Reasonable and Prudent Person) must be scheduled in respect of Capacity Services relating to those Nominations for that Inlet Point or Outlet Point (as the case may be) in accordance with the provisions of clause 17.9.
- (b) Subject to clause 17.9, if the Operator schedules a Capacity Service for P1 Service to the Shipper which is less than the Shipper's Initial Nomination for P1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference between the Shipper's Contracted P1 Capacity and the Capacity Service scheduled by the Operator for P1 Service for that Gas Day.

8.11 Shipper may give Renomination notice

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

8.12 Times for Renomination and scheduling of revised Daily Nominations

- (a) Subject to clause 8.12(c), the Renomination times for each Gas Day are 07:00 hours (at which time Renominations may be given for the Gas Day just about to begin, not the Gas Day just about to end), and 12:00 hours and 20:00 hours in the Gas Day.
- (b) Subject to clause 8.12(c), if under clause 8.14 the Operator is required to schedule the Capacity Service in respect of a revised Daily Nomination in response to the Shipper's Renomination received prior to a Renomination

time, the Operator must use reasonable endeavours to effect that scheduling within 1 hour after the Renomination time.

- (c) The Operator may, acting as a Reasonable and Prudent Person, from time to time by notice to the Shipper (which same notice must be given to all shippers) supplement or vary any one or more of the times prescribed in clause 8.12(a) or the period prescribed in clause 8.12(b).
- (d) A notice under clause 8.12(c) may be expressed to continue indefinitely or for a specified time, and may revoke, substitute or amend a previous notice.

8.13 Renominations reducing Daily Nomination

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

8.14 Renominations increasing Daily Nomination

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

8.15 Default provision for Renomination process

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

8.16 Aggregated P1 Service

Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for P1 Service which is, according to clause 8.17, deemed to be Aggregated P1 Service, is deemed to be a Nomination for a separate Type of Capacity Service which Service ranks equally in priority with all other Aggregated P1 Service. For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated P1 Service must be excluded from the P1 Service.

8.17 Nominations where insufficient Contracted Capacity

Subject to this clause 8, the Shipper is entitled to nominate that Gas be Delivered under the Shipper's P1 Service:

- (a) at an Outlet Point at or upstream of 082-01 Mondarra or an Inlet Point at which the Shipper does not have Contracted Capacity for P1 Services; and
- (b) in excess of the Shipper's Contracted Capacity for P1 Services at an Outlet Point at or upstream of 082-01 Mondarra or an Inlet Point,

(being **Aggregated P1 Service**). Nothing in this Contract allows the Shipper to use the P1 Service, or an Aggregated P1 Service, as Back Haul.

8.18 Charges for Aggregated P1 Service

- (a) If the Shipper nominates for and is scheduled Capacity Services for Aggregated P1 Service (**Aggregated P1 Capacity Service**) on a Gas Day at an Outlet Point (**Aggregated Outlet Point**) which is downstream of an Outlet Point in item 2 of Schedule 1 from which that Aggregated P1 Capacity Service derives, the Charges for that Aggregated P1 Capacity Service must be calculated and paid using the Distance Factor applicable to the Aggregated Outlet Point.
- (b) Where the Shipper nominates for and is scheduled Aggregated P1 Capacity Service at an Outlet Point which is upstream from an Outlet Point in item 2 of Schedule 1 from which that Aggregated P1 Capacity Service derives (**Originating Outlet Point**), the Charges for that Aggregated P1 Capacity Service must be calculated and paid using the Distance Factor applicable to the Originating Outlet Point.

8.19 Shipper's Advance Nomination

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

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- (ii) within 5 Working days of receipt of the Advance Nomination (in the case of a Nomination a month in advance).
- (d) The Shipper may submit an Initial Nomination for a Gas Day in respect of which it has made an Advance Nomination and been scheduled a Daily Nomination, in which case:
 - (i) the Initial Nomination is not a Renomination; and
 - (ii) the Shipper's Advance Nomination for the Gas Day is of no effect.

9. Imbalances

9.1 Operator to maintain balance

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

9.2 Shipper to maintain balance

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

9.3 Shipper's Accumulated Imbalance

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

9.4 Notice of the Shipper's imbalances

Before 13:00 hours on each Gas Day except the Capacity Start Date, the Operator must notify the 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) The Shipper's ***Accumulated Imbalance Limit*** for a Gas Day is 8% of the sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Contracted Capacity across all of the Shipper's Capacity Services for that Gas Day.
- (b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished and the Operator, acting as a Reasonable and Prudent Person, considers that a continuation of that condition:
 - (i) will have a material adverse impact on the integrity or operation of the DBNGP; or
 - (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for Contracted Firm Capacity,

then, the Operator (acting as a Reasonable and Prudent Person) may, subject to clause 9.5(f) either or both:

- (iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or 9.5(b)(ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to comply immediately, or to procure immediate compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and
- (iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the

absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.

- (c) If the Operator issues a notice under this clause 9.5 and the Shipper's Accumulated Imbalance is:
 - (i) positive, the Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or
 - (ii) negative, the Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit.
- (d) If, after the Operator issues a notice under clause 9.5(b)(iii):
 - (i) subject to clause 9.5(d)(ii), the absolute value of the Shipper's Accumulated Imbalance is reducing each Gas Day, then the Shipper is taken to be using best endeavours to comply, or to procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and
 - (ii) where the absolute value of the Shipper's Accumulated Imbalance exceeded the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or to procure compliance, with the notice for the purposes of clause 9.5(b)(iii).
- (e) If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).
- (f) The Operator may not:
 - (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
 - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).

9.6 Excess Imbalance Charge

- (a) The Shipper's Outer Accumulated Imbalance Limit for a Gas Day is 20% of the sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Contracted Capacity across all of the Shipper's Capacity Services for that Gas Day.

- (b) If the absolute value of the 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), the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Outer Accumulated Imbalance Limit in accordance with clause 20.
- (c) No Excess Imbalance Charge under clauses 9.5(e) or 9.6(b) is payable in respect of that part (if any) of the imbalance that is attributable to:
 - (i) the Shipper's Capacity Service being Curtailed under clause 17;
 - (ii) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
 - (iii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
 - (iv) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.6(c)(i), 9.6(c)(ii) or 9.6(c)(iii),

but in each case the Shipper's Daily Imbalance and Accumulated Imbalance must still be calculated for the Gas Day.

9.7 Balancing in particular circumstances

- (a) If the Parties anticipate a failure of the Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit or the Outer Accumulated Imbalance Limit (or both), in order to enable the Shipper to deposit additional Gas in the DBNGP in advance of that failure.
- (b) The Parties may, during a period in which the Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow the Shipper to exceed the Accumulated Imbalance Limit, whether or not the Shipper has deposited additional Gas under clause 9.7(a) in anticipation of the failure of the Shipper's Gas supply.
- (c) Subject to clause 9.7(d), an agreement under clauses 9.7(a) or 9.7(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate. The agreement must be in writing (which may be contained in an email) and must be in place before the Shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.
- (d) The Operator may require an agreement under clause 9.7(b) to contain any reasonable provisions it sees fit, including any or all of the following provisions:
 - (i) that the Operator may from time to time during the duration of that agreement, by notice to the Shipper, specify a limit for the Shipper's Accumulated Imbalance, beyond which limit the Operator may refuse to Receive Gas from the Shipper at an Inlet Point or Deliver Gas to the Shipper at an Outlet Point, or both; and
 - (ii) that upon resumption of the Shipper's Gas supply, the Operator may require the Shipper to restore the absolute value of its

Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.

- (e) Nothing in this clause compels a Party to enter into an agreement under clauses 9.7(a) or 9.7(b)).

9.8 Remedies for breach of imbalance limits

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

- (a) an action for breach of clause 9.5(b)(iii), limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 9.5(b)(iii) is reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the 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 the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
- (d) any combination of the rights and remedies in 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 the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.8, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

9.9 Trading in imbalances

- (a) The Shipper may exchange all or part of its Accumulated Imbalances with another shipper on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts the Shipper has with the Operator for Capacity Services, in accordance with this clause 9.9.
- (b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator on the next Working Day following receipt from the Operator of the Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day, by the later of 14:00 hours and the time (on that next Working Day) which is 1 hour after the time of receipt from the Operator of the Shipper's Accumulated Imbalance Notice for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.
- (c) On receipt of a notice under clause 9.9(b), the Operator must calculate adjustments in the Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.

9.10 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, the Shipper's Accumulated Imbalance is a positive number, the Operator must pay a fair market price to the Shipper for that Gas.
- (c) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a negative number, the Shipper must pay a fair market price to the Operator for that Gas.

9.11 Charges do not affect Daily Delivery

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

10. Peaking

10.1 Hourly Peaking Limits

The Hourly Peaking Limit is 125% in Winter and 120% in Summer of the aggregate MHQ calculated across all Outlet Points on the DBNGP (**Hourly Peaking Limit**).

10.2 Shipper to stay within Hourly Peaking Limit

On each Gas Day, the Shipper must do all things expected of a Reasonable and Prudent Person to ensure that the Shipper's Hourly Quantity for each Gas Hour calculated across all Outlet Points on the DBNGP does not exceed the relevant Hourly Peaking Limit described in clause 10.1.

10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time the Shipper exceeds an Hourly Peaking Limit and the Operator, acting as a Reasonable and Prudent Person, considers that a continuation of that condition:
- (i) will have a material adverse impact on the integrity or operation of the DBNGP; or
 - (ii) will have an adverse impact, or is likely to have an adverse impact, on any other shipper's entitlement to its Daily Nomination for Contracted Firm Capacity,
- the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:
- (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clause 10.3(a)(i) or 10.3(a)(ii)), in which case the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or to procure immediate compliance, with the notice and cease exceeding the Hourly Peaking Limit; and
 - (iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone.
- (b) If the Operator issues a notice to the Shipper under clause 10.3(a)(iii) and the Hourly Peaking Limit being exceeded relates to Outlet Points on the DBNGP generally, the Operator must issue a similar notice to all shippers which are exceeding their Hourly Peaking Limit or the equivalent under their relevant contracts.
- (c) If, after the Operator issues a notice under clause 10.3(a)(iii):
- (i) subject to clause 10.3(b), the Shipper's Hourly Quantity calculated across the relevant Outlet Points is reducing, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and
 - (ii) the Shipper's Hourly Quantity calculated across the relevant Outlet Points is not within the Hourly Peaking Limit by the end of the following Gas Hour, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).

- (d) If the Shipper does not comply and is not deemed pursuant to clause 10.3(c) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that the Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, the Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:
 - (i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause 10.4(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)),in accordance with clause 20.
- (e) If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which the Shipper is no longer exceeding any of the Hourly Peaking Limits (after which the Shipper is not liable to pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii)).
- (f) If the Shipper exceeds more than one Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.3(d) is calculated using only the amount of the largest excess.
- (g) No Hourly Peaking Charge, whether under clause 10.3(d) or 10.4(b), is payable in respect of any Gas Hour in which the Operator:
 - (i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or
 - (ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.
- (h) The Operator may not:
 - (i) issue a notice pursuant to clause 10.3(a)(iii) or refuse to Deliver Gas pursuant to clause 10.3(a)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Hourly Peaking Limit; or
 - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Deliver Gas pursuant to clause 10.3(a)(iv) without having issued a notice in accordance with clause 10.3(a)(iii).

10.4 Outer Hourly Peaking Limit

- (a) The Shipper's Outer Hourly Peaking Limit is 140% of the aggregate MHQ calculated across all Outlet Points on the DBNGP (**Outer Hourly Peaking Limit**).
- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.4(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.

- (c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.4(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 the 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 the Shipper's take of Gas is such that the Operator, acting as a Reasonable and Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.4(e) is only valid for the purposes of clause 10.4(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

10.5 Charges do not affect Daily Delivery

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

10.6 Remedies for breach of peaking limits

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

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

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

10.7 Permissible Peaking Excursion

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

- (a) is a Distribution Networks Shipper and the cause of the Shipper exceeding its Hourly Peaking Limit is the quantity of Gas Received by the Shipper at a Notional Gate Point for a Distribution Network; or
- (b) an other 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 the Operator to propose to refuse to Deliver Gas to the Shipper at Outlet Points.

11. Overrun

11.1 Overrun Charge

- (a) In respect of each GJ of Overrun Gas Received by the Shipper on a Gas Day, the Shipper must pay an Overrun Charge calculated by applying the Overrun Rate to the total Overrun Gas Received by the Shipper on that Gas Day in accordance with clause 20.
- (b) The Overrun Rate is the greater of:
 - (i) 115% of the P1 Tariff; and
 - (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,

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

11.2 Unavailability Notice

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

11.3 Content of an Unavailability Notice

An Unavailability Notice:

- (a) may apply to the Gas Day on which the Unavailability Notice is issued even though, in order to comply with such an Unavailability Notice, the Shipper must cease taking Delivery of Overrun Gas upon receipt of the notice in accordance with clause 11.4;

- (b) must identify the Gas Day or Gas Days to which the notice applies;
- (c) may be expressed to continue indefinitely or for a specified period;
- (d) may revoke, substitute or amend a previous Unavailability Notice; and
- (e) must state the quantity of Overrun Gas which is available to the Shipper.

11.4 Compliance with Unavailability Notice

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

11.5 Operator may refuse to Deliver Overrun Gas

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

11.6 Unavailable Overrun Charge

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

11.7 Saving and damages

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

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clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.

12. Additional Rights and Obligations of Operator

12.1 Commingling of Gas

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

12.2 Processing

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

12.3 Operation of Pipeline System

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

12.4 Delivery of Gas

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

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

13. Control, Possession and Title to Gas

13.1 Warranty of Title

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

13.2 Control, Possession, Responsibility and Title of Shipper

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

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

13.3 Title, Custody, Control and Responsibility of Operator

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

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

13.4 Entitlements to Receive Gas

- (a) Subject to clause 13.4(c), upon the transfer from the Shipper to the Operator of title to and possession of a quantity (in terajoules) of Gas Delivered at an Inlet Point, the Shipper becomes entitled to:
 - (i) Receive Gas from the Operator at an Outlet Point other than a Notional Gate Point; or
 - (ii) subject to clause 13.5(b), Receive Gas from the Operator at an Outlet Point that is a Notional Gate Point.
- (b) The quantity of Gas that the Shipper becomes entitled to Receive in aggregate under clause 13.4(a) is a quantity equivalent (in terajoules) to the quantity of Gas Delivered at the Inlet Point.

- (c) Clauses 13.4(a) and 13.4(b) do not affect a provision of this Contract entitling the Operator to Curtail wholly or partially or interrupt the Shipper's use of Capacity or to refuse wholly or partially to Deliver Gas to the Shipper and do not affect the obligations of the Shipper to Deliver Gas and Receive Gas in such a manner as complies with this Contract, including so as to ensure the Shipper remains within the limits prescribed by this Contract in clauses 9 and 10.

13.5 Title at Outlet Points

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

14. Relocation

14.1 Request for relocation of Contracted Capacity

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

14.2 Assessment of Requested Relocation

- (a) The Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable and Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to, among other things, the order, relative to its receipt of equivalent notices received from other shippers, in which the Shipper's Requested Relocation was received, (but for the avoidance of doubt the Parties intend this priority to apply only to the extent that requested relocations compete or conflict with each other for utilisation of capacity).
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:
- (i) the Requested Relocation would cause the sum (after the relocation) of all shippers':
 - A. quantities referred to as Contracted Capacity for that Inlet Point across all of the shippers' Capacity Services (including P1 Services and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; or
 - B. quantities referred to as Contracted Capacity for that Outlet Point across all the shippers' Capacity Services (including P1 Services and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located;
 - (ii) in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible; or
 - (iii) the Requested Relocation is such that the Inlet Point (including a New Inlet Point, as the case may be) would be downstream of the Outlet Point (including a New Outlet Point, as the case may be) and it would change the normal direction of Gas flow in the DBNGP.
- (c) For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:
- (i) the Requested Relocation would result in the New Inlet Point being downstream of the Existing Inlet Point;
 - (ii) the Requested Relocation would not cause the sum (after the relocation) of all the shippers' quantities referred to as Contracted

Capacity for that Inlet Point across all of the shippers' Capacity Services (including P1 Service and all Other Reserved Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; and

- (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.
- (d) For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:
- (i) the Requested Relocation would result in the New Outlet Point being upstream, 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 the shippers' quantities referred to as Contracted Capacity for that Outlet Point across all the shippers' Capacity Services (including P1 Service and all Other Reserved Services) at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located; and
 - (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

14.3 Operator to notify Shipper

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

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

14.4 Requested Relocation is an Authorised Relocation

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

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

14.5 Requested Relocation is not an Authorised Relocation

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

14.6 Relocated Contracted Capacity to be on same terms and conditions

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

14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.
- (b) If a relocation of Capacity under this clause results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), in addition to the matters described in clause 14.7(c), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.
- (c) Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in Gas being transported to an Outlet Point down stream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to:
 - (i) be treated as if it were on the same terms and conditions as Full Haul Capacity for T1 Service, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - (ii) be treated under this Contract as though it was Full Haul Capacity,and for that purpose clause 16.5(c) shall apply to that Capacity.

14.8 Pressures at New Inlet Point and New Outlet Point

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

14.9 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 must be given effect to by an amendment of Schedule 1 in accordance with clause 38.

15. Metering

15.1 Shipper's responsibility

The Shipper must:

- (a) either itself or by procuring another party to do so, at the Shipper's expense, supply, install, Operate and Maintain Inlet Metering Equipment at each Inlet Station in good working order and condition and in accordance with the standard of a Reasonable and Prudent Person; and
- (b) ensure that at all times all data required by the Operator from Inlet Metering Equipment is electronically accessible by the Operator.

15.2 Operator's responsibility

The Operator must:

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

15.3 Metering uncertainty

- (a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:
 - (i) measurement to within a maximum uncertainty of:
 - A. 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 TJ/d or greater; and
 - B. plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and
 - (ii) measurement to within a maximum uncertainty of plus or minus one quarter of one percent of Higher Heating Value at a minimum of the 95% confidence level.
- (b) 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 the Shipper to the Operator under this Contract; and
 - B. (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by the Operator to the Shipper under this Contract;
 - (ii) be of a standard of manufacture acceptable to the Operator acting as a Reasonable and Prudent Person;
 - (iii) comply with AS 2885 and any Australian or international standards required from time to time by the Operator;
 - (iv) subject to clauses 15.4(b) and 15.4(c), encompass newest proven technology;
 - (v) be able in all streams to withstand Gas flows of up to 120% of the design flow;
 - (vi) provide data signals in the form of galvanically isolated 4-20 milliamp current loops or potential free contacts, as appropriate, or in such other form as the Parties as Reasonable and Prudent Persons may agree; and
 - (vii) include facilities to enable electronic data collection by the Operator's Electronic Data Collection System.
- (b) Primary Metering Equipment with a design maximum flow rate of 5 TJ/d or more must include:
 - (i) alternative Metering Equipment capable of measuring Gas quantity and (for Inlet Metering Equipment) Gas quality;
 - (ii) a means for detecting a fault in Duty Equipment which is likely to materially affect the accuracy of any measurements produced by the Duty Equipment, and a means in the event of such a fault for automatically switching metering from the faulty Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i); and
 - (iii) a means for manually switching metering from Duty Equipment to the alternative Metering Equipment referred to in clause 15.4(b)(i).
- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
 - (i) delivery temperature;

- (ii) delivery pressure;
 - (iii) instantaneous energy flow rate in TJ/d;
 - (iv) totalised energy flow in GJ;
 - (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 the Operator and the Shipper as Reasonable and Prudent Persons agree to the contrary, Outlet Metering Equipment may utilise Gas quality data from equipment which is not located at the Outlet Station in question (the **Remote Data**), in which case:
- (i) the Operator may as a Reasonable and Prudent Person adopt procedures relating to that utilisation, including relating to the use of preset Gas quality values when the Remote Data is unavailable for any reason; and
 - (ii) clauses 15.9 and 15.12 apply, with appropriate modifications, to any procedures adopted under clause 15.4(d)(i).
- (e) Outlet Metering Equipment must provide digital signals Associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables Associated with Gas quantity:
- (i) delivery temperature;
 - (ii) delivery pressure;
 - (iii) instantaneous energy flow rate in terajoules per day derived using the Higher Heating Value;
 - (iv) totalised energy flow in GJ;
 - (v) all primary measures and Derived Variables used in any computation required by clauses 15.4(e)(i) to 15.4(e)(iv); and
 - (vi) Higher Heating Value in megajoules per cubic metre.
- (f) The Inlet Metering Equipment, and any building erected for such equipment, is the property of the Shipper (or its nominee), and the Outlet Metering Equipment, and any building erected for such equipment, is (subject to clause 15.4(g)) the property of the Operator.
- (g) To the extent that:

- (i) the Shipper has paid for the Outlet Metering Equipment and any building erected for such equipment;
- (ii) the Outlet Metering Equipment is detachable from the DBNGP without any damage to or effect on the DBNGP;
- (iii) no third party has any interest in or title to the Outlet Metering Equipment or the building; and
- (iv) no third party (including any other shipper) is deriving any benefit from the Outlet Metering Equipment,

the Outlet Metering Equipment and any building erected for such equipment is, at the end of this Contract, to become the property of the Shipper, and may be detached and removed at the expense and risk of the Shipper.

15.5 Provision of information to Shipper

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

- (e) The Operator must make available to the Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:
 - (i) Received by the Shipper in that Gas Day at each Physical Gate Point; and
 - (ii) Received by the Shipper aggregated across all Outlet Points including all Physical Gate Points.
- (f) Clause 15.5(e) only applies for as long as the Shipper is a Distribution Networks Shipper.

15.6 Changes to requirements for Metering Equipment

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

15.7 Approval of Inlet Metering Equipment

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

the Operator's written approval (which may not be unreasonably withheld) of, or of any amendment to, the design, location and construction of, and the proposed Operating and Maintenance procedures in relation to, that equipment or component.
- (b) For the purposes of clause 15.7(a), the Shipper must give to the Operator not less than one month's notice of the anticipated date of commencement of the relevant construction, installation or modification.
- (c) The Operator must, after receipt of a valid notice of the anticipated date of commencement, use all reasonable endeavours, before that anticipated date, to consider and to give notice to the Shipper of the Operator's approval of or refusal to approve the Inlet Metering Equipment.
- (d) Without limiting the generality of clause 37, the Shipper must, for the purposes of clause 15.7(a), prior to and during the construction, installation, modification or commissioning of any Inlet Metering Equipment or any component thereof, afford all reasonable rights of entry and inspection (including all relevant data, drawings and components) to the Operator and its agents at the Operator's expense and risk.

15.8 Check Metering Equipment

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

- (b) Check Metering Equipment (and any associated pressure or quantity control regulators or other equipment) must be located downstream of, and must not interfere with the operation of, the Primary Metering Equipment.
- (c) Check Metering Equipment at the Outlet Station is the Shipper's property, and Check Metering Equipment at the Inlet Station is the Operator's property.
- (d) Any Verification of the accuracy of Check Metering Equipment must 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 must be installed in a manner which permits an Accurate measurement of the quantity, and (for Inlet Metering Equipment) the quality, of Gas Delivered, and a ready Verification of the Accuracy of measurement.
- (b) Each Party must, in the installation, Maintenance and Operation of any Metering Equipment, exercise the care of a Reasonable and Prudent Person to prevent any inaccuracy in the measurement of the quantity of Gas Delivered under this Contract.

15.10 Presumptions of accuracy

- (a) Subject to clause 15.13, a measurement of the quantity or quality of Gas from any Primary Metering Equipment must 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 must 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) The Operator:
 - (i) must at least once each month (or other period agreed between the parties) during the duration of this Contract; and
 - (ii) may, at such greater frequency or on any occasion that either Party may request,verify the accuracy of any Primary Metering Equipment in accordance with a procedure described in clause 15.11(b).
- (b) The Verification procedure consists of:
 - (i) a comparison between simultaneous independent measurements of Gas flows;

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

15.12 Adjustment or replacement of defective equipment

- (a) Subject to clause 15.12(b), if 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, the Operator must at an Outlet Station and the Shipper must at an Inlet Station (in either case at the Shipper's expense) forthwith either:
 - (i) adjust it to measure within the Prescribed Limits of Uncertainty; or
 - (ii) if such adjustment is not possible, replace it with a serviceable component.
- (b) If Primary Metering Equipment with a design maximum flow rate of less than 5 TJ/d is at any time found to be for any reason operating outside the Prescribed Limits of Uncertainty, the Operator must at an Outlet Station and the Shipper must at an Inlet Station (in either case at the 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 TJ/d or greater; and
- (ii) plus or minus 3% for Metering Equipment with a design flow of less than 5 TJ/d,

then the measurements from that Primary Metering Equipment must be taken as 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 must 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 must be taken to be correct.
- (b) The period between the Previous Verification and the Current Verification must be divided into an earlier period and a later period, being:
 - (i) if the time at which the Primary Metering Equipment became Inaccurate can be established, respectively the period before and the period after that time; or
 - (ii) if the time at which the Primary Metering Equipment became Inaccurate cannot be established, 2 equal periods.
- (c) The measurements produced by the Primary Metering Equipment for the earlier period must be taken to be correct.
- (d) The measurements for the later period must be estimated:
 - (i) if Check Metering Equipment is installed and is established to the reasonable satisfaction of both Parties to have been operating during the later period within the Prescribed Limits of Uncertainty, by using the measurements recorded by that Check Metering Equipment;
 - (ii) if clause 15.14(d)(i) does not apply and if the percentage of error in the measurements is ascertainable to the reasonable satisfaction of both Parties by calibration test or mathematical calculation, by calculating a correction for that percentage error; or
 - (iii) in any other circumstance, by reference to measurements made under similar conditions when the Primary Metering Equipment was registering accurately.
- (e) Following the correction of any measurements in accordance with this clause 15.14, the Parties will determine the relevant overpayment or underpayment that has resulted under this Contract from the measurement error and the appropriate Party must make an adjusting payment to the other in accordance with clause 21.6.

15.15 Metering records

- (a) Any record produced by Primary Metering Equipment:
 - (i) in paper form must be retained for 2 years after the date of production; and
 - (ii) in electronic form must be retained for 5 years after the date of production,by and at the expense of the Party owning the equipment which produces the record.
- (b) The records and other information produced by, and any calculations and other information derived from, any Primary Metering Equipment or Check Metering Equipment remain the property of the Party owning that equipment.
- (c) Each Party must use reasonable endeavours to, within 20 Working Days after receipt of a request from the other Party, submit to the other Party its records and other information produced by its Primary Metering Equipment which solely relate to the other Party, for inspection and verification by that other Party and the other Party may make and return any copies of those records and other information and must return the originals within 10 Working Days of their receipt.

15.16 Unused Outlet Points

- (a) If:
 - (i) the Shipper has no Contracted Capacity at an Outlet Point; and
 - (ii) such point has not been used, or is, in the Operator's opinion (acting reasonably and after consulting with the Shipper), unlikely to be used, to Deliver Gas to the Shipper for a period, in aggregate, greater than 12 continuous months,then the Operator may, at the cost of the Operator, decommission, remove and deal with or dispose of as it sees fit (including selling for its own benefit) any part or the whole of that Outlet Point and any Associated Outlet Station. Upon the commencement of such decommissioning, such Outlet Point, subject to clause 15.16(b), ceases to be an Outlet Point for the purpose of this Contract.
- (b) If requested by the Shipper, the Shipper and the Operator will discuss in good faith deferring the decommissioning of the Outlet Point and any Associated Outlet Station on the basis that the Shipper will pay ongoing maintenance charges incurred by the Operator in maintaining the Outlet Point and any Associated Outlet Station.
- (c) If subsequent to the commencement of such decommissioning, the Shipper wishes to use such point as an Outlet Point under this Contract, the Shipper must give at least 10 months written notice to the Operator and must fully indemnify the Operator for all costs, losses, liabilities and expenses incurred by the Operator in respect of such recommissioning of the point as an Outlet Point for the purposes of this Contract and in respect of recommissioning any Associated Outlet Station.

16. T1 Capacity and Capacity Expansion Options

16.1 No T1 Capacity except by this clause

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

16.2 The Operator must issue Capacity Expansion Option

- (a) Where the Operator is not able to provide Requested T1 Capacity from Capacity available to it by virtue of relinquishments (or otherwise from available Capacity), the Operator must undertake an Expansion so as to be able to provide the Requested T1 Capacity to the Shipper at the times and to the extent required in accordance with this clause 16.
- (b) Where clause 16.2(a) applies and the Operator is required to make the 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 the Shipper's undertaking to indemnify the Operator for all Costs incurred by the 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 the 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 T1 Capacity Notice

- (a) If the Shipper requires any, or additional, T1 Service under this Contract, the Shipper shall provide the 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 the Shipper requires increased or new contracted capacity;
 - (ii) each new Inlet Point or Outlet Point on the DBNGP (if any) at which the 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 the 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 TJ/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 the Shipper.
- (b) The Operator (acting as a Reasonable and Prudent Person) may within 10 Working Days after receiving a T1 Capacity Notice request, and the Shipper must provide within 5 Working Days of the Operator's request, reasonable financial (including historical financial) information to enable the Operator to assess the ability of the 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 the Shipper, the Operator (acting as a Reasonable and Prudent Person) requests it, the 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) the 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), 16.3(a)(iv) and 16.3(a)(v), andneither the notice nor any information provided in response to a request from the Operator under clause 16.3(b) contains any information which materially affects the substance of the T1 Capacity Notice;
- (b) each new Inlet Point 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) the Operator has not received a T1 Capacity Notice from the Shipper within the previous 12 months which resulted in an agreement between the Operator and the Shipper for the Operator to provide Requested T1 Capacity under this clause 16 (unless the 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, the Shipper has complied with all requests by the Operator under clause 16.3(b);
- (e) the Shipper is not in default of an obligation under this Contract within the meaning of clause 22.1;
- (f) the Operator is satisfied (acting reasonably) that granting the Requested T1 Capacity to the 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) the Shipper has, in favour of the Operator, granted, or procured the grant of, such guarantees, undertakings, performance bonds, mortgages, charges, liens and other securities required by the Operator (acting reasonably taking

into account the Shipper's financial position based on information provided) from the Shipper or third parties (as the case may be) in relation to, and securing to the Operator's reasonable satisfaction, the 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;

- (h) subject to clause 16.4(o), the amount of Requested T1 Capacity for the Shipper, and for any other shippers that have provided the Operator with a T1 Capacity Notice at or around the same time as the Shipper, is for at least 10 TJ/d in total across all Inlet Points on the DBNGP and for at least 10 TJ/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 clauses 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 the 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 the Operator or the Operator Entities for the funding of the first expansion of Gas Transmission Capacity of the DBNGP following 27 October 2004, allowing for changes in financial market conditions since 27 October 2004);
- (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 the Shipper under clauses 16.9 or 16.10 and the 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 the Operator (as the case may be), is of the opinion that the Expansion is not technically feasible; and

- (k) the Expansion requires the DBNGP to be looped and the 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, the Operator shall offer (***the Operator's Expansion Offer***) within 2 months after the provision of the T1 Capacity Notice to the 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 the Shipper may accept such offer by delivering an unconditional final capacity requirement notice (***Final Capacity Requirement Notice***) to the Operator. The amendment to this Contract takes effect on and from the date that the Shipper's Final Capacity Requirement Notice is received by the 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 the Shipper with the amount of Requested T1 Capacity for other shippers that have provided the Operator with a T1 Capacity Notice at or around the same time as the Shipper, then the Operator must offer all other shippers the amount of T1 Capacity required by them as notified to the Operator and the Operator's offer pursuant to this clause 16.4 can only be accepted by the 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 the Operator's offer by way of a Final Capacity Requirement Notice in accordance with this clause 16.4 or if the Shipper or some of the other shippers that have provided the 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(l) is not satisfied, the offer to the Shipper shall lapse;
- (m) without limiting the provisions of clause 16.4(c), if an offer lapses under clause 16.4(l), a subsequent T1 Capacity Notice may relate to Requested T1 Capacity which was the subject of the offer which lapsed;
- (n) the requirement that the Shipper lodge an access request, if required by the Operator under clause 16.3(c), does not prejudice or affect the provisions of clause 16.4(f);
- (o) the 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 the 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 TJ/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 conform with the criterion in rule 79(1)(a) of the Rules;
- (q) the Shipper's obligation to pay the Capacity Reservation Charge in respect of the Requested T1 Capacity commences from the time the Operator provides the Requested T1 Capacity; and
- (r) the Operator must notify the Shipper as soon as reasonably practicable after the 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 Capacity Start Date, the Capacity End Date as determined under clause 4; and
 - (ii) in respect of each quantity of Requested T1 Capacity granted by the Operator to the 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 any amount specified in Item 1 of Schedule 1 and Item 2 of Schedule 1 respectively in relation to T1 Service (and if no amount is so specified, by amending Items 1 and 2 of Schedule 1 to show the amount of Requested T1 Capacity at an Inlet Point and at an Outlet Point relevant to that Contract Amendment Commencement Date) 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) on a Capacity End Date for particular Contracted Capacity the subject of this Contract by subtracting either (as the case requires):
 - A. the amount of Contracted Capacity the subject of this Contract as at the Capacity Start Date at each relevant Inlet Point and each relevant Outlet Point relevant to that Capacity End Date for that Contracted Capacity as determined in accordance with clause 4; or
 - B. the amount of the relevant Requested T1 Capacity at each Inlet Point and each 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.
- (c) If pursuant to clause 16.5(b) or clause 14.7(c) there is Contracted Capacity for T1 Service under this Contract on a Gas Day:
- (i) the Capacity Reservation Charge calculated under clause 20.2(a) will be increased for such Gas Day by adding, to the amount otherwise calculated in accordance with clause 20.2(a), the sum of such Contracted Capacity for T1 Service on that Gas Day multiplied by the T1 Capacity Reservation Tariff, and, when calculating such charge, the Reservation Portion of the Aggregate Tariff Adjustment Factor must be added to or subtracted from the T1 Capacity Reservation Tariff in accordance with clause 20.8;
 - (ii) the Commodity Charge calculated under clause 20.3(a) will be increased for such Gas Day by adding, to the amount calculated in accordance with clause 20.3(a), the result of multiplying the T1 Commodity Tariff by each GJ of Gas Delivered to the Shipper in the T1 Service under this Contract, up to the amount of Contracted Capacity for T1 Service, at all Outlet Points by the Operator on that Gas Day, and, when calculating such charge, the Commodity Portion of the Aggregate Tariff Adjustment Factor must be added to or subtracted from the T1 Commodity Tariff in accordance with clause 20.8; and
 - (iii) in respect of such T1 Service, in clause 11.1(b) and Schedule 2 row 4, the reference to "P1 Tariff" shall be replaced with "T1 Tariff" and in Schedule 2 row 4 ", multiplied by the Distance Factor" shall be deleted.

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) The Operator shall give the Shipper:
- (i) within 10 Working Days after the date the Shipper gives it a T1 Capacity Notice, a good faith estimate of the Costs likely to be incurred by the Operator in the remainder of the current calendar month; and
 - (ii) if the Operator gives the 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 the Operator in the following calendar month and a reconciliation of Costs incurred since the date of the previous reconciliation compared to the Operator's estimate of those Costs.
- (b) If the Shipper issues a T1 Capacity Notice, the Operator issues the Operator's Expansion Offer and the 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, the Shipper shall promptly upon demand indemnify the Operator for all of the Operator's out of pocket costs, losses, claims, liabilities and expenses (**Costs**) incurred by the 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:

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

where:

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

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

The Shipper agrees that the Operator may satisfy part or all of its obligations (if any) to provide the Requested T1 Capacity to the Shipper under this clause 16 by procuring a third party to assign or transfer Gas Transmission Capacity to the Shipper. Notwithstanding anything in the third party's existing contract in relation to that Gas Transmission Capacity, the Shipper shall take such Capacity on the terms and conditions under this Contract (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 the Shipper). The 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 the Shipper to take any assignment or transfer in breach of any Law) and the Operator shall pay the Shipper's reasonable costs and expenses of doing so.

16.8 Operation of this clause 16

- (a) The Shipper may not give the 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 the Shipper until after 08:00 on the Capacity End Date.
- (c) The Operator shall use reasonable endeavours to ensure that the Expansion Works Contractor's liability to the Operator for Liquidated Damages for a delay in completing the Expansion required to enable the Operator to provide the Requested T1 Capacity is an amount at least equal to 20% of the Capital Cost of the Expansion.
- (d) The Operator shall obtain, or shall procure that the Expansion Works Contractor obtains, insurance against the risks of delays in completing the Expansion or against the 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 the 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 the 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) The Shipper agrees to withdraw each access request (if any) it has provided to the 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 Capacity Start 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 the Shipper has reserved on the DBNGP under all contracts with the Operator as at the Capacity Start 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 the Operator notifies the Shipper that the condition for the grant of Requested T1 Capacity under clause 16.4(i) is not able to be satisfied by the Operator, before the Shipper undertakes to contribute the Capital Cost of the Expansion, the Operator and the 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 the Shipper through subordinated debt.

16.10 The Shipper funding contribution

- (a) If the Shipper and the 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 the 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 **the Shipper's Funding**) on the following basis:
- (i) the Shipper's Funding is to be provided at the times and in the manner required to meet the Operator's liability for the earliest scheduled payments for the design, engineering, procurement and construction of the Expansion, with security for the balance of the Shipper's Funding outstanding at any time being provided to the reasonable satisfaction of the Operator by way of unconditional bank undertaking, performance bond, or other form of security acceptable to the Operator.
 - (ii) Following the contribution of the Shipper's Funding, the 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 the Operator and indirectly through ownership of the Pipeline Trust, the DBNGP.
 - (iii) The Shipper's Funding may comprise debt or unit interests in the DBNGP Trust at the option of the 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). The Operator will use reasonable endeavours to procure any external approvals required in a timely manner.
 - (iv) If the Shipper's Funding is provided by the Shipper acquiring unit interests in the DBNGP Trust, the value of the 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 the 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 the 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) The Shipper, the Pipeline Trustee and the DBNGP Trustee must execute all documents that are reasonably required to give effect to the contribution of the Shipper's Funding, and to reflect the 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**). The 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 the Shipper's Funding does not have any adverse stamp duty or taxation impact (excluding normal transaction costs).

- (vii) The contribution of the 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 the Shipper's Funding; and
 - B. that the 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) The Shipper is not obliged to provide the Shipper's Funding.
- (ix) If the Shipper's Funding is contributed by way of debt, the Shipper may nominate another person to provide the 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 the Shipper's Funding is contributed by way of equity, the Shipper may sell that equity to third parties, subject to any restrictions (including pre-emptive rights) contained in the Unitholders Agreement.
- (b) The Operator warrants to the Shipper that the Unitholders Agreement makes provision for shippers that contribute the 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 Capacity Start 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 the Operator or both, then:
 - (i) the Operator, Pipeline Trustee and the DBNGP Trustee must promptly notify the Shipper; and
 - (ii) the Operator, Pipeline Trustee, the DBNGP Trustee and the 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, the Shipper's Funding shall be that proportion of the Capital Cost of the Expansion that the amount of the 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 the Operator will not be taken to be satisfied for the purposes of clause 16.4(i) 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 the Operator to undertake the works required to expand the Gas Transmission Capacity of the DBNGP (***Expansion Works Contractor***) reasonably satisfies the 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, the Operator may give the 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 the 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 the Shipper to align its T1 Capacity Notice with other shippers' T1 Capacity Notices for the purposes of satisfying clause 16.4(h), the Operator shall notify the 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 the Operator shall notify the 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 the Operator to disclose the identity of those other shippers).

17. Curtailment

17.1 Operator's obligations and Curtailment principles

- (a) The Operator must use its best endeavours to minimise the magnitude and expected duration of any Curtailment of the P1 Service.
- (b) A Curtailment may affect one or more Inlet Points or Outlet Points on the DBNGP. Unless the Curtailment affects only one Inlet Point or Outlet Point, it is a System Curtailment.
- (c) Curtailment occurs in two stages, although in some instances the Operator will not need to move to the second stage:
 - (i) **Stage 1:** the Operator identifies that a Curtailment is necessary and, acting as a Reasonable and Prudent Person, determines how much Capacity needs to be Curtailed. In most circumstances this will be a System Curtailment.
 - (ii) **Stage 2:** If it is necessary (at the same time or subsequently) for the Operator to resolve incompatible demands by shippers for the use of a single Inlet Point or Outlet Point, the Operator undertakes a Point Specific Curtailment at each such point.
- (d) In a Curtailment, whether System Curtailment or in any Point Specific Curtailments, Contracted Capacity at a particular point (**incumbent capacity**) has priority for the use of that point above capacity relocated from another point for that Gas Day, unless the incumbent capacity has been fully curtailed by virtue of the application of the Curtailment Plan in a System Curtailment which affects a Curtailment Area greater than a Point Specific Curtailment.

17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

- (a) if there is an event of Force Majeure where the Operator is the Affected Party;
- (b) whenever it needs to undertake any Major Works;
- (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of the Shipper;
- (d) for any Planned Maintenance; and
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

17.3 Curtailment without liability

- (a) Subject to clause 17.3(b), the Operator is liable to the Shipper only for Direct Damage caused by or arising out of a Curtailment or interruption of the Shipper's P1 Service. For the avoidance of doubt, the giving of a Curtailment Notice constitutes a Curtailment and the provision by the Operator of Capacity equal to the Shipper's reduced Contracted Capacity under clause 17.7(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) The Operator has no liability to the Shipper whatsoever under clause 17.3(a) or otherwise, except as may be provided in clause 17.4, for a Curtailment in any of the following circumstances:
- (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the P1 Service during the Gas Year does not cause the P1 Permissible Curtailment Limit to be exceeded;
 - (ii) where the Curtailment is in accordance with any of clauses 17.2(a), 17.2(b) or 17.2(c); or
 - (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

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

- (c) The P1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
- (i) a Curtailment in circumstances set out in clause 17.2(a), 17.2(b) or 17.2(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 P1 Permissible Curtailment Limit to be exceeded.

17.4 Refund of Capacity Reservation Charge

To the extent that the Shipper's P1 Service is Curtailed for any reason other than:

- (a) an event of Force Majeure where the Shipper is the Affected Party; or
- (b) a 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,

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

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

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

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

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

17.6 Curtailment Notice

- (a) The Operator must give the Shipper a notice (***Curtailment Notice***) setting out the matters referred to in clause 17.7(a) and the expected duration of an impending Curtailment and otherwise complying with this clause 17.
- (b)
 - (i) Where the Curtailment Notice relates to Major Works, the Operator must give the Shipper a Curtailment Notice at least 90 days in advance of the starting time of the Curtailment.
 - (ii) In any case other than one described in clause 17.6(b)(i):
 - A. subject to clause 17.6(b)(ii)B, the Operator must give the Shipper a Curtailment Notice at least one hour in advance of the starting time of the Curtailment; and
 - B. where as a result of Force Majeure or by reason of an emergency it is not reasonably possible to give a Curtailment Notice at least one hour in advance of the starting time of the Curtailment, the Operator must give the Shipper a Curtailment Notice as soon as it is practicable to do so, whether that is before or after the starting time of the Curtailment.
- (c) The Operator must send a copy of the Curtailment Notice in accordance with clause 29.1(a) (Notices) and must also endeavour to telephone the Shipper to advise that the Curtailment Notice has been or will be provided.
- (d) The Operator is not required to inform all affected Producers and downstream entities that relate to the Shipper of the notification of the Curtailment or the Curtailment Notice.
- (e) A Curtailment Notice under clause 17.6(a) must give the reasons for the Curtailment.
- (f) The Operator must, on a reasonable request by the Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to explain the issue of a Curtailment Notice.

17.7 Content of a Curtailment Notice

- (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 the 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, the Shipper must use best endeavours to, and to procure persons to whom the Shipper supplies Gas to, cease taking delivery of any

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

17.8 Compliance with Curtailment Notice

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

17.9 Priority of Curtailment

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

all Types of Capacity Services listed below it in that column in the Curtailment Plan have been reduced to zero.

- (b) The general principle in clause 17.9(a) is subject to the following:
- (i) Any Laws regulating the priority of Capacity Services (which for the purposes of this clause include capacity under a Spot Transaction) on the DBNGP.
 - (ii) Where the Curtailment is a Point Specific Curtailment, the Curtailment Plan will be subject to any Multi-shipper Agreement relating to that Inlet Point or Outlet Point.
 - (iii) Any Point Specific Curtailment of the Aggregated P1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded to the extent that the Shipper is entitled to give a Renomination Notice in respect of either of the following:
 - A. (subject to clause 17.9(b)(iii)B) one or more Inlet Points or Outlet Points (as the case may be) where the Shipper has unutilised Contracted Capacity for the P1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the P1 Service at that or those Inlet Points or Outlet Points (as the case may be);
 - B. one or more Inlet Points or Outlet Points (which may be points referred to in clause 17.9(b)(iii)A above) where the Shipper can otherwise utilise Capacity.
 - (iv) If and to the extent that, because of the default, negligence, breach of contractual term, or other conduct of a shipper (in this clause 17.9(b)(iv) the **defaulting shipper**):
 - A. a reduction in Gas Transmission Capacity is caused that makes necessary any Curtailment of the use of Gas Transmission Capacity by any shipper; or
 - B. the Operator is entitled to refuse to Receive Gas from or Deliver Gas to any shipper (or, if applicable, to Curtail the use of Gas Transmission Capacity by any shipper),

the Operator must, to the extent that it is entitled to do so, wholly refuse to Receive Gas from or Deliver Gas to the defaulting shipper and must reduce the defaulting shipper's use of Gas Transmission Capacity of any kind (but only to the extent necessary to correct the default of the shipper) before it reduces any shippers' (other than the defaulting shipper's) use of Gas Transmission Capacity of any kind, and the Operator is not liable to the defaulting shipper for any Direct Damage or Indirect Damage (whatsoever) arising from that Curtailment or refusal.
 - (v) To the extent that:
 - A. the use of Gas Transmission Capacity by a particular shipper would, but for this clause 17.9(b)(v), be included in an apportionment of a Curtailment; and

- B. in the view of the Operator (acting fairly and reasonably) the inclusion of that Gas Transmission Capacity would because of the location of the particular shipper's Inlet Point or Inlet Points or Outlet Point or Outlet Points in relation to the circumstances which gave rise to the need to Curtail be unlikely to wholly or partially reduce the need to Curtail any other shipper's use of Gas Transmission Capacity,

the Operator may exclude that Gas Transmission Capacity from the apportionment of Curtailments (despite what would otherwise be the Operator's obligation to include that Gas in the apportionment).

- (vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the relevant shipper's:
- A. Aggregated P1 Service which derives from Contracted Capacity for P1 Services at the Outlet Points located within the Curtailment Area, when the Curtailment Plan is applied to that Curtailment Area:
- 1) are not included in the Aggregated P1 Service; and
 - 2) are included in the P1 Service,
available to the relevant shipper in the Curtailment Area; and
- B. Aggregated P1 Service which derives from Contracted Capacity for P1 Services at any Outlet Point located outside the Curtailment Area, when the Curtailment Plan is applied to that Curtailment Area:
- 1) are included in the Aggregated P1 Service; and
 - 2) are not included in the P1 Service,
available to the relevant shipper in the Curtailment Area.
- (vii) Despite any provision of the Curtailment Plan or any contract, the Delivery of Gas to the Shipper is at all times subject to the Operator's absolute right to utilise part of the DBNGP's capability to transport Gas which is required by the Operator for operational purposes in relation to the DBNGP.
- (viii) The Operator must enforce any rights it may have under the Alcoa Exempt Contract in relation to allocating to, and Delivering to, Alcoa no more than Alcoa's Exempt Delivery Entitlement during a Curtailment, including taking the full benefit of any force majeure provisions of the Alcoa Exempt Contract when and to the extent that it is entitled to do so.
- (ix) Nothing in this clause 17 limits or affects the Operator's right to refuse to Receive or Deliver Gas under clauses 5.3 or 5.7.
- (x) This clause 17 is subject to any contrary agreement reached between the Shipper and other shippers as to the manner of treating Curtailments between them.

- (c) (i) Subject to clauses 17.9(c)(ii) and 17.9(c)(iii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

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

where:

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

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

B = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of T1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that T1 Service on that Gas Day)

- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service (other than a Tp Service), then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.
- (iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.

17.10 Apportionment of Shipper's Curtailments

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

- (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to Receive Gas across those Outlet Points in the manner required by the Shipper; or
 - (iii) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points in the manner required by the Shipper, except in the case of Point Specific Curtailments.
- (b) The Operator is not required to make the apportionment referred to in clause 17.10(a) if:
 - (i) acting as a Reasonable and Prudent Person, the Operator considers it is not Technically Practicable to do so;
 - (ii) acting as a Reasonable and Prudent Person, the Operator considers the circumstances do not reasonably allow the Operator to consult with the Shipper as to the apportionment or wait for the Shipper's response following such consultation; or
 - (iii) the Operator has requested the Shipper notify the Operator of its apportionment, and the Shipper has not done so by the end of the relevant Gas Day,

in which case the Operator may apportion the refusal across the relevant Inlet Points or Outlet Points (as the case may be) in the manner it considers appropriate.
- (c) The Shipper may at any time and from time to time propose to the Operator an apportionment mechanism which will operate as a standing requirement as to how the Operator must apportion any:
 - (i) refusals to Receive Gas across Inlet Points;
 - (ii) refusals to Deliver Gas across Outlet Points; or
 - (iii) Curtailments across Inlet Points and Outlet Points.
- (d) The Operator and the Shipper must, in good faith, attempt to agree any apportionment mechanism for the purposes of this clause 17.10. If the Operator and the Shipper have not agreed an apportionment mechanism for the purposes of this clause 17.10 within 1 month from the date of the Shipper's proposal, either Party may refer this Dispute to an Independent Expert under clause 24 for determination as a Technical Matter.
- (e) If the Operator and the Shipper have agreed an apportionment mechanism or an apportionment mechanism has been determined by an Independent Expert for the purposes of this clause 17.10, then the Operator must apportion any:
 - (i) refusals to Receive Gas;
 - (ii) refusals to Deliver Gas; or
 - (iii) Curtailments,

in accordance with that mechanism.
- (f) If no apportionment mechanism has been proposed by the Shipper or agreed or determined under clause 17.10(d), and it becomes necessary to effect an

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apportionment of the kind referred to in clause 17.10(c), the apportionment may be effected by the Operator acting as a Reasonable and Prudent Person and must in that case be notified by the Operator to the Shipper as soon as practicable after the end of the relevant Gas Day.

18. Maintenance and Major Works

- (a) By 31 August of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 October (**Maintenance Year**) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) On or before 30 September of each Contract Year, the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works and Planned Maintenance for the DBNGP for the Maintenance Year (**Annual DBNGP Maintenance Schedule**), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.
- (c) The Operator must issue a copy of the Annual DBNGP Maintenance Schedule to all shippers who provided the Operator with a schedule pursuant to clause 18(a).
- (d) At the Shipper's request, the Operator must provide the Shipper with its estimate of the Curtailment to Capacity available to the Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.
- (e) The Operator must, as a Reasonable and Prudent Person, endeavour to:
 - (i) comply with the Annual DBNGP Maintenance Schedule; and
 - (ii) give the Shipper as much advance notice as is reasonably practicable (in the form of regular outage schedules or otherwise) of any material departure from the Annual DBNGP Maintenance Schedule that is likely to affect the Shipper. However, the Operator will not be bound by any notification it provides pursuant to this clause 18(e)(ii).
- (f) If the Shipper is affected by any planned Curtailment arising out of any Planned Maintenance, or any Major Works, the Operator must use its reasonable endeavours to:
 - (i) consult with the Shipper concerning the scheduling and duration of;
 - (ii) accommodate the needs of the Shipper in scheduling; and
 - (iii) minimise the duration and impact of,the Curtailment.
- (g) Despite clause 18(b), but subject to clauses 18(e) and 18(f), the 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 the Shipper's entitlement to a refund under clause 17.4 in circumstances where a Curtailment is other than as a result of an event of Force Majeure where the Shipper is the Affected Party, the Shipper is not relieved of its obligation to pay the Capacity Reservation Charge by the occurrence of an event of Force Majeure in respect of it however caused.
- (d) If a Party claims the benefit of Force Majeure, it must:
 - (i) promptly give notice to the other Party of the occurrence and circumstances in which the claim arises;
 - (ii) use its best endeavours to remedy the consequences without delay; and
 - (iii) resume full performance of its obligations under this Contract as soon as reasonably practicable.
- (e) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the Party claiming the benefit of this clause and the Party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
- (f) The Shipper is relieved from paying the Surcharges to the extent that it was unable to prevent such Surcharges accruing due to some event of Force Majeure affecting it.
- (g) For the avoidance of doubt, the Parties acknowledge that lack of finances, lack of funds or access to funds, or inability to borrow funds are not in any circumstances an event of Force Majeure under this Contract.

20. Charges

20.1 Obligation to pay Charges

The Shipper must pay the Charges and any other amounts payable under this Contract to the Operator in the manner and at the times set out in this Contract, including the charges set out in clauses 20.2, 20.3, 20.4, 20.6 and 20.7 (inclusive). The Charges must be invoiced and payable in accordance with clause 21.

20.2 Capacity Reservation Charge

- (a) Subject to clause 16.5(c), the Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by multiplying the sum of Contracted Capacity for P1 Services at each Outlet Point by the P1 Capacity Reservation Tariff.
- (b) Subject to clause 17.4, the Capacity Reservation Charge is payable for each Gas Day during the Period of Supply regardless of whether the Shipper provides Gas at any Inlet Point and regardless of whether the Shipper takes Gas at any Outlet Point.
- (c) When calculating the Capacity Reservation Charge under clause 20.2(a), the Reservation Portion of the Aggregate Tariff Adjustment Factor must be added to or subtracted from the P1 Capacity Reservation Tariff in accordance with clause 20.8.

20.3 Commodity Charge

- (a) Subject to clause 16.5(c), the Commodity Charge will be calculated for each Gas Day during the Period of Supply by multiplying the P1 Commodity Tariff by the sum of each GJ of Gas Delivered to the Shipper up to Contracted Capacity for P1 Services at all Outlet Points by the Operator on that Gas Day.
- (b) When calculating the Commodity Charge under clause 20.3(a), the Commodity Portion of the Aggregate Tariff Adjustment Factor must be added to or subtracted from the P1 Commodity Tariff in accordance with clause 20.8.

20.4 Other Charges

- (a) The following charges apply to this Contract:
 - (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)); and
 - (v) any charges or other sums payable under clauses 6.6, 14.7 and 15.11 or elsewhere in this Contract,(together **Other Charges**).
- (b) The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may

be incurred by the Operator or is otherwise a penalty or constitutes penal damages.

20.5 Adjustment to Base T1 Tariff

- (a) Up to 08:00 hours on 1 January 2021, the Base T1 Tariff must be adjusted, with effect from 08:00 hours on 1 January in each year (beginning with 1 January 2015), in accordance with CPI on the following basis:

$$Base\ Tariff_n = New\ 2014\ Tariff \times \left(\frac{CPI_n}{CPI_{2013}} \right)$$

where:

Base Tariff_n= the adjusted Base T1 Tariff;

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;

CPI₂₀₁₃ means the CPI for the quarter ending on 30 September 2013; and

New 2014 Tariff has the meaning given in clause 1.

- (b) With effect from 08:00 hours on 1 January 2021, the Base T1 Tariff shall be the Firm Service Reference Tariff (or equivalent) at that time.
- (c) 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 2021.
- (d)
- (i) The Parties intend that, with effect from 08:00 hours on 1 January 2021, the Base T1 Tariff will be equal to the Reference Tariff from time to time, for the Reference Service that is a T1 Service.
- (ii) The Operator agrees:
- A. in each Access Arrangement revision proposal made by the Operator to the Regulator for any Access Arrangement in respect of a period which falls entirely after 1 July 2014 (each such Access Arrangement being a **Future Access Arrangement**), it will not propose revisions to the Access Arrangement that remove the T1 Service as a Reference Service (without limitation on its right to propose the inclusion or removal of any other pipeline services as Reference Services);
- B. to use reasonable endeavours to procure that the Regulator includes a T1 Service as a Reference Service in each Future Access Arrangement (provided that nothing in this clause 20.5(d)(ii)B requires the Operator to apply under Chapter 8 Part 5 of the National Gas Access (Western Australia) Law for a review of the relevant reviewable regulatory decision (as that term is defined under the National Gas Access (Western Australia) Law), seek any other administrative review or seek judicial review of any decision of the Regulator); and
- C. that it will not, and will use reasonable endeavours to procure that its Related Bodies Corporate do not, make

any submission or proposal to the Regulator that is inconsistent with the position described in clause 20.5(d)(ii)A or B,

except:

- D. if otherwise agreed by the Shipper;
- E. to the extent that the Operator determines, acting as a Reasonable and Prudent Person, that it is necessary to do otherwise so as to comply with any applicable law or the requirements of the Regulator; or
- F. to the extent that the period of an Access Arrangement falls after the end of the Period of Supply.

In this clause 20.5(d)(ii), "T1 Service" means the service defined in clause 3.3(a) of the Access Arrangement as in force at 1 July 2014 which has a curtailment regime substantively in the form of clause 17 of the Access Contract annexed to the Access Arrangement as in force at 1 July 2014.

- (iii) The Operator acknowledges and agrees that damages alone would not be an adequate remedy for the breach by the Operator of any of the provisions of clause 20.5(d)(ii) and, without prejudice to any other rights or remedies it may have, the Shipper shall be entitled to the granting of equitable relief (including without limitation injunctive relief) in relation to any threatened or actual breach of any of the provisions of clause 20.5(d)(ii).
- (e) On 1 January 2021 and during any time thereafter, the capacity reservation charge/commodity charge split (i.e. fixed/variable 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 must be reduced by any part of that loss, cost expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (d) The additional amount payable under clause 20.6(b) is payable at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it is payable within 10 days of a Tax Invoice being issued by the Party making the supply.
- (e) Where in relation to this Contract a Party makes a taxable supply, that Party must provide a Tax Invoice in respect of that supply at or before the time the payment to which the supply relates is payable.
- (f) If a Party becomes aware of an adjustment event, that party agrees to notify the other Party as soon as practicable after becoming so aware, and the

Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the Supplier has satisfied itself that the adjustment event has occurred.

- (g) If an amount is paid by a Party under this Contract as an additional amount under clause 20.6(b) and the amount of GST is not payable or the amount of GST is less than or greater than the additional amount paid, the payer must pay the difference to the supplier or shall be entitled to recover the amount paid from the supplier by serving notice on the supplier (as the case may require).
- (h) For the purposes of this clause:
 - (i) **GST** means GST as that term is defined in the GST Law; and
 - (ii) the terms GST group, member, recipient, representative member, supply, consideration, input tax credit, taxable supply, adjustment, adjustment event and adjustment note have the same meaning as in the GST Law.

20.7 Other Taxes

If:

- (a) any Tax which was not in force as at 30 June 2014 is validly imposed;
- (b) the rate at which a Tax is levied is validly varied from the rate prevailing as at 30 June 2014; 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 30 June 2014,

(called the **Tax Change**) then, to the extent that the Tax Change affects any costs incurred by the Operator in performing its obligations under this Contract or otherwise affects the amounts payable under this Contract, the Shipper must pay to the Operator an amount equal to the increase in costs attributable to the Tax Change, or the Operator must pay to the Shipper an amount equal to the decrease in costs attributed to the Tax Change (as the case may be), which amount must be added to amounts, or deducted from (as the case may be) otherwise due under this Contract.

20.8 Capacity expansion tariff adjustment

- (a) Except where clause 20.5(b) applies, and subject to clause 20.8(b) below, following an Expansion of the Gas Transmission Capacity of the DBNGP prior to 1 January 2021, the T1 Capacity Reservation Tariff and the T1 Commodity Tariff (**Tariff Components**) must be adjusted, and thereby the Base T1 Tariff 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) Notwithstanding anything in this Contract, this clause 20.8 applies only in respect of Expansions of the Gas Transmission Capacity of the DBNGP after 1 July 2014 (and prior to 1 January 2021) (and any Expansion of the Gas Transmission Capacity of the DBNGP prior to 1 July 2014 shall be ignored (and not referred to) when calculating the Reservation Portion of the Aggregate Tariff Adjustment Factor and the Commodity Portion of the Aggregate Tariff Adjustment Factor).
- (c) The adjustment to the Tariff Components is 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 must be subtracted from the T1 Capacity Reservation Tariff and the T1 Commodity Tariff respectively;
 - (iv) subject to clause 20.8(b), each Expansion of Gas Transmission Capacity of the DBNGP may result in a Tariff Adjustment Factor which applies 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(d)) 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).
- (d) The **Tariff Adjustment Factor** for an Expansion must be determined in accordance with the following formula:

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

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:

Discount Rate × (*Compressor Cost Variance* + *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 which, as at 27 October 2004, was 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 27 October 2004 (**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 the 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:

$$\text{Looping Cost Variance} = (\text{Looping Actual Costs} - \text{Looping Budget Costs}) \times \text{Looping Total Kilometres}$$

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 27 October 2004 (**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; and
- (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;
- (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 the 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 calculated by using the nominal post-tax rate of return approved by, and the inputs used by, the Regulator for the weighted average of the returns applicable to debt and equity for the purposes of determining the total revenue using the building block method applying under the Access Arrangement and which rate of return is expected to be redetermined as at 1 January 2016; and

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

- (e) The Aggregate Tariff Adjustment Factor must 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(d) 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.

- (f) Where this clause 20.8 refers to costs of an Expansion being **verified**, the total of these costs are either:
- (i) as accepted by the Regulator as the amount by which the Capital Base of the DBNGP is increased for the purposes of the Access Arrangement; or
 - (ii) as audited and verified by an independent accounting firm appointed by the Operator as being the actual total Capital Costs of the Expansion.
- (g) The Operator must 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.
- (h) For the purposes of this clause 20.8, the Capital Cost of the Expansion must not include:
- (i) interest costs other than those incurred during construction or at any time after commissioning of the relevant Expansion;
 - (ii) any administrative, head office or other internal costs of the 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 include:
- (iv) fees and costs (including project management costs) of any company contracted by the 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 the Operator in insuring against risks of delays in completing the Expansion by the Requested T1 Capacity Start Date or against the 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.
- (i) The Operator must give the 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.
- (j) No adjustments to the Tariff Components under this clause 20.8 may be made after 1 January 2021.

21. Invoicing and Payment

21.1 Monthly payment of Capacity Reservation Charge

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

The Operator must, within 5 Working Days after the end of a month, provide the Shipper a Tax Invoice or Tax Invoices for the Gas Month just ended showing:

- (a) the quantity of Gas Delivered by the Shipper at each Inlet Point and the quantity of Gas Delivered by the Operator at each Outlet Point on each Gas Day in the month;
- (b) the Commodity Charges for the month;
- (c) all Other Charges payable for the month;
- (d) any other amounts which under this Contract are payable in arrears or refundable for the month and any other amounts payable pursuant to clause 8.18 in respect of the month;
- (e) any outstanding amounts (whether those amounts were originally payable in arrears or advance) from previous months and the interest payable thereon;
- (f) in the case of the Tax Invoice for the final Gas Month in a Gas Year, any funds payable to the Shipper for that Gas Year by reason of any Curtailment of the Shipper's P1 Service; and
- (g) such other information as may be agreed between the Parties.

21.3 Payment within 10 Working Days

Subject to clause 21.1(b), the Shipper must, within 10 Working Days of receipt of a Tax Invoice, pay to the Operator in the manner shown on the Tax Invoice all amounts shown on the Tax Invoice as payable under this Contract.

21.4 Default in payment

- (a) If the Shipper fails by the relevant due date to make full payment of any:
 - (i) Capacity Reservation Charge;
 - (ii) Commodity Charge;
 - (iii) Other Charges; or
 - (iv) any other amount or amounts payable by it under this Contract and shown on a Tax Invoice,

then, without prejudice to the Operator's other rights and remedies under this Contract or in equity, the Shipper must (unless the Operator in its absolute discretion waives this requirement) pay interest on the unpaid amount (after as well as before judgment), calculated daily at the Prescribed Interest Rate from the due date until payment.

- (b) The Prescribed Interest Rate calculated for a day from which interest is payable on an amount referred in clause 21.4(a) or clause 21.5 applies until payment of that amount, and must not be recalculated despite any change in the Bank Bill Rate during that period.
- (c) This clause 21.4 applies with appropriate changes to a default by the Operator in paying or allowing any credit, rebate or other sum under this Contract.

21.5 Disputed Tax Invoices

- (a) If the Shipper disputes any amount or amounts set out in a Tax Invoice to be due or payable, then the Shipper must pay the undisputed portion (if any) of the amount shown on the Tax Invoice in accordance with clause 21.3, and must, within 10 Working Days of the date of the Tax Invoice, give notice in writing to the Operator that it disputes the amount or amounts and full details of the dispute.
- (b) Any amount withheld by the Shipper under this clause but subsequently found to have been payable is, without prejudice to the Operator's other rights, to attract interest calculated daily at the Prescribed Interest Rate from 10 Working Days after the date of the Tax Invoice until payment. The Shipper must pay any interest payable under this clause at the same time as it pays the amount withheld.

21.6 Correction of payment errors

- (a) If a Party detects any underpayment or overpayment by a Party of any amount and 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 must 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 the Bank Bill Rate plus an annual interest rate of 1 percent per annum.

21.7 Set off

The Shipper may set off against amounts owing by it under Tax Invoices provided to it under this clause 21 any amounts payable by the Operator to the Shipper for Liquidated Damages.

22. Default and Termination

22.1 Default by Shipper

The Shipper is in default under this Contract only if:

- (a) the Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract;
- (b) the Shipper defaults in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in this Contract and such default is material in the context of the Contract as a whole;
- (c) without the Operator's prior consent, the Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking;
- (d) the Shipper suffers an Insolvency Event;
- (e) there is any adverse change in the business or financial condition of the Shipper or any event occurs which could, in the reasonable opinion of the Operator, in any way jeopardise the ability of the Shipper to meet its obligations to the Operator under this Contract; or
- (f) the Shipper is found to be materially in breach of any warranty given to the Operator in this Contract, or if any statement or representation made by any means or in any document by the Shipper to the Operator, is found to be false or misleading in any material particular.

22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing by certified mail to the Shipper specifying the nature of the default and requiring the Shipper to rectify the default (***Shipper Default Notice***).

22.3 When Operator may exercise remedy

- (a) Subject to clause 22.3(b), the Operator may exercise a remedy under clause 22.4 at any time during which the Shipper remains in default under this Contract.
- (b) The Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):
 - (i) in respect of an event described in clauses 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days have elapsed after the Shipper receives that Shipper Default Notice; and
 - (ii) in respect of an event described in clauses 22.1(b), 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after the Shipper receives that Shipper Default Notice,and the event has not been remedied within the relevant period specified in 22.3(b)(i) or 22.3(b)(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 the Shipper is in default under this Contract, then the Operator may in its sole discretion:

- (a) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point until such time as:
 - (i) all amounts the failure to pay which constitutes the event described in clause 22.1(a), plus interest on those amounts at the Prescribed Interest Rate, have been paid in full; and
 - (ii) all other events described in clause 22.1 have been remedied, ceased or removed; or
- (b) by notice in writing to the Shipper terminate this Contract which termination takes effect immediately upon receipt of such notice.

22.5 Default by Operator

The Operator is in default under this Contract only if:

- (a) the Operator repudiates, disclaims or defaults in the performance of, any obligation under this Contract and such repudiation, disclaimer or default is material in the context of the Contract as a whole; or
- (b) an Insolvency Event occurs in respect of the Operator.

22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing by certified mail to the Operator specifying the nature of the default and requiring the Operator to rectify the default (**Operator Default Notice**).

22.7 When Shipper may exercise remedy

- (a) Subject to clauses 22.7(b) and 22.7(c), the Shipper may exercise a remedy under clauses 22.8 or 22.9 at any time during which the Operator remains in default under this Contract.
- (b) The Shipper may not terminate this Contract under clauses 22.8 or 22.9 or commence the exercise of any remedy under clause 22.9 (and is not entitled to Liquidated Damages under clause 22.9(a)) for a default under this Contract:
 - (i) in respect of an event described in clause 22.5(a), unless it has given an Operator Default Notice, and until 40 Working Days have elapsed after the Operator receives that Operator Default Notice; and
 - (ii) in respect of an event described in clause 22.5(b), unless it has given an Operator Default Notice, and until 5 Working Days have elapsed after the Operator receives that Operator Default Notice,and the event has not been remedied within the relevant period specified in clause 22.7(b)(i) or 22.7(b)(ii).
- (c) The Shipper may not terminate this Contract under clause 22.8 or 22.9(b) in respect of a default by the Operator of its obligations under clause 16 until the 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 the Operator is in default under this Contract in a way described in clause 22.5(a) above of its obligations under clause 16 (T1 Capacity and Capacity Expansion Options), any applicable extension of time or other limitation agreed between the Parties must be taken into account.

22.8 Remedies for Operator's default

Subject in all cases to clauses 22.7 and 22.9, if the Operator is in default under this Contract (other than in respect of an event described in clause 22.5(a), of its obligations under clause 16 (T1 Capacity and Capacity Expansion Options)) and:

- (a) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(b), then the Shipper may in its sole discretion by notice in writing to the Operator terminate this Contract, which termination takes effect at the start of the Gas Day immediately following the Operator's receipt of the notice of termination; or
- (b) the Shipper elects to terminate this Contract in respect of a default described in clause 22.5(a), then the Shipper may, in its sole discretion, by notice in writing to the Operator terminate this Contract, which termination takes effect at the time the Shipper specifies in the notice of termination not exceeding 3 years after the Operator receives the notice of termination.

22.9 Operator's Liability for a failure to expand

If the Operator is in default of its obligations under clause 16 in a way described in clause 22.5(a), then (subject in all cases to clause 22.7) the Shipper may:

- (a) notify the Operator that it must pay Liquidated Damages, in which case the Operator must pay the Liquidated Damages to the Shipper from the date the notice is given to the Operator for each Gas Day during which the default continues but subject to clause 22.13, calculated for that Gas Day. The 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 the Operator in accordance with clause 16 and was not so provided; or
 - (ii) the obligation to provide the Requested T1 Capacity which the Operator repudiates or disclaims would have fallen due but for the repudiation or disclaimer.

Subject to clause 22.13(c), if the Shipper terminates this Contract under this clause 22.9(b) the Shipper will only be entitled to recover Direct Damages from the Operator suffered by the Shipper as a result of the default by the 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 are the Shipper's sole and exclusive remedy in respect of a repudiation, disclaimer or default under clause 16 and the Operator (despite any provision of clause 23) is not liable to the 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 this Contract or under any Law.

22.12 Effect of termination

- (a) Termination of this Contract by the Operator under clause 22.4(b) or the Shipper under clauses 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 clauses 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 the Operator under clause 22.4(b) does not relieve the Shipper of its obligations under this Contract to (subject to clause 22.12(d)) pay the Capacity Reservation Charges for the balance of the Period of Supply (but for the termination of this Contract) and to pay all amounts outstanding (and then due and payable) at the time of termination, and termination of this Contract by the Shipper under clause 22.8 does not relieve the Operator of its obligations to pay all amounts outstanding (and then due and payable) at the time of termination.
- (c) Termination of this Contract by the Shipper under clause 22.9 does not relieve the Operator of its liability for Direct Damage suffered by the Shipper as a result of the default by the Operator of its obligations under clause 16.1.
- (d) The Shipper is relieved of its obligation under clause 22.12(b) to continue to pay an amount if and to the extent that the Operator subsequently enters into a contract for Capacity Services, and receives payment from the Shipper or any other shipper for, some or all of the Contracted Capacity (**Terminated Capacity**) made spare by the termination of this Contract.
- (e) For the purposes of clause 22.12(d), Terminated Capacity in any Capacity Service must be assumed to be the last Capacity available to be committed under a contract for Gas Transmission Capacity, and any amounts received by the Operator under such contract must be assumed to be applied last to any Terminated Capacity committed under that contract.

22.13 Maximum amount of Liquidated Damages

- (a) Unless the Operator wilfully 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 the Operator can be liable to the Shipper under clause 22.9 for Liquidated Damages is, subject to clause 22.13(b), the aggregate amount which the 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 the Operator or the Expansion Works Contractor insuring against the risks of delays in completing the Expansion or against the 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 the Operator.
- (b) If the Expansion is providing Requested T1 Capacity for the Shipper and other shippers, the maximum amount for which the Operator can be liable to the 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 the 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 the Operator wilfully 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 Shipper may give the Operator a notice terminating the Shipper's requirements for the Requested T1 Capacity and the Operator is liable to the Shipper for all loss or damage incurred by the Shipper as a result of the Operator's failure to provide the Requested T1 Capacity, and the exclusion of Indirect Damage in clause 23.3 does not apply.
- (d) To avoid doubt, the Parties do not intend:
 - (i) clause 22.13(a)(i) to limit the 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) The 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 22.13(a)(ii).

23. Liability

23.1 Liability limited to Direct Damage

Subject to the terms and conditions of this Contract, a Party who:

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

is liable to the other Party (including its directors, servants, consultants, independent contractors and agents) for, and must indemnify the other Party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage caused by or arising out of the negligence or default.

23.2 Liability for fraud

A Party who is fraudulent in respect of its obligations to the other Party under this Contract is liable to the other Party for, and must indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of the fraud, and the exclusion of Indirect Damage in clause 23.3 does not apply.

23.3 No liability for Indirect Damage

- (a) Subject to clause 23.3(c), neither Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.
- (b) Subject to clause 23.3(c), the Operator hereby releases the Shipper from, and agrees to indemnify the Shipper against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Operator and the Shipper hereby releases the Operator from, and agrees to indemnify the Operator against all Indirect Damage arising under, or in respect of conduct under, this Contract suffered by the Shipper.
- (c) Where this Contract states that "the exclusion of Indirect Damage in clause 23.3(a) does not apply", or words to the same effect, in relation to a matter, then:
 - (i) the exclusion of Indirect Damage in clause 23.3(a) and the release and indemnity in clause 23.3(b) do not apply in relation to that matter; and
 - (ii) the Parties' respective liability in relation to the matter must be determined by Law and, to avoid doubt, the definition of "Indirect Damage" in this Contract must be disregarded for the purposes of that determination.

23.4 No liability arising out of any approval by Operator

Without limiting the generality of clause 23.3, the Operator is not, except as provided in clauses 23.1 and 23.2, in any circumstances to be liable to the Shipper for any Direct Damage or Indirect Damage arising out of any approval by the Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the DBNGP.

23.5 Saving of contractual payments

Nothing in this clause 23 limits the liability of either Party to make all payments due under this Contract.

23.6 Shipper responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Shipper alone is liable for any:
 - (i) injury to or death of any person employed by the Shipper or by any person (except the Operator) contracting with the Shipper; and
 - (ii) loss of or damage to any property of the Shipper or of any person (except the Operator) contracting with or employed by the Shipper,

however caused, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP, or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Shipper must indemnify the Operator and any person (except the Shipper) contracting with the Operator, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.6(a).

23.7 Operator responsible for contractors' personnel and property

- (a) Subject to clause 23.1, the Operator alone is liable for any:
 - (i) injury to or death of any person employed by the Operator or by any person (except the Shipper) contracting with the Operator; and
 - (ii) loss of or damage to any property of the Operator or of any person (except the Shipper) contracting with or employed by the Operator,

however caused, which occurs during the duration of this Contract, in or about, or incidental to activities in or about, any Inlet Station, any Outlet Station, the DBNGP or any other premises, facilities or places used for the storage, transportation or Delivery of Gas Received from or Delivered to the Shipper or where the Operator's property or directors, servants, consultants, independent contractors or agents and the Shipper's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (b) The Operator must indemnify the Shipper and any person (except the Operator) contracting with the Shipper, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 23.7(a).

23.8 Each limitation separate

Each limitation or exclusion created by this clause 23 and each protection given to the Operator or the Shipper or to their respective directors, servants, consultants, independent contractors and agents by this clause 23 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 23 is held inapplicable in any circumstances.

24. Dispute Resolution and Independent Experts

24.1 Method of Resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause.

24.2 Acknowledgment

The Parties acknowledge that while Disputes may arise from time to time, their common intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

24.3 Service of Notice

If a Dispute arises at any time which is between the Parties, then either Party may give the other Party a notice in writing which is dated, signed, and must specify the precise nature of the Dispute (**Dispute Notice**).

24.4 Meeting

Within 5 Working Days of service of a Dispute Notice, the Parties must meet and use all their reasonable efforts to resolve the Dispute (by negotiation or otherwise).

24.5 Senior Officers

If the Dispute is not resolved within 10 Working Days after the meeting between the Parties under clause 24.4, the Parties must immediately refer the Dispute to their respective senior executive officers who must meet within 5 Working Days and use all reasonable efforts to resolve the Dispute.

24.6 Failure to Resolve Dispute

If the Parties are unable to resolve the Dispute in accordance with clause 24.5, and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 24.7), then either Party may require that the Dispute be determined by an independent expert (**Independent Expert**) under clauses 24.8, 24.9 and 24.10 and if the Dispute is not a Technical Matter or a Financial Matter then either Party may commence proceedings in a court of competent jurisdiction in Western Australia.

24.7 Technical and Financial Matters

In this clause 24:

- (a) a **Technical Matter** means a matter involving issues relating to the receipt, transportation and delivery of Gas under this Contract which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which the Operator has issued an Unavailability Notice); and
- (b) a **Financial Matter** means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

24.8 Appointment of Independent Expert

- (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
- (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then, in relation to a Technical or Financial matter, either Party may refer the matter to the Australian Commercial

Disputes Centre and request that a suitably qualified person be nominated by the Australian Commercial Disputes Centre, in accordance with the Rules of Expert Determination of the Australian Commercial Disputes Centre as amended from time to time, to act as Independent Expert to determine the Dispute.

- (c) If the Australian Commercial Disputes Centre ceases to exist or otherwise ceases to provide the relevant expert nomination service, then the Institute of Arbitration and Mediation Australia is to substitute for the Australian Commercial Disputes Centre as the nominating body and nomination is to occur in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators Australia as amended from time to time.

24.9 Expert not an Arbitrator

The Independent Expert appointed under clause 24.8:

- (a) will act as an expert and not as an arbitrator;
- (b) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) will not be a current or former employee or representative of, or a person who provides consultancy services on a regular basis to, a Party or to a Related Body Corporate of a Party; and
- (d) must disclose fully to the Parties, before being appointed as the Independent Expert, any interest or duty which may conflict with his or her position.

24.10 Representation, Evidence, Confidentiality, Powers and Costs

- (a) Each Party may be legally represented at any hearing before the Independent Expert.
- (b) Each Party will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute.
- (c) Each Party will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (d) The Independent Expert will not be bound by the rules of evidence and, subject to abiding by the rules of natural justice, the Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent Expert must determine the procedures to be followed in resolving the Dispute (including whether or not any hearing will take place) and the Parties must co-operate promptly with those procedures, but the Independent Expert must in any event:
 - (i) provide the Parties with a fair opportunity to make written submissions;
 - (ii) provide written reasons for the Independent Expert's determination; and
 - (iii) prior to handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity to lodge written submissions concerning the proposed determination which the Independent Expert must consider before

settling and handing down the Independent Expert's determination.

- (f)
 - (i) Subject to clause 24.10(f)(ii), all information, material and evidence obtained or made available in the course of or for the purpose of the determination will be kept confidential by the Independent Expert and all the Parties.
 - (ii) Clause 24.10(f)(i) does not apply if:
 - A. all the Parties otherwise agree; or
 - B. the disclosure is authorised by Law or the disclosure is required by or under a written Law of the State or the Commonwealth.
 - (iii) If either Party becomes legally compelled to disclose information, material or evidence obtained in the course of or for the purpose of the determination, that person must immediately provide the other Party with written notice so that the other Party may seek appropriate relief and may only disclose information, material or evidence which is legally required to be disclosed.
 - (iv) This clause does not make confidential, information, material or evidence which is in the public domain at the time it is obtained in the course of or for the purpose of the determination.
 - (v) The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.
- (g) Subject to any time prescribed anywhere else in this Contract, the Independent Expert will make a determination on the Dispute within a reasonable period of his or her appointment.
- (h) The determination of the Independent Expert:
 - (i) will be final and binding upon the Parties so far as the Law allows, except where a Party has been denied natural justice; and
 - (ii) will determine what, if any, adjustments may be necessary between the Parties.
- (i) The allocation of costs in relation to a determination by the Independent Expert will be dealt with as follows:
 - (i) unless the Parties otherwise agree before the reference of the Dispute, the remuneration of the Independent Expert will be finally determined by the President for the time being of the appropriate body referred to in clause 24.8(b) who will have the power to fix the remuneration of the Independent Expert at the conclusion of the determination or, if requested by the Independent Expert, to determine a fair rate at which the Independent Expert will be remunerated at any time during the conduct of the determination process; and
 - (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of:

- A. the determination; and
- B. each Parties' own costs (including out of pocket costs) incurred in the preparation and presentation of any submissions or evidence to the Independent Expert,

and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.

24.11 Urgent Relief Condition Precedent to litigation

- (a) A Party must not commence any proceedings before any court in respect of a Dispute which a Party requires to be determined by an Independent Expert under clause 24.6 unless the Dispute has first been referred to an Independent Expert and the Independent Expert does not determine the Dispute within 6 months of the date of the dispute being referred to the Independent Expert.
- (b) Nothing in this clause 24.11 will preclude either Party from seeking any urgent interlocutory, injunctive or declaratory relief, or from commencing proceedings before any court to prevent its claim from being statute barred under the *Limitation Act 1935* (WA) or any other relevant statute of limitation.

25. Assignment

25.1 No assignment except under this clause

Subject to this clause 25 and to clause 27, neither Party may assign any right, interest or obligation under this Contract (but this clause 25 does not prevent the creation of an interest for the 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 deed with the other Party substantially in the form of Schedule 7. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.
- (b) The granting of a charge under this clause 25.2 does not constitute the assignment of a right, interest or obligation referred to in this clause 25.

25.3 Assignment

- (a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:
 - (i) such assignment does not release the assignor from liability; and
 - (ii) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.
- (b) Subject to clauses 25.3(c), 25.3(d) and 25.4, either Party may, with the prior written consent of the other Party, which must not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.
- (c) Without limitation, the Operator may withhold its consent to an assignment by the Shipper if the Operator reasonably considers that the proposed assignee is not in a position to meet the Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to the Operator, acting reasonably.
- (d) Without limitation, the Shipper may withhold its consent to an assignment of the Operator's obligations under this Contract if the 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 the Operator's obligations under this Contract; or
 - (ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNGP and to perform all of the Operator's obligations under this Contract, including the obligations under clause 16.

25.4 Assignment: deed of assumption

- (a) A Party (in this clause 25.4 the **Assignor**) must not assign all or part of its rights and interests under this Contract (other than by way of a Transfer under clause 27) without requiring the assignee to enter into a deed of assumption to the reasonable satisfaction of the other Party under which the assignee assumes all, or the relevant portion, of the Assignor's obligations under this Contract.
- (b) Upon the fulfilment of the relevant conditions specified in clause 25.3 and the entry into of a deed of assumption contemplated by clause 25.4(a), the Assignor is released from all future liability and obligations under this Contract to the extent that the assignee agrees to perform them under the deed of assumption, but this release does not apply to an assignment to a Related Body Corporate under clause 25.3(a) effected without the written consent of the other Party.

25.5 Pipeline Trustee's Acknowledgments and Undertakings

- (a) In this clause 25.5, **dispose** means, in relation to the DBNGP, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the DBNGP (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee:
 - (i) acquiring any equitable interest in the DBNGP, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the DBNGP; or
 - (ii) otherwise acquiring legal or equitable rights against the DBNGP which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the DBNGP itself.
- (b) The Pipeline Trustee, in its capacity as trustee of the DBNGP WA Pipeline Trust (**Pipeline Trust**), undertakes to the Shipper that the Pipeline Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Operator under:
 - (i) this Contract; and
 - (ii) any other contract with the Shipper entered into by, or undertaking given in favour of the Shipper by, the Operator which requires the use or application of any asset owned by the Pipeline Trust, including the DBNGP, in order to be able to perform the contract or comply with the undertaking,except to the extent that such obligations are observed, performed or discharged by the Operator.
- (c) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to the Shipper that if for any reason the DBNGP Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the DBNGP (whether imposed on the Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by the Operator had the DBNGP Operating Agreement not been terminated.
- (d) The Pipeline Trustee, in its capacity as Trustee of the Pipeline Trust, acknowledges and agrees that the Pipeline Trustee's undertakings in clauses 25.5(b) and 25.5(c) for the benefit of the Shipper extend to and include each

and every amount of Requested T1 Capacity requested by the Shipper pursuant to clause 16.

- (e) The Shipper acknowledges and agrees that:
- (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25.5(b), 25.5(c) and 25.5(d) (**Relevant Agreements**) to the same extent that the Operator would have had to comply with those obligations under the Relevant Agreements had the Operator remained bound by them;
 - (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement and expressed to be for the benefit of the Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25.5(b), 25.5(c) and 25.5(d); and
 - (iii) nothing in clauses 25.5(b), 25.5(c) and 25.5(d) gives the Shipper any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that the Shipper would have been entitled to against the Operator for that failure had the Operator remained bound by that Relevant Agreement.
- (f) The Pipeline Trustee represents and warrants that it is the legal owner of the DBNGP and owns the DBNGP in its capacity as trustee of the DBNGP Pipeline Trust.
- (g) The Pipeline Trustee must not dispose of the whole or any part of its right, title or interest in the DBNGP without requiring the disponent to enter into a deed of assumption with the Shipper to the reasonable satisfaction of the Shipper pursuant to which it:
- (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of the Shipper (and the Shipper agrees that the Pipeline Trustee is 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 the Operator's obligations under the Relevant Agreements,
- consistent with this clause 25.5.
- (h) Subject to clause 25.5(i), if the disponent 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 disponent, execute the deed of assumption in terms of clause 25.5(g).
- (i) If the disponent is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25.5(h) 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 disponent. Nothing in clause 25.5(h) or this clause 25.5(i) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

25.6 DBNGP Trustee Acknowledgments and Undertakings

- (a) The DBNGP Trustee in its capacity as trustee of the DBNGP Trust (***DBNGP Trust***) undertakes to the Shipper that the DBNGP Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Operator under:
- (i) this Contract; and
 - (ii) any other contract with the Shipper entered into by, or undertaking given in favour of the Shipper by, the Operator which requires the use or application of any asset owned by the 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 the Operator.
- (b) The DBNGP Trustee, in its capacity as Trustee of the DBNGP Trust, acknowledges and agrees that the DBNGP Trustee's undertaking in clause 25.6(a) for the benefit of the Shipper extends to and includes each and every amount of Requested T1 Capacity requested by the Shipper pursuant to clause 16.
- (c) The 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 the Operator would have had to comply with those obligations under the Relevant Agreements;
 - (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement for the benefit of the 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 the 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 the Shipper would have been entitled to against the Operator for that failure.
- (d) The DBNGP Trustee must 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 the Shipper to the reasonable satisfaction of the Shipper pursuant to which it:
- (i) assumes all, or the relevant portion, of the DBNGP Trustee's obligations under this Contract in respect of the Shipper (and the 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 the 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 disponent, 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 disponent 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 disponent. 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*.

The Parties acknowledge that this clause 25 does not apply to a Transfer under clause 27.

25.8 Utilising other shippers' Daily Nominations

Neither clause 25.1 nor clause 27.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of an other shipper or an other shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

26. General Right of Relinquishment

26.1 Shipper may make Relinquishment Offer

- (a) In addition to its rights under this Contract to relinquish Contracted Capacity in certain circumstances, the Shipper may at any time offer to relinquish all or part of its Contracted Capacity by giving notice in writing to the Operator (**Relinquishment Offer**).
- (b) The Relinquishment Offer must specify the amount of Contracted Capacity under this Contract to be relinquished (**Relinquishable Capacity**) at an Inlet Point, and at an Outlet Point.
- (c) The Relinquishment Offer may specify how a Relinquishment Acceptance apportions any Relinquished Capacity between the Shipper's Contracted Capacities for each Period.
- (d) A Relinquishment Offer, unless accepted under clause 26.3(a), has no effect on this Contract.

26.2 Withdrawal of Relinquishment Offer

- (a) The Shipper may at any time before the Shipper is given a Relinquishment Acceptance in relation to a Relinquishment Offer give notice in writing to the Operator that it wishes:
 - (i) to withdraw that Relinquishment Offer; or
 - (ii) to amend that Relinquishment Offer,and that Relinquishment Offer is by force of this clause 26.2 withdrawn or amended, as the case requires, from the time when that notice is received by the Operator.

26.3 Operator may accept Relinquishment Offer

- (a) The Operator may at any time give notice in writing to the Shipper accepting a Relinquishment Offer (**Relinquishment Acceptance**).
 - (i) A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.
 - (ii) A Relinquishment Acceptance must not apportion Relinquished Capacity between the Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(c).
- (b) A Relinquishment Acceptance must specify:
 - (i) the amount of Relinquishable Capacity that the Operator has agreed to relinquish (**Relinquished Capacity**);
 - (ii) the changes to Schedule 1 which are required to give effect to the relinquishment of the Relinquished Capacity; and
 - (iii) the date the relinquishment takes effect.
- (c) Subject to clause 26.3(b), the Operator's discretion in determining:
 - (i) whether or not to give a Relinquishment Acceptance;
 - (ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and

- (iii) the order in which it accepts offers of relinquishment from:
 - A. the Shipper under this clause 26; and
 - B. if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,

is absolute and unfettered.

- (d) The Operator's discretion is not limited by:
 - (i) any circumstances of the Shipper;
 - (ii) the current or projected level of utilisation of capacity of the DBNGP;
 - (iii) the number or magnitude of current or anticipated offers of relinquishment from:
 - A. the Shipper under this clause 26; and
 - B. if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or
 - (iv) the order in which offers of relinquishment are received by the Operator from:
 - A. the Shipper under this clause 26; and
 - B. if another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

26.4 Effect of Relinquishment Acceptance

- (a) Upon receipt by the Shipper of a Relinquishment Acceptance, or a later date otherwise agreed by the Parties:
 - (i) the Shipper's Contracted Capacity is amended in accordance with the Relinquishment Acceptance;
 - (ii) if, as a result of a reduction under clause 26.4(a)(i), the Shipper's Contracted Capacity is reduced to zero, then this Contract is terminated; and
 - (iii) if the Relinquishment Acceptance is given in respect of:
 - A. part only of the Relinquishable Capacity, the Relinquishment Offer remains in effect, subject to clause 26.2, in respect of the Relinquishable Capacity which has not become Relinquished Capacity; or
 - B. all of the Relinquishable Capacity, the Relinquishment Offer ceases to have effect.

- (b) Subject to clause 26.4(a)(ii), this Contract, as amended under clause 26.4(a)(i), remains in effect after receipt by the Shipper of the Relinquishment Acceptance, and the Operator is not obliged to release all or any part of any bond, deposit, security or other form of assurance provided by the Shipper.

26.5 Notification of relinquishment of capacity by other shippers

If another shipper or shippers have rights of relinquishment of P1 Service under clauses materially equivalent to this clause 26, the Operator must, whenever requested by the Shipper to do so, provide the Shipper, at the Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26.

26.6 Administrative expenses

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

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

26.7 Relinquishment right from 2021

- (a) At any time after 08:00 hours on 1 January 2021 the Shipper may give a notice to the Operator (**Relinquishment Notice**) that it wishes to relinquish Contracted P1 Capacity or Requested T1 Capacity in accordance with this clause 26.7.
- (b) A Relinquishment Notice in respect of Contracted P1 Capacity or Requested T1 Capacity may not be given less than 12 months after the giving of a previous Relinquishment Notice in respect of Contracted P1 Capacity or Requested T1 Capacity (respectively) and, if the 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 following amount:
 - A. either:
 - 1) the Original Capacity (in the case of a relinquishment of Contracted P1 Capacity); or
 - 2) the sum of all Requested T1 Capacity granted to the Shipper under clause 16 after the Capacity Start Date and at least 10 years prior to the issue of the relevant Relinquishment Notice (in the case of a relinquishment of Requested T1 Capacity);
 - B. less any Contracted P1 Capacity under this Contract (in the case of a relinquishment of Contracted P1 Capacity) or Requested T1 Capacity referred to in

paragraph A.2 (in the case of a relinquishment of Requested T1 Capacity):

- 1) which is the subject of a trade to a third party pursuant to clause 27 as at; or
- 2) assigned or otherwise disposed of or relinquished (except under this clause 26.7(c)) by the Shipper prior to,

the date of such Relinquishment Notice;

- (ii) the changes to Schedule 1 which are required to give effect to the relinquishment; and
 - (iii) the Gas Day on which the relinquishment takes effect, which cannot be earlier than 60 days after the Relinquishment Notice has been given to the 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 the 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, the Operator must notify the 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 the Operator as a Reasonable and Prudent Person proposes any relinquishment under this clause 26.8 should become effective; and
 - (ii) the Shipper may, by written notice to the Operator given no later than 30 days after receipt of notice under clause 26.8(a)(i), offer to relinquish Contracted Capacity in respect of T1 Service under this Contract (if any) 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 the Shipper and the other shipper or shippers must 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 the Shipper in TJ/d;

EA is the amount of T1 Capacity by which the DBNGP is to be expanded in TJ/d;

SRR is the amount of T1 Capacity the Shipper has requested to relinquish in TJ/d; and

TRR is the amount of T1 Capacity and Alcoa's Exempt Capacity all shippers (including the Shipper and Alcoa) have requested to relinquish in TJ/d.

In calculating CR, the amount must be rounded to 1 decimal place.

- (b) The Operator must within a reasonable period after receiving the offer notice under clause 26.8(a)(ii) give the Shipper a relinquishment notice specifying:
 - (i) the quantity of Contracted Capacity in respect of T1 Service relinquished, which must equal the amount specified by the 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 the 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 the 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 Contracted Capacity other than by this clause

- (a) The Shipper must not Transfer any of its Contracted Capacity other than in accordance with this clause 27 or clause 25, as the case may be.
- (b) Neither clause 27.1(a) nor clause 25.1 prevents the Shipper agreeing to utilise its Daily Nominations on behalf of an other shipper or an other shipper agreeing to utilise its Daily Nominations on behalf of the Shipper.

27.2 Replacement Shipper must be an other shipper or an Approved Prospective Shipper

The 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 the 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, the Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (**Tradeable Capacity**), make a written request to the Operator for the approval of the Transfer of that Tradeable Capacity (**Request for Approval**).
- (b) A Request for Approval must set out in detail the terms and conditions on which the Shipper is prepared to Transfer the Tradeable Capacity to a Replacement Shipper, including:
 - (i) the duration of the Transfer;
 - (ii) the Inlet Point or Inlet Points and the Outlet Point or Outlet Points at which the Tradeable Capacity is to be Transferred;
 - (iii) the circumstances in which, and the terms on which, the Shipper may interrupt a Replacement Shipper;
 - (iv) the quantity of Tradeable Capacity; and
 - (v) whether there are any rights reserved in respect of the Tradeable Capacity by the Shipper.
- (c) The Shipper may retain a right in specified circumstances to Resume the Traded Capacity, either permanently or temporarily.
- (d) The Operator must, within 5 Working Days of receipt of the Request for Approval, notify the Shipper that it either approves, or rejects, the Transfer Terms. The Operator may reject the Transfer Terms if the Operator as a Reasonable and Prudent Person considers for any reason that its operation of the DBNGP cannot accommodate:
 - (i) the Transfer of the Tradeable Capacity on the Transfer Terms; or
 - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (e) The Operator must not unreasonably withhold its approval of Transfer Terms if the Transfer is to an existing shipper who is not in default of any of its contracts for Capacity Services and Spot Transactions and, the Operator

(acting as a Reasonable and Prudent Person) believes the DBNGP can accommodate:

- (i) the Transfer of the Tradeable Capacity on the Transfer Terms; and
 - (ii) the performance of either or both of this Contract and the Replacement Contract following the Transfer of the Tradeable Capacity.
- (f) If the Operator does not notify the Shipper that it rejects the Transfer Terms in the terms and within the time stipulated in clause 27.3(d), then the Transfer of the Tradeable Capacity on the Transfer Terms is deemed to have been approved by the Operator.
- (g) If:
- (i) the Operator notifies the Shipper that it approves the Transfer of the Tradeable Capacity; or
 - (ii) the Operator is taken to have approved the Transfer of the Tradeable Capacity,

(in either case **Approved Tradeable Capacity**) on the Transfer Terms, then (subject to clause 27.5) the Shipper may Transfer the Tradeable Capacity to a Replacement Shipper on those terms.

27.4 Posting of Tradeable Capacity

- (a) The Operator must, if requested by the Shipper, use reasonable endeavours to ensure that all other shippers of which the Operator is aware who are or may be interested in taking a Transfer of Tradeable Capacity are notified of details of Approved Tradeable Capacity in such a way that they all receive notice (by the CRS or otherwise) at approximately the same time as the Operator makes available to the shippers any bulletin dealing with the amount of Capacity available for Nomination or Renomination on a Gas Day.
- (b) The Operator must provide a statement of the current details of all other shippers' Approved Tradeable Capacity at the Shipper's request.

27.5 Notification of traded capacity

The Shipper must notify the Operator of a Transfer of Approved Tradeable Capacity to a Replacement Shipper at least 2 Working Days before the Transfer of Approved Tradeable Capacity takes effect.

27.6 Replacement Contract

- (a) A Transfer of Approved Tradeable Capacity to a Replacement Shipper is deemed to be a contract between the Operator and the Replacement Shipper in respect of the Approved Tradeable Capacity.
- (b) A Replacement Contract is governed by the terms and conditions of this Contract only so far as is necessary to accommodate the Transfer Terms.
- (c) A Replacement Contract shall be deemed to include a provision that the Traded Capacity is subject to all the Operator's rights over that Traded Capacity under this Contract.
- (d) Prior to the Operator exercising any rights to terminate the Replacement Contract as a result of the Replacement Shipper's default, the Operator must give at least 20 Working Days' notice to the Shipper specifying the nature of the default, and the Operator must not terminate the Replacement Contract if within that period the Shipper:

- (i) cures the default; or
- (ii) resumes the Tradeable Capacity (having cured the default).

27.7 Shipper's Contract

- (a) Subject to this clause 27, this Contract remains in full force and effect following any Transfer of Traded Capacity and the Operator is not obliged to release any deposit, bond, security or other form of assurance provided by the Shipper.
- (b) For the duration of the Replacement Contract, this Contract is deemed to be amended so that the Shipper's Contracted Capacity in respect of the relevant Inlet Point or Inlet Points or Outlet Point or Outlet Points is reduced by the amount of the Traded Capacity.

27.8 Resumption of Traded Capacity by Shipper

- (a) If the Shipper wishes to exercise a right under the Transfer Terms to resume the Traded Capacity, the Shipper must give a Resumption Notice to the Operator and the Replacement Shipper, specifying the amount of Capacity Resumed and the duration of the Resumption.
- (b) The Operator, on receipt of a Resumption Notice, must as soon as practicable confirm to the Shipper and the Replacement Shipper that the Capacity has been Resumed.
- (c) In any proceedings brought against the Operator in relation to a Resumption, a Resumption Notice is conclusive proof of the validity of its issue and of its contents.
- (d) To the extent that a Resumption Notice is invalidly issued or a purported Resumption is not authorised by the Transfer Terms, a Replacement Shipper's remedy lies against the Shipper.
- (e) For the duration of a Resumption, this Contract and the Replacement Contract is deemed to be amended to the extent necessary to reflect the Resumption of Traded Capacity and the duration and terms of that Resumption.
- (f) Traded Capacity which is resumed by the Shipper, or Capacity which is otherwise transferred or reverts to the Shipper, is subject to the terms of this Contract and treated as the same Capacity Service that applied prior to its Transfer, regardless of the terms applying to it prior to the resumption.

27.9 Administrative expenses

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator by reason of the Request for Approval and any Resumption.

27.10 Further marketing service

- (a) The Operator may, if requested by the 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) The Operator and the Shipper may agree on the remuneration of the Operator in respect of any additional marketing service the Operator agrees to provide, and the Operator may refrain from providing that additional marketing service until such agreement is reached.

27.11 Relinquishment

- (a) Where under this Contract the Shipper has given a Relinquishment Notice or a notice indicating that it wishes to relinquish capacity, the Operator may request that the Shipper instead Transfer the relevant capacity to a third party specified by the Operator in the request in accordance with this clause 27.
- (b) The Operator must procure that the specified third party releases and indemnifies the Shipper from any liability which the Shipper may incur arising out of the Transfer.
- (c) If the Operator makes a request under clause 27.11(a), and the third party releases the Shipper from liability in accordance with clause 27.11(b), then:
 - (i) the Shipper must comply with that request; and
 - (ii) the Shipper is not required to make a Request for Approval under clause 27.3(a) in connection with the Transfer of the relevant capacity to the specified third party and the Operator will be deemed to have approved the Transfer; and
 - (iii) the Shipper will (and the Operator will procure the third party to) execute all documents and do all other things reasonably requested of it to give effect to the Transfer contemplated by the request; and
 - (iv) the Shipper will not retain the right to Resume the relevant capacity; and
 - (v) the Operator must reimburse the Shipper for all reasonable expenses incurred by the Shipper by reason of the request; and
 - (vi) the Operator will be deemed to have released the Shipper from all of its obligations and liabilities to the Operator in connection with the Contracted Capacity Transferred which arise on or after the date on which the Transfer takes effect.

28. Confidentiality

28.1 Confidential Information

- (a) Subject to clauses 28.2 and 28.3, each Party must keep the terms and conditions of this Contract, and all information specifically relating to or provided pursuant to or in accordance with this Contract or in the negotiations leading to the execution of this Contract (**Confidential Information**), confidential.
- (b) To avoid doubt Confidential Information includes all information received by the Operator in the Operation and Expansion of the DBNGP which relates to the Shipper, the disclosure or misuse of which might reasonably be expected to materially affect the Shipper's commercial interests, including information relating to the Shipper's gas flows and flow rates, billing, and the Shipper's maintenance schedules and plant availability.
- (c) A reference in this clause 28 to information being **disclosed** to or **received** by a Party, includes information being communicated to or created, ascertained, discovered or derived by it or on its behalf.

28.2 Exceptions to Confidentiality

Either Party may disclose Confidential Information which:

- (a) at the time when it is disclosed to the Party, is publicly known;
- (b) subject to clauses 28.4 and 28.5, at the time when it is disclosed to the Party, is already known to the Party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 28.1, and which the Party can prove by prior or contemporaneous written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) after the time when it is disclosed to the Party, comes into the public domain otherwise than as a result of any breach of the confidentiality undertaking owed pursuant to clause 28.1;
- (d) subject to clauses 28.4 and 28.5, the other Party acquires from a source other than that Party or any Related Body Corporate or representative of that Party where such source is entitled to disclose it and such disclosure is not subject to confidentiality restrictions under this Contract;
- (e) that Party is required by the ASX, court order, Law, the Regulator, or requested by the ACCC to disclose, and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be);
- (f) is necessary in relation to any discovery of documents, or any proceedings before a court, tribunal, ACCC, other governmental agency or stock exchange, and in such cases, the disclosing Party must promptly notify the other Party of that requirement;
- (g) with the consent of the other Party and subject to any conditions of that consent;
- (h) it is necessary or convenient in relation to any notification by the Shipper to ACCC or ERA under clause 28.7;
- (i) is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a

Party, a Related Body Corporate of a Party, any member of the DUET Group, or any funding vehicle of any of those parties; or

- (j) comprises the terms of the Operator's Standard Shipper Contract.

28.3 Permitted Disclosure

- (a) Either Party may disclose Confidential Information to:
 - (i) subject to clauses 28.4 and 28.5, its, and its Related Bodies Corporate, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers (and for the purpose of this clause 28.3(a) Alcoa and the System Operator must be considered Related Bodies Corporate of the Operator); and
 - (ii) subject to clauses 28.4 and 28.5, a bona fide proposed or prospective transferee (and their employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial advisers, Related Entities, co-bidders or bid consortium members and actual or proposed joint venturers) of:
 - A. a 20% or more legal or equitable interest in a relevant part or the whole of a Party's business;
 - B. a 20% or more legal or equitable interest in any property to which the information relates;
 - C. 20% or more of the shares in a Party; or
 - D. 20% or more (by value) of the shares or units (or both) in a company or trust (or both) which, directly or indirectly, controls (as that term is defined in the Corporations Act) a Party,

to the extent those persons have a need to know the Confidential Information.

- (b) Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:
 - (i) any person who is directly involved in:
 - A. the distribution of Gas to customers through a covered pipeline that is a distribution pipeline situated in Western Australia under the National Gas Access (Western Australia) Law;
 - B. the retailing of Gas within Western Australia;
 - C. the generation or sale of electricity in Western Australia;
 - D. contracting for Capacity on the DBNGP; or
 - E. the management of the activities referred to in clauses 28.3(b)(i)A to 28.3(b)(i)D; or
 - (ii) such person's employees, officers, agents, contractors, consultants and technical advisers who are themselves directly involved in any of the activities described in clause 28.3(b)(i),

except to the extent that such person is:

- (iii) the System Operator and requires the disclosure of information to it by the Operator or by it to enable it to perform its obligations to the Operator under the relevant operating and maintenance services contract (provided that at no time may the System Operator or its employees, officers, agents, contractors, consultants and technical advisers (which, without limiting clauses 28.4 and 28.5, does not include ATCO Technologies Australia Pty Ltd ABN 26 151 386 015 to the extent it provides corporate and other head office services to the System Operator) be directly or indirectly involved in anything listed in clauses 28.3(b)(i)B, 28.3(b)(i)C or 28.3(b)(i)D or clause 28.3(b)(i)E to the extent it relates to clauses 28.3(b)(i)B, 28.3(b)(i)C or 28.3(b)(i)D);
- (iv) a director or senior manager of Alcoa, or any of its Related Bodies Corporate through which it has a direct or indirect equity interest in the DBNGP, and requires the disclosure of information in connection with the management of its equity interest in the DBNGP; or
- (v) a senior manager of Alcoa, or any of its Related Bodies Corporate, who:
 - A. is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or
 - B. by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv),

which disclosure under clauses 28.3(b)(iii), 28.3(b)(iv) and 28.3(b)(v) is, subject to clauses 28.4 and 28.5, permitted in accordance with the provisions of this clause 28.3.

- (c) Any Party seeking to disclose information under clause 28.3(a)(ii) must:
 - (i) seek the consent of the other Party as to the protocols, arrangements and agreements which will govern the disclosure of the information and the prevention of further disclosure of the information, which consent is not to be unreasonably withheld or unreasonably delayed; and
 - (ii) consult with the other Party to ascertain whether there is any commercially sensitive information which may not be disclosed at all or may only be disclosed on terms and conditions agreed between the Parties, and must give effect to the reasonable requirements of the other Party in these respects.

28.4 Disclosure by recipient of Confidential Information

- (a) Any Party disclosing information under clauses 28.2 or 28.3 must ensure that persons receiving Confidential Information from it, or from any person or persons to whom the Confidential Information has been disclosed, do not:
 - (i) disclose the information except in circumstances permitted in clauses 28.2 or 28.3 (as the case may be); and
 - (ii) use the information except in the circumstances permitted by clause 28.5.
- (b) If the Operator and the System Operator disclose information to a person under clauses 28.3(b)(iii), 28.3(b)(iv) or 28.3(b)(v), then the Operator must ensure that (unless in the circumstances of a particular case it is not possible

to do so) the information is disclosed in a manner which minimises the disclosure of the Confidential Information referred to in clause 28.1(b), including by one or more of aggregating the information with like information from other shippers, presenting it in summary form, or presenting it (so far as is practicable) in a form which does not identify it as relating to the Shipper.

28.5 Use of Confidential Information

A Party who has received Confidential Information from another under this Contract must not use it, and a Party who has disclosed Confidential Information to a person under clause 28.3 must procure that that person, and any person or persons to whom the Confidential Information is subsequently disclosed, does not use it, except for the purpose of exercising the Party's rights or performing the Party's obligations under this Contract or as otherwise contemplated under this Contract, with the exception of those persons set out in clause 28.3(a)(ii), who must not use the Confidential Information received from another under this Contract except for and in relation to assessing the value of, and preparing a bid for, the relevant interest under clause 28.3(a)(ii) that is proposed to be acquired and who must comply with the protocols, arrangements and agreements agreed under clause 28.3(c)(i).

28.6 Information received by Operator

(a) The Operator must implement and enforce, policies and procedures to:

(i) give effect to its obligations under:

A. clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c);
and

B. clauses 28.4 and 28.5 to the extent related to
disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b);
and

(ii) subject to clause 45, ensure that all shippers are treated equally and fairly,

and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.

(b) The Operator recognises that information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that, in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP. The Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.

(c) The Operator must make available to the Shipper upon request a copy of the policies and procedures developed and implemented under clause 28.6(a). Despite this clause 28, the Shipper may in any submissions to the ERA or the ACCC disclose this clause 28 and the policies and procedures developed and implemented under clause 28.6(a).

- (d) Nothing in clause 28.6(c) requires the Operator to consult with the Shipper regarding, or to seek the Shipper's agreement with, any policies and procedures developed and implemented under clause 28.6(a).

28.7 Breach by Operator

- (a) The Shipper must notify the Operator immediately if it has evidence able to be substantiated of a breach by the Operator, or any party for whom the Operator is responsible under this clause 28, of any of:
 - (i) clauses 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c);
 - (ii) clauses 28.4 or 28.5 to the extent related to disclosure under clause 28.3(a)(i), 28.3(b) or 28.6(b); or
 - (iii) the policies or procedures referred to in clause 28.6(a),

(each a **Relevant Breach**).
- (b) Within 30 days after receipt of a notice under clause 28.7(a), the Operator must:
 - (i) notify the Shipper as to whether or not it agrees that a Relevant Breach has occurred; and
 - (ii) if it agrees that a Relevant Breach has occurred, specify the manner in which the Operator proposes to address the breach and ensure that it is not repeated and if applicable make a proposal of compensation for the Shipper's loss (which proposal must take into account the fact that the exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under clauses 28.7(c) and 28.7(e)).
- (c) If the Operator does not agree that a Relevant Breach has occurred, or if the Operator's response under clause 28.7(b) does not resolve the matter to the Shipper's reasonable satisfaction or include a proposal of compensation acceptable to the Shipper acting reasonably, or if the Operator does not respond within the time required by clause 28.7(b), the Shipper may notify the ACCC. If the ACCC confirms that there was a Relevant Breach of this clause 28, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(c).
- (d) If, following notification from the Shipper to ACCC under clause 28.7(c), the ACCC does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ACCC, the Shipper may notify the ERA.
- (e) If, following notification from the Shipper to ERA under clause 28.7(d), the ERA confirms that there was a Relevant Breach of this clause 28 or does not resolve the matter to the Shipper's reasonable satisfaction within 30 days after the Shipper notified the ERA, the Shipper may then pursue any other remedies under this Contract or under any Law against the Operator, including seeking any loss or damage arising in respect of the Relevant Breach. The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Operator's liability under this clause 28.7(e).
- (f) If the Shipper considers that a breach of this clause 28 has occurred by the Operator or any party for whom the Operator is responsible under this clause 28 but the Shipper does not have evidence of such breach, then the Shipper may notify the Operator.

- (g) Within 30 days after receipt of a notice under clause 28.7(f), the Operator must:
 - (i) notify the Shipper as to whether or not it agrees that a breach has occurred; and
 - (ii) if it agrees that a breach has occurred, confirm the manner in which the Operator proposes to address the breach and ensure that it is not repeated.
- (h) If the Operator's response under clause 28.7(g) does not address the Shipper's concern to the Shipper's reasonable satisfaction, the Shipper may notify the ERA.
- (i) Following notification under clause 28.7(h), if the ERA determines that there was a breach of this clause 28 it may suggest an appropriate remedy, however the Parties agree that the Operator is not liable to the Shipper for any damages in these circumstances.
- (j) The procedures outlined above represent the sole and exclusive means by which the Shipper may obtain damages in relation to such breaches or alleged breaches by the Operator. No right of termination arises for a Relevant Breach. This clause 28.7(j) does not limit clause 28.10.
- (k) If, and for so long as, either or both of the ERA and the ACCC are unable to accept the role intended for them under this clause 28.7, the Parties agree that the references to the ERA or ACCC, as applicable, will be deemed to be to an Independent Expert under clause 24 and the provisions of clause 24 will apply subject only to the following modifications:
 - (i) the matter will be considered a Technical Matter;
 - (ii) the appointing authority in clause 24.8(b) will in the first instance be the Chairman for the time being of the ERA or, if he or she fails or declines to make the appointment within 10 days of being asked to do so, then it will revert to the appointing body as set out in clause 24.8(b); and
 - (iii) the following will be added to clause 24.10(g): "and the Independent Expert must, and the Parties must assist as applicable to, make a determination within 30 days of his appointment".
- (l) The Parties agree to cooperate to make submissions to the applicable person or body to seek the conferral of the relevant power on the ERA or ACCC, as applicable, in order that they may accept the role intended for them under this clause 28.7.

28.8 Publicity

A Party must not make press or other announcements or releases relating to this Contract and the transactions the subject of this Contract without the approval of the other Party as to the form and manner of the announcement or release (which approval must not be unreasonably withheld or delayed) unless and to the extent that the announcement or release is required to be made by the Party by Law or by a stock exchange. This clause 28.8 does not apply:

- (a) if the second Party unreasonably delays or withholds approval; or
- (b) to the extent that the proposed announcement or release relates to a matter regarding which the Parties are in a bona fide dispute or disagreement.

Nothing in this clause 28.8 authorises the disclosure of Confidential Information.

28.9 No disclosure of terms of this Contract

Except as otherwise agreed or duly required by Law or any regulatory authority, no Party may disclose the terms of this Contract to any person other than pursuant to clauses 28.2(d) to 28.2(f) and 28.3.

28.10 Remedies

The Parties acknowledge that damages are not a sufficient remedy for any breach of the obligations of this clause 28 and both Parties are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

28.11 Survival

This clause 28 survives termination (for whatever reason) of this Contract.

29. Notices

29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading

- (a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5 and 17.6(a) must be communicated by facsimile to the facsimile number, until further notice is given under clause 29.3(c), set out in Schedule 5.
- (b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.
- (c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each install and maintain a dedicated facsimile machine on a separate facsimile number for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new facsimile number which takes effect in substitution for the number set out in this clause 29.1.

29.2 The CRS

- (a) Subject to clauses 29.2(b) and 29.2(c), Accumulated Imbalance Notices, Resumption Notices and all notices under clause 8 (Nominations) may be provided through the CRS.
- (b) If at any time and for any reason the CRS fails to function properly, then each of the notices specified in clause 29.2(a) that are required to be given during the period of failure, must be communicated by the method set out in clause 29.1.
- (c) The terms and conditions of access to the CRS will be as published by the Operator from time to time, provided that the CRS must not be used for giving notices which have contractual effect unless the Shipper has agreed to the terms and conditions (such agreement not to be unreasonably withheld).

29.3 Notices generally

- (a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- (b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses and facsimile numbers of the Parties are as set out in Schedule 5.
- (c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- (d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

29.4 Receipt of notices

- (a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or facsimile machine, or posted to the CRS, by no later than that time.
- (b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.
- (c) When the time printed on the transmission report referred to in clause 29.4(b) is between:
 - (i) 00:00 hours and 09:00 hours; or
 - (ii) 17:00 hours and 24:00 hours,on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.
- (d) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in Schedule 5 (***Dedicated Email Address***). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4, taken to be given and received at the time the sender receives an automatic response message to the email.
- (e) For the purposes of this Contract, a notice sent by certified mail is taken to be received on the earlier of the date of receipt or on the second Working Day after the notice was committed to post.
- (f) For the purposes of this Contract:
 - (i) a notice sent by the CRS between 00:00 hours and 17:00 hours on a Working Day will be taken to have been received on that Working Day; and
 - (ii) the other notices sent by the CRS will be taken to have been received at the commencement of the next Working Day.

30. Representations and Warranties

30.1 Operator's Representations and Warranties

- (a) The Operator represents and warrants to the Shipper that:
- (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental And Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
 - (ii) it has in full force and effect all authorisations necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract and to allow those obligations to be enforced;
 - (iii) it has in full force and effect all materially necessary leases, licences or easements to construct, Operate and Maintain the Outlet Point Station at each Outlet Point specified in Item 2 of Schedule 1 and all metering and other facilities for which it is responsible under this Contract;
 - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
 - (v) the Operator does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
 - (vi) this Contract and any transaction under it does not contravene the Operator's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
 - (vii) it is the operator of the DBNGP;
 - (viii) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the person except debts mandatorily preferred by Law;
 - (ix) the Operator is not in default under a Law affecting it or its assets, or any obligation or undertaking by which it or any of its assets are bound which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
 - (x) the Nominations Plan will be applied to the allocation of Gas Transmission Capacity to all shippers on the DBNGP and the Curtailment Plan will be applied to the Curtailment of the Delivery of Gas to all shippers on the DBNGP; and
 - (xi) it will not enter into a contract arrangement or understanding for a Capacity Service that has a priority of allocations of Nominations for the purposes of clause 8.8, and for the purposes of Curtailments under clause 17.7(a), that is inconsistent with clause 8.8 and in particular, but without limitation, it will not allow a Capacity Service to have a priority of allocation of Nominations which sits between Alcoa's Exempt Delivery Entitlement and the P1 Service, or between any of the Types of Capacity Services listed in the Curtailment Plan.

- (b) The representations and warranties in clause 30.1(a) are made on and from the Capacity Start Date, and are made anew on each day thereafter for the duration of this Contract.

30.2 Shipper's Representations and Warranties

- (a) Subject to clause 30.2(b), the Shipper represents and warrants to the Operator that:
- (i) it has duly complied, and will up to the termination of this Contract continuously comply, with all Environmental And Safety Laws with respect to any of its obligations connected with, arising out of or in relation to this Contract;
 - (ii) it has in full force and effect all authorisations necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract, and to allow those obligations to be enforced;
 - (iii) it has, or its Producers have, in full force and effect all necessary leases, licences or easements to construct, Operate and Maintain all facilities for which it is responsible under this Contract;
 - (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
 - (v) this Contract and any transaction under it does not contravene the Shipper's constituent documents or any Law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its, or its directors', powers;
 - (vi) its obligations to make payments under this Contract rank at least equally with all unsecured and unsubordinated indebtedness of the Shipper except debts mandatorily preferred by Law;
 - (vii) neither the Shipper nor any of its Related Bodies Corporate is in default under a Law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
 - (viii) there is no pending or threatened action or proceeding affecting the Shipper or any of its Related Bodies Corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract;
 - (ix) neither the Shipper nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
 - (x) the Shipper is not an agent or trustee in relation to this Contract or in relation to the Gas to be Received or Delivered under this Contract.
- (b) The representations and warranties in clause 30.2(a) are made on and from the Capacity Start Date, and are made anew on each day thereafter for the duration of this Contract.

30.3 Pipeline Trustee's Representations and Warranties

- (a) The Pipeline Trustee represents and warrants to the Shipper that:
- (i) it is empowered by the constitution of its Trust to enter into and perform this Contract, to carry on its business as now conducted or contemplated and to own its assets in its capacity as trustee of the Pipeline Trust, and there is no restriction on or condition of its doing so;
 - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the constitution of its Trust for it to enter into and perform this Contract;
 - (iii) it is the sole trustee and responsible entity of the Pipeline Trust;
 - (iv) no property of the Pipeline Trust has been re-settled or set aside or transferred to any other trust;
 - (v) the Pipeline Trust has not been terminated, nor has any event for the vesting of the assets of the Pipeline Trust occurred;
 - (vi) its right of indemnity out of, and lien over, the assets of the Pipeline Trust has not been limited in any way (other than as required by section 601GA(2) of the Corporations Act) including, without limitation, it has no liability which may be set off against that right of indemnity;
 - (vii) the Pipeline Trust is registered under section 601EB of the Corporations Act;
 - (viii) the Pipeline Trustee holds a dealers licence authorising it to operate the Pipeline Trust;
 - (ix) the constitution of its Trust complies with all applicable Laws; and
 - (x) it has complied in all material respects with its obligations and duties under the constitution of its Trust and the Corporations Act.
- (b) The representations and warranties in clause 30.3(a) are made on and from the Capacity Start Date and are made anew on each day thereafter for the duration of this Contract.

30.4 DBNGP Trustee's Representations and Warranties

- (a) The DBNGP Trustee represents and warrants to the Shipper that:
- (i) it is empowered by the constitution of its Trust to enter into and perform this Contract, to carry on its business as now conducted or contemplated and to own its assets in its capacity as trustee of the DBNGP Trust, and there is no restriction or condition of its doing so;
 - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the constitution of its Trust for it to enter into and perform this Contract;
 - (iii) it is the sole trustee and responsible entity of the DBNGP Trust;
 - (iv) no property of the DBNGP Trust has been re-settled or set aside or transferred to any other trust;

- (v) the DBNGP Trust has not been terminated, nor has any event for the vesting of the assets of the DBNGP Trust occurred;
 - (vi) its right of indemnity out of, and lien over, the assets of the DBNGP Trust has not been limited in any way (other than as required by section 601GA(2) of the Corporations Act) including, without limitation, it has no liability which may be set off against that right of indemnity;
 - (vii) the DBNGP Trust is registered under section 601EB of the Corporations Act;
 - (viii) the DBNGP Trustee holds a dealers licence authorising it to operate the DBNGP Trust;
 - (ix) the constitution of its Trust complies with all applicable Laws; and
 - (x) it has complied in all material respects with its obligations and duties under the constitution of its Trust and the Corporations Act.
- (b) The representations and warranties in clause 30.4(a) are made on and from the Capacity Start Date and are made anew on each day thereafter for the duration of this Contract.

30.5 Creditworthiness of Shipper

The Operator may from time to time seek confirmation from the Shipper (including provision of the most recent audited financial accounts of the Shipper) that the Shipper is in a position to meet its obligations under this Contract.

30.6 Failure to Satisfy Operator of Creditworthiness

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

31. Records and Information

- (a) Except where otherwise provided in this Contract, both the Operator and the Shipper must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to this Contract, and must retain those books, accounts, records and inventories for at least seven years.
- (b) If the Shipper so requests (which it may not do more frequently than every 12 months), and without limiting any other obligation on the Operator to provide information under this Contract, another contract or under any Law, the Operator must provide the Shipper with a non-binding indicative summary of its material planned expansions (if any) of the Gas Transmission Capacity for the following 5 years. The Shipper agrees that these plans are prepared and provided to the Shipper without any warranty or undertaking that such planned expansions will be undertaken, or if undertaken will be effective and available to the Shipper.

32. Insurances

- (a) Subject to clause 32(d), the Shipper must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
- (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981 (WA)*, and for the Shipper's common law liability to workers;
 - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment (if any) at the Inlet Point Station or Outlet Point Station; and
 - (iii) liability insurance for such amount as the Operator may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27 October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.
- (b) Subject to clause 32(d), the Shipper must:
- (i) arrange for the Operator's interest to be noted on the policies referred to in clauses 32(a)(ii) and 32(a)(iii) to the reasonable satisfaction of the Operator so that the Operator is covered under those policies; and
 - (ii) use all reasonable endeavours to arrange for the insurers to waive rights of subrogation against the Operator.
- (c) Subject to clause 32(d), the Shipper must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Operator with certificates of currency of the insurances and endorsements required by this clause 32.
- (d) The Operator may waive compliance by the Shipper with any or all of the requirements of clauses 32(a), 32(b) and 32(c), if the Operator:
- (i) is satisfied that the Shipper has adequate alternative arrangements; or
 - (ii) accepts the Shipper as a self-insurer; or
 - (iii) determines that there is other sufficient reason to do so.
- (e) Subject to clause 32(h), the Operator must procure and maintain at its own expense throughout the duration of this Contract the following insurances with insurers having a reputation satisfactory to a Reasonable and Prudent Person:
- (i) workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981 (WA)*, and for the Operator's common law liability to workers;
 - (ii) property damage insurance against damage, loss or destruction of the DBNGP and all associated equipment; and
 - (iii) liability insurance for such amount as the Shipper may reasonably require (not exceeding \$100 million adjusted for changes in CPI compared to the CPI for the quarter ending immediately prior to 27

October 2004) against risk of loss, damage, death or injury to property or personnel of the Operator, the Shipper or the public in connection with, related to or arising out of this Contract, caused by negligence.

- (f) Subject to clause 32(h), the Operator must use all reasonable endeavours to arrange for:
 - (i) A. endorsement on the policies referred to in clauses 32(e)(ii) and 32(e)(iii) of the Shipper as an insured or co-insured; or
 - B. the Shipper's interest to be noted on those policies to the satisfaction of the Shipper so that the Shipper is covered under those policies; and
 - (ii) the insurers to waive rights of subrogation against the Shipper.
- (g) Subject to clause 32(h), the Operator must, prior to the commencement of this Contract and prior to the commencement of each Calendar Year thereafter, provide the Shipper with certificates of currency of the insurances and endorsements required by this clause.
- (h) The Shipper may waive compliance by the Operator with any or all of the requirements of clauses 32(e), 32(f) and 32(g), if the Shipper:
 - (i) is satisfied that the Operator has adequate alternative arrangements;
 - (ii) accepts the Operator as a self-insurer; or
 - (iii) determines that there is other sufficient reason to do so.

33. No Waiver

No failure or delay by a Party in exercising any of its rights under this Contract operates as a waiver of the Party's rights or prevents the Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of this Contract.

34. Entire Agreement

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

35. Severability

If any clause or provision of this Contract is held to be illegal or unenforceable by any judgment of a court, arbitrator, tribunal or authority having competent jurisdiction, the judgment does not affect the remaining provisions of this Contract which remain in full force and effect as if the clause or provision held to be illegal or unenforceable had not been included in this Contract.

36. Entry and Inspection

- (a) Each Party must grant to, or use its reasonable endeavours to procure for, the other Party all reasonable rights of entry:
 - (i) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP);
 - (ii) to inspect for safety or other reasons the construction, installation, Operation, Maintenance and repair of any Metering Equipment, other equipment or thing (and if the Party is the Operator, the DBNGP); and
 - (iii) for any other purpose connected with or arising out of this Contract.
- (b) Any entry under clause 36(a) is made in all respects at the expense and risk of the entering Party, who must, subject to clause 23 make good any damage occasioned by or resulting from the entry.
- (c) Except in the case of emergency, a Party must:
 - (i) when it seeks to exercise a right of entry under this clause 36, give reasonable notice to the other Party specifying the proposed time and duration of entry; and
 - (ii) take all reasonable steps to ensure that during the entry its employees, servants, consultants, independent contractors and agents cause as little inconvenience to the other Party as possible and at all times comply with all reasonable safety standards and other requirements of that Party.
- (d) To the extent that any equipment or thing is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a right of entry to that third person's premises.

37. Ownership, Control, Maintenance and Risk

- (a) In the absence of any agreement between the Parties to the contrary, the Inlet Point and the Outlet Point on the DBNGP mark the boundaries of ownership of all plant, equipment, pipelines and facilities and, as between the Parties and in the absence of evidence to the contrary:
 - (i) the Shipper is presumed to own any relevant thing upstream of the Inlet Point and downstream of an Outlet Point; and
 - (ii) the Operator is presumed to own any relevant thing between the Inlet Point and the Outlet Point.

- (b) In the absence of any agreement between the Parties to the contrary, the responsibility to install, commission, Operate and Maintain, and the risk in relation to, all plant, equipment, pipelines and facilities follows ownership.

38. Revocation, Substitution and Amendment

- (a) Subject to clause 38(b), the Operator and the Shipper may at any time agree in writing to revoke, substitute or amend any provision of this Contract.
- (b) The Operator and the Shipper may not amend this Contract to increase the Shipper's Contracted Capacity under this Contract, unless the increase in Contracted Capacity is made in accordance with clause 16.
- (c) Clause 38(b) does not prevent the Shipper from:
 - (i) relocating Contracted Capacity under this Contract;
 - (ii) making a Nomination or Renomination for and being scheduled Capacity under this Contract which exceeds the Shipper's Contracted Capacity;
 - (iii) contracting for and having Capacity transferred to it by an other shipper; or
 - (iv) varying this Contract in accordance with clause 14.9 or 17.7(e).
- (d) If the Parties agree to an increase in Contracted Capacity in accordance with clause 38(b), this Contract must be amended to reflect this in accordance with clause 16.5.

39. No Common Carriage

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

40. Operator Not a Supplier of Gas

Nothing in this Contract requires the Operator to supply Gas to the Shipper but the Operator is required to Deliver Gas from time to time in accordance with this Contract.

41. Duty

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

42. No Third Party Benefit

Subject to clause 23, no person other than the Operator or the Shipper obtains any right, benefit or entitlement under this Contract, despite that person being referred to in this Contract or belonging to a class of persons which is referred to in this Contract.

43. Governing Law

This Contract must be construed and interpreted in accordance with the Law of Western Australia and the Parties entering into this Contract submit to the non-exclusive jurisdiction of the courts of Western Australia.

44. General

44.1 Operator's discretion

The Operator acknowledges and agrees that in circumstances in which it has a discretion to take action under this Contract, including any of clauses 9.5(b)(ii), 9.8, 10.3(a)(iii) or 10.4 that may limit the amount of Capacity available to the Shipper, or that may affect the way in which the Shipper may use Capacity, during a certain period, which action is not governed by the provisions of clauses 8.8 or 8.9 relating to Nominations or clauses 17.9 or 17.10 relating to Curtailment, the Operator must treat the Shipper fairly and reasonably in the circumstances with all other shippers who should or may be subject to similar action.

44.2 Refusal to Receive or Deliver Gas

Where the Operator is entitled under this Contract to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, then the Operator may take whatever action it believes, acting as a Reasonable and Prudent Person, is necessary to refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point, including by physically reducing, interrupting or stopping completely or in part the flow of Gas at the Inlet Point or Outlet Point.

45. Non-Discrimination Clause

45.1 P1 Service to shippers

The Operator represents and warrants to the Shipper that where the Operator provides a P1 Service to any other shipper (other than an Access Contract for a P1 Service provided pursuant to the Access Arrangement), the Operator will do so on terms and conditions which are:

- (a) the same as those in this Contract relating to the tariffs and rates of Charges payable under this Contract, the adjustment of those tariffs and rates and the giving of rebates (if any) with respect to Charges;
- (b) similar to those in this Contract relating to the allocation between the Shipper and the Operator of commercial risks associated with a long term capacity reservation gas transport contract; and
- (c) the same as those in clause 16 relating to the Operator's obligation to provide any, or additional, Contracted Capacity for T1 Service,

other than differences arising from:

- (d) any shipper specific arrangements which derive from, or were authorised under, the *Gas Transmission Regulations 1994* (WA) (repealed), including arrangements for the transport of LPGs to the WLPG Plant and the pricing of that transport, the preservation of existing gas specifications, and curtailment priority;
- (e) differences in terms and conditions (but not differences in the tariffs and rate of Charges payable under this Contract) as a consequence of bona fide differences between the shippers' respective requirements, and the times and the circumstances under which the respective contracts were concluded; and
- (f) the Alcoa Exempt Contract.

45.1A 2014 Amendments

- (a) The Operator represents and warrants that amendments to certain contracts for Gas Transmission Capacity (**Amended Contracts**) took effect in or around mid-2014 to early-2015 (such amendments being the **2014 Amendments**) and that the terms and conditions of the Amended Contracts are (other than with respect to Full Haul or Back Haul Gas transportation services):
 - (i) the same as each other; and
 - (ii) the same as this Contract,with respect to tariffs and rates of Charges, the adjustment of those tariffs and rates and the giving of rebates (if any) with respect to Charges (other than as a result of the pricing arrangements in existence prior to the 2014 Amendments in relation to the transport of LPGs to the WLPG Plant or any differences arising from the matters set out in clause 45.1(d)).
- (b) The Shipper acknowledges and agrees that clause 45.1 does not apply in respect of any:
 - (i) differences between this Contract and a contract for Gas Transmission Capacity which was entered into prior to 6 August 2014 and which was not subject to the 2014 Amendments (including a contract arising pursuant to a trade of capacity under such a contract or pursuant to a novation or assignment and assumption (or similar) of such a contract), in relation to the terms

and conditions referred to in clause 45.1A(a) and terms and conditions relating to Period of Supply and relinquishment rights; and

- (ii) differences between this Contract and any Amended Contract, arising as a result of the 2014 Amendments, in relation to the Period of Supply (including differences in the availability (or absence) of options to extend the Period of Supply), mechanisms for adjusting a shipper's Contracted Capacity and relinquishment rights.

45.2 Access to DBNGP information

If the Operator, the System Operator or any of their contractors or agents, or any person or persons to whom information from the Operator or the System Operator has been disclosed, provides any information to any shipper or a Related Body Corporate or officer of a shipper (acting in their respective capacity as shippers) about availability of Capacity, including:

- (a) information relating to planned and unplanned maintenance;
- (b) policies and procedures under which the market for Spot Capacity and Curtailment is administered; or
- (c) DBNGP flow data between each compressor station and each other significant point,

then, other than to the extent that such information relates to an Inlet Point, Outlet Point or Gate Station which is specific to an individual shipper, the Operator must ensure that the Shipper receives that information at substantially the same time and in the same format.

- (d) Nothing in this clause 45.2 limits the Operator's obligations under clause 28.

45.3 Arm's length dealings

The Operator must, and must procure that the System Operator does, in Operating and Expanding the DBNGP and exercising the discretions afforded to the Operator under this and other contracts:

- (a) treat all shippers (including shippers which are Associates of a Relevant Company) on an arm's length basis; and
- (b) ensure that no shipper which is an Associate of a Relevant Company receives a benefit, compared with another shipper which is not, unless the benefit is attributable to an arms' length application of the two shippers' respective contractual entitlements entered into in accordance with clause 45.1.

46. Pipeline Trustee's Limitation of Liability

- (a) The Pipeline Trustee enters into this Contract only in its capacity as trustee of the Pipeline Trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Pipeline Trustee only to the extent to which it can be satisfied out of property of the Pipeline Trust out of which the Pipeline Trustee is actually indemnified for the liability. Except as provided in clause 46(b), this limitation of the Pipeline Trustee's liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Pipeline Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.
- (b) Clause 46(a) does not act to limit:
 - (i) the Shipper's entitlements to seek orders against the Pipeline Trustee (in its capacity as trustee of the Pipeline Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Shipper under any Law; or
 - (ii) Pipeline Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

47. DBNGP Trustee's Limitation of Liability

- (a) The DBNGP Trustee enters into this Contract only in its capacity as trustee of the DBNGP Trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the DBNGP Trustee only to the extent to which it can be satisfied out of property of the DBNGP Trust out of which the DBNGP Trustee is actually indemnified for the liability. Except as provided in clause 47(b), this limitation of the DBNGP Trustee's liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the DBNGP Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.
- (b) Clause 47(a) does not act to limit:
 - (i) the Shipper's entitlements to seek orders against the DBNGP Trustee (in its capacity as trustee of the DBNGP Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Shipper under any Law; or
 - (ii) DBNGP Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

Schedule 1 - Inlet Points, Outlet Points and Contracted Capacity

Item 1: Inlet Points: Description and Contracted Capacities

| | | | Contracted Capacity (TJ/d) for P1 Service | |
|--------|----------|-------------|-------------------------------------------|----------|
| | Location | Designation | Summer | Winter |
| 1. | [insert] | [insert] | [insert] | [insert] |
| TOTAL: | | | [insert] | [insert] |

Item 2: Outlet Points: Description and Contracted Capacities

| | | | Contracted Capacity (TJ/d) for P1 Service | |
|--------|----------|-------------|-------------------------------------------|----------|
| | Location | Designation | Summer | Winter |
| 1. | [insert] | [insert] | [insert] | [insert] |
| TOTAL: | | | [insert] | [insert] |

Schedule 2 - Charges

All amounts in this Schedule 2 are exclusive of GST.
Other Charges (clause 20.4)

| Row | Description of Charge | Rate at which Charge is determined |
|-----|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Excess Imbalance Charge (clause 9.6(b), clause 9.5(e)) | 200% of the Base T1 Tariff from time to time |
| 2 | Hourly Peaking Charge (clause 10.3(d) and 10.4(b)) | 200% of the Base T1 Tariff from time to time |
| 3 | Overrun Charge (clause 11.1(a)) | At the rate specified in clause 11.1(b) |
| 4 | Unavailable Overrun Charge (clause 11.6 and clause 17.8(e)) | The greater of: (a) 250% of the P1 Tariff from time to time; and (a) 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, multiplied by the Distance Factor. |

Schedule 3 - Operating Specifications

Item 1 Gas Specifications

| Component | | Inlet Points and Outlet Points |
|-----------------------------------------------------------------------|----------------|--------------------------------|
| Maximum carbon dioxide (mol %) | | 4.0 |
| Maximum inert gases (mol %) | | 7.0 |
| Minimum higher heating value (MJ/m ³) | | 37.0 |
| Maximum higher heating value (MJ/m ³) | | 42.3 |
| Minimum Wobbe Index | | 46.5 |
| Maximum Wobbe Index | | 51.0 |
| Maximum total sulphur (mg/m ³) | Unodorised Gas | 10 |
| | Odorised Gas | 20 |
| Maximum Hydrogen Sulphide (mg/m ³) | | 2 |
| Maximum Oxygen (mol %) | | 0.2 |
| Maximum Water (mg/m ³) | | 48 |
| Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute | | Below 0°C |
| Maximum radioactive components (Bq/m ³) | | 600 |
| Minimum Extractable LPGs (t/TJ)* | | 0 |

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

Item 2 Gas Temperature and Pressure

In addition, the following temperature and pressure specifications apply:

Inlet Points: Minimum and Maximum Temperature and Pressure

| | Location | Pressure | | Temperature | |
|----|----------|---------------|------------|-------------|----------|
| | | Min (kPag) | Max (kPag) | Min (°C) | Max (°C) |
| 1. | [insert] | Line Pressure | MAOP | [0] | [50] |

Outlet Points: Minimum and Maximum Temperature and Pressure

| | Location | Pressure | | Temperature | |
|----|----------|---------------|------------|-------------|----------|
| | | Min (kPag) | Max (kPag) | Min (°C) | Max (°C) |
| 1. | [insert] | Line Pressure | MAOP | [0] | [45] |

Schedule 4 - Pipeline Description

<http://www.era.wa.gov.au/library/AAI%5FAnnex%5F1%5FDescription%5Fof%5FGas%5FTransmission%5FSystem.pdf>

Schedule 5 - Parties' Details

DBNGP TRUSTEE

Attention: Manager Commercial Operations
DBNGP (WA) Transmission Pty Ltd
Level 6
12-14 The Esplanade
Perth WA 6000

Telephone: (08) 9223 4300
Fax: (08) 9223 4301
Direct Email Address: dbpnotices@dbp.net.au

PIPELINE TRUSTEE

Attention: Manager Commercial Operations
DBNGP (WA) Transmission Pty Ltd
Level 6
12-14 The Esplanade
Perth WA 6000

Telephone: (08) 9223 4300
Fax: (08) 9223 4301
Direct Email Address: dbpnotices@dbp.net.au

OPERATOR

Attention: Manager Commercial Operations
DBNGP Transmission Pty Ltd
Level 6
12-14 The Esplanade
Perth WA 6000

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SHIPPER

Attention: [insert]

With a copy to: [insert]

Telephone: [insert]
Fax: [insert]
Direct Email Address: [insert]

Schedule 6 - Existing Stations

| Existing Station | Designation |
|-----------------------------|----------------------------|
| Nangetty Road | O81-01 |
| Eneabba | O83-01 |
| Pinjar Power Station | OP2-01 |
| Ellenbrook | OP3-01 |
| North Metro | OP4-01 OP5-01 OP9-01 |
| South Metro | OP8-01 OP6-01 OP7-01 |
| W LPG | OPLPG-01 |
| AGR | OPLPGOSO-01 |
| Kwinana Power Station | OKW-02 |
| Barter Road | OKW-03 |
| BP Cogen | ORK-01 |
| Mason Road | ORK-02 |
| Rockingham | ORK-03 |
| TiWest Cogen | ORK-05 |
| WMC | ORK-04 |
| Pinjarra Town | OS1-01 |
| Alcoa Pinjarra Cogen | OS2-01 |
| Harvey | OS4-01 |
| Worsley | OS4-02 |
| Rhone Poulenc (Oakley Road) | OS2-02 |
| Kemerton | OS5-01 |
| Clifton Road | OS6-01 |

Schedule 7 - Tripartite Deed



Tripartite Deed

DBNGP (WA) Transmission Pty Limited
and

[Shipper]

and

[Security Holder]

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| | |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date | |
| Parties | |
| 1. | DBNGP (WA) Transmission Pty Limited (ABN 69 081 609 190) of Level 6, 12-14 The Esplanade, Perth, Western Australia, 6000 (<i>Operator</i>) |
| 2. | [#] (<i>Shipper</i>) |
| 3. | [#] (<i>Security Holder</i>) |
| | [<i>Note: Without limiting clause 25.2 of the Access Contract Terms and Conditions, this document may be amended where necessary:</i> |
| | (a) <i>to reflect bona fide differences between Shipper's requirements and the requirements of shippers generally (for example, amendments necessary to reflect Shipper's ownership structure); or</i> |
| | (b) <i>to reflect bona fide requirements of particular securities (for example, where there is only one chargee).]</i> |
| Recitals | |
| A | Operator has entered into a contract with Shipper for the transportation of gas on the DBNGP (the <i>Transmission Contract</i>). |
| B | Operator and Shipper have agreed to enter into this deed with the Security Holder. |

Operative Provisions

1. Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means:

- (a) in the case of the Security Holder, a director or company secretary, or an officer whose title contains the word "director", "chief", "head", "president" or "manager" or a person performing the functions of any of them or any other person nominated by the Security Holder as an Authorised Officer for the purposes of this deed;
- (b) in the case of Shipper, a director or company secretary of Shipper or any other person nominated by Shipper as an Authorised Officer for the purposes of this deed; and
- (c) in the case of Operator, a director or company secretary of Operator or any other person appointed by Operator to act as an Authorised Officer under this deed.

Beneficiary includes the Security Holder and any person on whose behalf the Security Holder holds the Security, whether as trustee, agent, nominee, custodian or otherwise.

Cure Notice means a notice given by Shipper to the Security Holder in respect of a Default Event and includes the following:

- (a) details of the Default Event and refers to the relevant provisions (if any) of the Transmission Contract relating to the Default Event;
- (b) a statement that Shipper will rely upon that Default Event to Terminate the Transmission Contract unless it is remedied;
- (c) the Cure Period applicable to the Default Event; and
- (d) details of steps or actions which Shipper considers may remedy the Default Event or are otherwise appropriate.

Cure Period means the period commencing on the date set out in the Cure Notice (not being a date earlier than the date on which the Security Holder receives the Cure Notice for a Default Event) and ending:

- (a) if the Default Event is a repudiation, disclaimer or default by Operator in the performance of the obligations of Operator under clause 16 of the Transmission Contract to provide contracted capacity, not less than 40 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of Shipper under clause 22.9(b) of the Transmission Contract;
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of an ascertainable sum of money, not less than 15 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of Shipper;
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) and is an Insolvency Event or is capable of being remedied, not less than 60 Working Days (or any further period from time to time agreed by Shipper and an Enforcing Operator Party) after a Termination Right in respect of the Transmission Contract arises on the part of Shipper; and
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, not less than 15 Working Days after an amount is agreed by Shipper and Operator or an Enforcing Operator Party (as the case may be) or awarded by a court of competent jurisdiction,

unless the period is ended earlier by the Security Holder or an Enforcing Operator Party by giving notice in writing (which will take effect immediately on receipt by Shipper) to Shipper and as extended from time to time under clause 3.7.

Default Event means any event or circumstance which would:

- (a) entitle Shipper to give a notice under the Transmission Contract requesting that default be remedied; or
- (b) either immediately or upon the expiry of any time period, giving of notice or satisfaction of some other condition provided for under the Transmission Contract, give rise to a Termination Right; or
- (c) constitute a repudiation or disclaimer of the Transmission Contract by Operator.

Default Notice means any notice given by Shipper to Operator in respect of a Default Event, including any notice required under the terms of the Transmission Contract to be given by Shipper if it is to rely upon, or exercise any Power in respect of, that Default Event.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement, or any agreement to create any of them or allow them to exist.

Enforcing Operator Party means the Security Holder or any Receiver, agent, controller, administrator or attorney or nominee appointed pursuant to the Security, or any person claiming through or under the Security Holder (including any person acquiring any rights on realisation of the Security). It also includes the Security Holder as mortgagee in possession.

Event of Default has the meaning it has in the Security.

Force Majeure has the meaning it has in the Transmission Contract.

Force Majeure Notice means any notice given under clause 19 of the Transmission Contract in respect of an event of Force Majeure, and all attachments and other particulars given or required to be given under the Transmission Contract in connection with the occurrence of the event of Force Majeure.

GST means Australian Goods and Services Tax payable in accordance with *A New Tax System (Goods and Services Tax) 1999* (Cth) or any goods and services tax, value added tax or similar tax imposed in any applicable jurisdiction.

Independent Expert has the meaning it has in the Transmission Contract.

Insolvency Event has the meaning it has in the Transmission Contract and a person is Insolvent if an Insolvency Event occurs in respect of that person.

Permitted Assignee has the meaning provided in clause 7.1.

Power means any right, power, authority, discretion, remedy or privilege, whether express or implied (including to exercise a Termination Right or grant releases or waivers) conferred on any person.

Receiver includes a receiver or receiver and manager.

Relevant Account means a bank account nominated by the Security Holder.

Related Entity has the meaning it has in the *Corporations Act 2001* (Cth).

Security means any Encumbrance in favour of or with any Beneficiary granted by or entered into by a Security Provider relating to or which may affect the Transmission Contract.

Security Holder means the Security Holder, and includes its successors, substitutes and assigns.

Security Provider means the party granting or entering into the Security to or with the Security Holder.

Security Trust means the trust created by the Security Trust Deed.

Security Trust Deed means the deed dated on or about the date of this deed entitled "Security Trust Deed" between, among others, Operator and the Security Holder.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

Terminate means, in relation to a document, to terminate, determine, rescind, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance), or accept the termination, rescission or repudiation of that document and **Termination** has a corresponding meaning.

Termination Right means, at any time, any right of Shipper to, but for this deed, Terminate the Transmission Contract.

Transmission Contract has the meaning given in Recital A.

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

1.2 Terms defined in the Transmission Contract

A term which has a defined meaning in the Transmission Contract has the same meaning when used in this deed unless it is expressly defined in this deed in which case the meaning in this deed prevails.

1.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (b) the singular includes the plural and vice versa;
- (c) a particular person includes a reference to the person's substitutes (including persons taking by novation), successors and assigns;
- (d) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (e) a reference to assign (and other cognate expressions) includes selling, assigning, transferring, novating or creating or permitting to exist any Encumbrance over or an interest in or otherwise disposing of or dealing with, any of that party's rights or obligations or both under or in connection with a document (including the Transmission Contract);
- (f) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) a reference to amend (and cognate expressions) includes any amendment, variation, supplement, replacement or novation;
- (i) a document (including this deed) includes any variation or replacement of it, provided it is not prohibited by this deed; and
- (j) the word **person** includes a firm, body corporate, an unincorporated association or an authority.

1.4 Obligations as to time

For the avoidance of doubt, if an obligation under the Transmission Contract requires a thing to be done or occur by a certain time or date, a breach of that obligation will be remedied when that thing is done or occurs notwithstanding that the relevant time or date has passed and no obligation under the Transmission Contract is incapable of remedy merely because the time or date for it to be done or to occur has passed, unless the Transmission Contract has been validly terminated prior to the breach of obligation being remedied.

1.5 Headings

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

1.6 Duration

This deed terminates (without limiting any rights accrued prior to termination) when the Security Holder gives notice to Shipper that it has fully and finally discharged and released the Security.

1.7 Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and for other valuable consideration.

1.8 Security Holder

- (a) The Security Holder enters into this deed only in its capacity as trustee of the Security Trust and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against the Security Holder only to the extent to which it can be satisfied out of the trust fund of the Security Trust out of which the Security Holder is actually indemnified for the liability, except in the case of fraud, wilful misconduct, gross negligence or breach of trust. This limitation of the Security Holder's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Security Holder in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed, except in the case of fraud, wilful misconduct, gross negligence or breach of trust.
- (b) The parties other than the Security Holder may not sue the Security Holder in connection with this deed in any capacity other than as trustee of the Security Trust, nor may they seek the appointment of a receiver (except in relation to the trust fund of the Security Trust), a liquidator, an administrator or any similar person to the Security Holder or prove in any liquidation, administration or arrangement of or affecting the Security Holder (except in relation to the trust fund of the Security Trust).
- (c) The provisions of this clause 1.8 shall not apply to any obligation or liability of the Security Holder to the extent that it is not satisfied because under the trust deed establishing the Security Trust or by operation of law there is a reduction in the extent of the Security Holder's indemnification out of the assets of the Security Trust, or as a result of the Security Holder's fraud, wilful misconduct, gross negligence or breach of trust.
- (d) In relation to the administration of rights and obligations of the Shipper and the Security Holder under this deed the Shipper is entitled to deal only with the Security Holder and is under no obligation or duty to enquire as to the authority of the Security Holder or to confer with, contact or seek approvals, consents or waivers of any of the Beneficiaries for the time being (past or

present) and the Beneficiaries are only entitled to deal with the Shipper through the Security Holder.

1.9 Precedence of obligations

If any ambiguity, inconsistency or conflict of obligations exists or arises between this deed and the Transmission Contract, the provisions of this deed take precedence over and apply to resolve that ambiguity, inconsistency or conflict.

2. Acknowledgments and Consents

2.1 Shipper

Shipper:

- (a) acknowledges that it has received notice of the Security, including the charging and assigning by the Security Provider to the Security Holder of its right, title and interest in, to, under and derived from the Transmission Contract and agrees that there are no restrictions under the Transmission Contract on granting such Security;
- (b) irrevocably consents to the Security and this deed;
- (c) acknowledges that:
 - (i) neither the existence of the Security nor the exercise of any Power under any Security will of itself contravene or constitute a default under the Transmission Contract or entitle it to exercise any right or power under the Transmission Contract (including the right to terminate);
 - (ii) any Enforcing Operator Party may directly exercise and enforce, in accordance with the Security Documents, any powers conferred on Operator under the Transmission Contract in accordance with the Transmission Contract; and
 - (iii) at any time after the commencement or enforcement of any Security, any Enforcing Party may, but is not obliged to, exercise all or any of the powers of Operator, and perform all or any of the obligations of Operator under or in relation to the Transmission Contract;
- (d) agrees that the Security Holder, an Enforcing Operator Party and each Beneficiary (if any) may provide a copy of the Transmission Contract and this deed (and correspondence and notices in relation to the Transmission Contract and this deed) to any person permitted by the terms of the Security and any proposed purchaser or assignee of any or all of Operator's assets (including any contracts or choses in action) or any equity interest in Operator (and to their consultants and advisors) and to any consultants or advisors engaged by the Security Holder, an Enforcing Operator Party or a Beneficiary, subject to compliance with the requirements as to confidentiality in the Transmission Contract; and
- (e) acknowledges that if Shipper elects or is granted additional equity in the Consortium Holding Trust, pursuant to clause 16.10 of the Transmission Contract, then such additional equity must be fully subordinated to debt secured by the Security (if the additional equity is in the form of a loan), in both cases on terms satisfactory to the Security Holder.

Nothing in clause 2.1 relieves Operator or any Permitted Assignee (to the extent a Permitted Assignee has become a party to the Transmission Contract) from its obligations under the Transmission Contract.

2.2 No interference

Each of Shipper and Operator undertake that it will not hinder or prevent the Security Holder, the Beneficiaries (if any) or the Enforcing Operator Parties exercising or enforcing their rights under the Security or this deed, provided that, in relation to exercising any rights under this deed, the Security Holder or any Enforcing Operator Parties exercise or enforce their rights under this deed in accordance with this deed.

2.3 Releases in favour of Security Holder

Each of Shipper and Operator agree that despite any provision of the Transmission Contract:

- (a) the parties to the Security may at any time amend the Security and persons may become Beneficiaries without the consent of Shipper;
- (b) neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary has any obligation or commitment whatsoever to arrange, provide or reschedule any financial accommodation in connection with Operator or its assets or the Transmission Contract;
- (c) at any time while an Event of Default subsists, the Security Holder and any Enforcing Operator Party may exercise all or any of Operator's Powers and perform all or any of Operator's obligations under or in connection with the Transmission Contract as if it were, and to the exclusion of, Operator; and
- (d) except in respect of any obligation expressly assumed by the Security Holder in accordance with this deed, neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary is at any time obliged to:
 - (i) remedy or prevent any Default Event or Termination;
 - (ii) observe or perform any of Operator's obligations under the Transmission Contract; or
 - (iii) exercise any of its Powers under or in connection with this deed, the Transmission Contract or the Security or continue to exercise them or exercise them in any particular manner,

and, is not liable, will not be taken to have assumed liability, and will not become (including as a result of taking any of these actions) liable for any liability or responsibility including for any Direct Damage or any Indirect Damage or to perform any obligation under or in connection with the Transmission Contract, this deed or the Security.

2.4 Shipper and Operator continue to deal

The parties agree that, despite the creation of the Security and this deed, Shipper will continue to deal with Operator and Operator is entitled to exercise Powers under the Transmission Contract until Shipper has received written notice to the contrary from the Security Holder or as this deed otherwise requires. Operator will remain liable to perform its obligations under the Transmission Contract and subject to clause 3.12, 3.14 and 3.15 neither the Security Holder, nor any Beneficiary nor any Enforcing Operator Party is under any obligation of any kind under the Transmission Contract nor under any liability whatsoever in the event of any failure or default by Operator.

2.5 Acknowledgment by Operator

Operator consents to the terms of this deed, agrees that it is bound by and will co-operate in the implementation of this deed and Operator agrees that nothing in this deed affects, limits or derogates from its obligations to the Beneficiaries, the Security Holder and the Enforcing Operator Parties.

2.6 Payment of Money

If the Security Holder so directs at any time when the Security Holder, Beneficiaries or the Enforcing Operator Parties are exercising or enforcing their rights under the Security, Shipper must pay all money due to Operator under the Transmission Contract to the Relevant Account. This clause 2.6 is not intended to create any Encumbrance.

2.7 Acknowledgment by Operator

Operator acknowledges and consents to the obligation of Shipper as set out in clause 2.6 and agrees that any such payment by Shipper will discharge Shipper from its obligation to make that payment to Operator.

3. Regulating the Transmission Contract

3.1 Notification by Shipper

Shipper must notify the Security Holder, in writing, as soon as is reasonably practicable after it:

- (a) becomes aware of any Default Event; or
- (b) determines that it has, but for this deed, the Power to Terminate the Transmission Contract; or
- (c) becomes aware of, or commences, any dispute resolution or arbitration proceeding under the terms of, or in connection with, the Transmission Contract.

3.2 Copies of key notices

Shipper must give the Security Holder a copy of:

- (a) any Default Notice (including details of the Default Event and copies of all documents issued by Shipper to Operator under the Transmission Contract in any way relating to, or arising out of, the Default Event);
- (b) any Force Majeure Notice;
- (c) any T1 Capacity Notice given by Shipper under clause 16 of the Transmission Contract;
- (d) any notice of exercise of the Option by the Shipper given by the Shipper under clause 4.5 of the Transmission Contract;
- (e) any notice of the proposed creation of a charge over the Transmission Contract given to or received by Shipper under clause 25.2 of the Transmission Contract; and
- (f) any notice of proposed assignment of rights under the Transmission Contract given to or received by Shipper under clause 25.3 of the Transmission Contract,

at the same time it gives the applicable notice to Operator or Operator's representative (or as soon as is reasonably practicable thereafter), or as soon as possible following receipt of the applicable notice from Operator.

3.3 Operator information

Where Shipper has given Operator a Default Notice, Operator must promptly inform the Security Holder of all measures taken or intended to be taken by Operator to remedy the Default Event which is the subject of the Default Notice and Shipper and Operator each irrevocably consent to the giving of such information to the Security Holder.

3.4 Notification by Security Holder

- (a) The Security Holder must give notice to Shipper of any action taken by the Security Holder to exercise its rights, powers or remedies under a Security or otherwise to enforce a Security promptly after the relevant action is taken.
- (b) If and when the Security Holder or any Enforcing Operator Party ceases the enforcement of a Security, the Security Holder must give Shipper notice thereof.

3.5 Cure rights

- (a) Shipper agrees that, despite anything to the contrary in the Transmission Contract:
 - (i) Shipper cannot, and will not, Terminate the Transmission Contract in respect of Operator; and
 - (ii) the Transmission Contract cannot, and will not automatically Terminate in respect of Operator,unless:
 - (iii) the Security Holder has been notified in accordance with clause 3.2(a) of this deed; and
 - (iv) in respect of the Default Event which, but for this deed, would give rise to the applicable Termination Right:
 - A. a Cure Notice has been received by the Security Holder;
 - B. that Default Event has not been remedied in accordance with clause 3.6 of this deed, or other arrangements made to the reasonable satisfaction of Shipper within the Cure Period and upon expiry of that Cure Period, a Termination Right subsists; and
 - C. at that time, no Independent Expert has been appointed in accordance with the Transmission Contract or no dispute resolution or arbitration is being conducted in accordance with the Transmission Contract in connection with the Default Event or any Termination Right arising from or in connection with that Default Event.
- (b) This clause does not affect or prejudice Shipper's rights to Liquidated Damages against Operator under clause 22.9 of the Transmission Contract following the giving of a notice to Operator if the default described in clause 22.5(a) of the Transmission Contract has not been remedied within 40

Working Days after the giving of an Operator Default Notice in respect of that default.

- (c) If, during any Cure Period, a further Default Event occurs, then Shipper may issue a further Default Notice in respect of that additional Default Event and if that further Default Event has not been remedied in accordance with clause 3.6 within the applicable Cure Period for that additional Default Event, then Shipper may Terminate the Transmission Contract in accordance with the terms of the Transmission Contract.

3.6 Remedy of Default Event

Each of the parties agrees with the others that a Default Event (other than the occurrence of an Insolvency Event) will be remedied:

- (a) if the Default Event is a repudiation, disclaimer or default by Operator in the performance of the obligations of Operator under clause 16 of the Transmission Contract, if the Requested T1 Capacity is provided within the relevant Cure Period (identified in paragraph (a) of the definition of "Cure Period");
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of a readily ascertainable sum of money, if that sum of money and any consequential default interest is paid to Shipper within the relevant Cure Period (identified in paragraph (b) of the definition of "Cure Period");
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) that default, if reasonably capable of remedy within the Cure Period, is remedied within the relevant Cure Period (identified in paragraph (c) of the definition of "Cure Period") or in relation to a default that is not reasonably capable of remedy within the Cure Period, a process to remedy such default has been commenced and is being diligently pursued within the Cure Period (provided that such default must be remedied within 6 months of the start of the Cure Period);
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, if Shipper's reasonable estimation of that amount and any consequential interest is paid within the relevant Cure Period (identified in paragraph (d) of the definition of "Cure Period") (provided that such default must be remedied within 6 months of the start of the Cure Period).

3.7 Remedy of an Insolvency Event

Without limiting any other rights of the Security Holder, any Enforcing Operator Party or any Beneficiary, if the Default Event is an Insolvency Event in respect of Operator, the Security Holder will be taken to have remedied the Default Event:

- (a) if and for so long as it procures the appointment of an Enforcing Operator Party over or to Operator's right, title or interest in or to the Transmission Contract and the Enforcing Operator Party complies or procures compliance with, and continues to comply with and procure compliance with, all of Operator's obligations under the Transmission Contract both before and after the Cure Period; or
- (b) if Operator's right, title and interest in or to or obligations under the Transmission Contract are assigned, transferred or novated to a person who is not Insolvent in accordance with clause 7.1; or

(c) by any combination of the above,

provided it does so within the relevant Cure Period (as specified in paragraph (c) of the definition of "Cure Period").

3.8 Change of Cure Period

A Cure Period will be extended only if Shipper consents (such consent to be granted at Shipper's discretion) in writing to a longer period after the Security Holder, an Enforcing Operator Party or a Beneficiary has demonstrated to the reasonable satisfaction of Shipper that a course of action is being diligently pursued to remedy or otherwise overcome the effect of the Default Event. More than one extension may be sought and obtained to a Cure Period.

3.9 Right to remedy

Each of Shipper and Operator agree that:

- (a) the Security Holder, another Enforcing Operator Party or a Beneficiary may (but are not obliged to), in addition to Operator's rights to remedy any Default Event or prevent the occurrence of a Default Event, do all things necessary and take any steps to remedy, or procure the remedy of, any Default Event or to prevent the occurrence of a Default Event and in doing so acts as the agent of Operator; and
- (b) any remedy that remedies the Default Event by the Security Holder, an Enforcing Operator Party or a Beneficiary remedies the Default Event for the purposes of the Transmission Contract.

3.10 Information, access and discussions

Upon written request from the Security Holder, an Enforcing Operator Party or a Beneficiary, Shipper must:

- (a) promptly provide the Security Holder, the Enforcing Operator Party or Beneficiary, as applicable, with all information reasonably requested by that person for the purpose of taking any steps under clause 3.9(a) (Right to remedy) or exercising any Power under the Security or this deed, including details of:
 - (i) any steps Shipper considers appropriate to be taken in the circumstances; or
 - (ii) any progress made in remedying any Default Event;
- (b) promptly after a request from the Security Holder or an Enforcing Operator Party, hold discussions in good faith with that person in connection with the remedying of any Default Event; and
- (c) provide the Security Holder and its representatives and consultants a reasonable opportunity, after the occurrence of a Default Event and while it is subsisting, to attend and participate in all negotiations, consultations and meetings undertaken or convened:
 - (i) pursuant to an obligation imposed on any party to the Transmission Contract to negotiate, consult or agree; and
 - (ii) in an endeavour to resolve any material dispute with Operator under the Transmission Contract.

3.11 Undertakings by Security Holder

- (a) The Security Holder undertakes that, during any Cure Period, if a decision has been reached whereby the Security Holder or an Enforcing Operator Party does not intend to procure a remedy of a Default Event in accordance with clause 3.6, then the Security Holder will notify Shipper, as soon as reasonably practicable after such decision has been reached. If the Security Holder notifies Shipper that it does not intend to procure a remedy of a Default Event within the applicable Cure Period in accordance with clause 3.6, then clause 3.5(a) shall cease to apply from the date of receipt of such notice.
- (b) The Security Holder undertakes that during any Cure Period it will not, and any Enforcing Party will not, materially interfere with, prevent or restrict Operator's continued provision of the "P1 Service" (as defined in the Transmission Contract) in accordance with the terms of the Transmission Contract, provided that and for so long as:
 - (i) Shipper has not committed a default which is subsisting under the Transmission Contract which would allow Operator a right to terminate the Transmission Contract; and
 - (ii) the Receiver, the Security Holder or any Enforcing Party is exercising any Power over Operator's right, title and interest in the Transmission Contract.

3.12 Appointment and rights of Enforcing Operator Party

Without limiting the rights of the Security Holder under any Security following an event that renders a Security enforceable, but subject to this deed:

- (a) the Security Holder may appoint an Enforcing Operator Party to exercise any or all of Operator's rights or perform some or all of Operator's obligations under the Transmission Contract; and
- (b) and subject to clause 7.1, the Security Holder or any Enforcing Operator Party may transfer or dispose of Operator's rights and obligations under the Transmission Contract to another party.

3.13 Notification

If the Security Holder has enforced or exercised any of its rights, powers or remedies under any Security, including by appointing an Enforcing Operator Party or commencing proceedings to foreclose, the Security Holder must notify Shipper promptly after it has enforced or exercised its rights, powers or remedies (which notice must set out the identity and capacity of any such Enforcing Operator Party).

3.14 Consequences of enforcement

If the Security Holder appoints an Enforcing Operator Party under clause 13.12(a) then:

- (a) Shipper must continue to duly and punctually perform and observe its duties and obligations under the Transmission Contract (in accordance with its terms);
- (b) the Transmission Contract shall remain in full force and effect; and
- (c) the Enforcing Operator Party is not liable to Shipper in respect of any events, acts or omissions which have occurred or should have occurred before the date of the appointment, or for any liability of Operator to Shipper in relation

to the Transmission Contract in respect of any event, act or omission before the date of the appointment.

3.15 Rights to enforce

Nothing in this deed prevents the Security Holder from:

- (a) giving any notices under the Security;
- (b) demanding the payment of any money under the Security;
- (c) exercising or enforcing any power, right or remedy afforded generally to unsecured creditors or under any agreement other than the Security; or
- (d) enforcing the Security.

3.16 Removal of Cure Period

If, during a Cure Period, the Security Holder or any Enforcing Party causes or allows Operator to commit a separate Default Event to the one in respect of which the Cure Period is running (**Cure Period Default**) then Shipper may immediately serve a Default Notice on Operator and the Security Holder, and Shipper may subsequently terminate the Transmission Contract in accordance with its terms and shall not be required to comply with clause 3.5 of this deed in relation to such Cure Period Default.

4. Representations and Warranties

4.1 Representations and warranties

Each of Shipper and Operator represents and warrants to the Security Holder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this deed and the Transmission Contract, to carry out the transactions contemplated by them and to carry on its business as now conducted or contemplated;
- (c) this deed and the Transmission Contract constitute its legal, valid and binding obligations enforceable against it in accordance with their terms subject only to laws generally affecting creditors' rights and principles of equity;
- (d) the Transmission Contract is in full force and effect, the obligations of Operator under it are not subject to any conditions precedent (which have not been satisfied) and, if required under the Transmission Contract, any notice to proceed and notice of satisfaction of conditions precedent has been received by Shipper as applicable prior to the date of this deed;
- (e) it has in full force and effect, and is complying with, the consents, licences, approvals and authorisations necessary for it to enter into this deed and the Transmission Contract, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- (f) the execution, delivery and performance by it of this deed and the Transmission Contract and each transaction contemplated under them does not cause a limitation on its powers or exceed the powers of its directors, or contravene in any respect:
 - (i) any law, regulation, treaty, judgment, ruling, order or decree binding on it or to which any of its assets are subject;
 - (ii) its constituent documents (if any); or

- (iii) any other document, the Transmission Contract, arrangement or obligation which is binding on it or its assets;
- (g) each representation and warranty made by it under the Transmission Contract is true and correct and not misleading when made and when repeated;
- (h) it has not entered into this deed or the Transmission Contract in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of any of the other parties to this deed nor any of their respective Related Entities;
- (i) it is not in default under the Transmission Contract and except as disclosed to the other parties to this deed prior to any repetition of this representation and warranty after the date of this deed:
 - (i) no Default Event is subsisting and it is not able to Terminate the Transmission Contract; and
 - (ii) no condition exists (or would exist with the giving of notice, lapse of time or fulfilment of any condition or any of them) which would interfere with its ability to perform its obligations under the Transmission Contract or entitle it to Terminate the Transmission Contract; and
- (j) it has not received actual notice of any notice of any assignment, transfer, novation, Encumbrance, or other dealing in relation to the Transmission Contract.

4.2 Notification if incorrect

Each of the parties undertakes to notify the other parties promptly of any representation or warranty made by it in this deed or the Transmission Contract which is found to be incorrect or misleading when made.

5. Taxes and GST

5.1 Taxes

Operator agrees to pay all fees, Taxes and charges, including fines and penalties, payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment receipt or other transaction contemplated by them.

5.2 GST gross up

If any party:

- (a) is liable to pay GST on a supply made in connection with this deed; and
- (b) certifies to the recipient of the supply that it has not priced the supply to include GST,

then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

6. Notices

6.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications (a **Notice**) in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in clause 6.3 of this deed or, if the recipient has notified otherwise for the purpose of this clause, then marked for attention in the way last notified.

6.2 Delivery

A Notice must be:

- (a) left at the address set out or referred to in clause 6.3 of this deed;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in clause 6.3 of this deed;
- (c) sent by fax to the fax number of the party set out or referred to in clause 6.3 of this deed; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the Notice must be to that address or number.

6.3 Parties details

Operator

DBNGP (WA) Transmission Pty Limited, Level 6, 12-14 The Esplanade, Perth 6000,
Western Australia
Fax: (08) 9223 4301
Attention: Manager Commercial Operations

Shipper

[To be completed]

Security Holder

[To be completed]

6.4 When effective

A Notice takes effect from the time it is received unless a later time is specified.

6.5 Receipt - post

If sent by post, a Notice is taken to be received three Working Days after posting (or seven days after posting if sent to or from a place outside Australia).

6.6 Receipt - fax

If sent by fax, a Notice is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

6.7 Receipt - general

Despite clauses 6.5 and 6.6, if a Notice is received after 5.00pm in the place of receipt or on a non-Working Day, it is to be taken to be received at 9.00am on the next Working Day.

7. Assignment

7.1 Assignment of the Transmission Contract

Shipper and Operator agree with the Security Holder that the Security Holder and the Enforcing Operator Parties may, in the exercise or enforcement of their Powers under the Security and this deed, without the consent of Shipper or Operator (and without the need for them or anyone else to comply with any provision of the Transmission Contract):

- (a) assign (or seek to assign) all or any of Operator's rights, title or interest in or to the Transmission Contract; or
- (b) transfer or novate Operator's obligations under or in connection with the Transmission Contract,

to any person (including any person who takes an assignment of any or all of Operator's right, title or interest in and to, and/or a transfer or novation of any or all of Operator's obligations under, the Transmission Contract) (**Permitted Assignee**) provided that:

- (c) the Permitted Assignee is a person to whom an assignment would be permitted by clause 25.3 of the Transmission Contract or a person to whom Shipper has given its consent (such consent not to be unreasonably withheld or delayed);
- (d) the Permitted Assignee enters into a deed of assumption with Shipper on terms reasonably satisfactory to Shipper so as to ensure the assignment, transfer or novation of the applicable rights, title, interest and obligations; and
- (e) Shipper agrees, acting reasonably, that the Permitted Assignee has the:
 - (i) contractual and ownership rights necessary to access the DBNGP for the purpose of performing all of Operator's obligations under the Transmission Contract; and
 - (ii) financial capability and technical expertise to enable the Permitted Assignee to effectively operate the DBNGP and to perform all of Operator's obligations under the Transmission Contract.

Each of Shipper and Operator agree to do anything reasonably requested by the Security Holder or an Enforcing Operator Party (including signing and producing documents and effecting the transaction by way of a novation) to enable or facilitate that assignment, transfer or novation.

7.2 New tripartite

Each of Shipper and Operator agrees, promptly on the written request of the Security Holder, to execute a deed substantially in the form of this deed with:

- (a) the person to whom the Security Holder assigns, transfers or novates rights or obligations or both under this deed; and
- (b) if the rights or obligations or both of Operator under the Transmission Contract are assigned, transferred or novated, the financier (or an agent or trustee on its behalf) of the assignee, transferee or novatee.

7.3 Assignment by Security Holder

Shipper acknowledges that:

- (a) the Security Holder may assign its rights and novate or otherwise transfer its obligations under this deed to any replacement security trustee appointed in relation to the Security; and
- (b) any other Beneficiary may assign or novate the whole or any part of its interest in the Security and the documents relating to the Security or the money secured by the Security.

7.4 Assignment by Shipper

Shipper must not assign or otherwise dispose of, novate or deal with its rights or obligations under the Transmission Contract without the prior written consent of the Security Holder, provided that such consent is not required where the transfer is permitted under the terms of the Transmission Contract and such transfer is to a new counterparty who is in a position to meet Shipper's obligations under the Transmission Contract and who will provide security, in favour of Operator, for those obligations on terms and conditions acceptable to the Security Holder, acting reasonably.

8. General

8.1 Counterparts

This deed may consist of a number of copies of this deed each signed by one or more parties to the deed. When taken together, the signed copies are treated as making up the one document.

8.2 Governing law

- (a) This deed is governed by the law in force in the State of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of that State.
- (b) Each party waives any rights it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

8.3 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

8.4 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

8.5 No liability for loss

- (a) A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.
- (b) In relation to any breach of this deed, the party in breach will only be liable to any other party for damages for direct losses attributed to any such breach and the rights of any other party to damages for indirect or consequential loss in respect of such breach are hereby expressly excluded.

8.6 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

8.7 Variation and waiver

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound, and in all cases, the Security Holder.

8.8 No merger

The warranties, undertakings and indemnities in this deed do not merge upon the occurrence of any event or activity.

8.9 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

8.10 Further security

If the Security Holder is granted any additional Encumbrance over or in respect of the Transmission Contract, each party agrees that the additional Encumbrance is to be treated in all respects as part of the Security and subject to the provisions of this deed.

8.11 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

8.12 Further steps

Each party agrees to do anything the Security Holder reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind it and any other person intended to be bound by this deed; and
- (b) to show whether it is complying with the Transmission Contract or this deed.

8.13 Rights and obligations are unaffected

Rights given to the Security Holder under this deed and the other parties' liabilities under it are not affected by anything which might otherwise affect them at law.

EXECUTED as a deed.

EXECUTED by **DBNGP (WA)
TRANSMISSION PTY LIMITED**
ABN 69 081 609 190 in accordance with
section 127 of the Corporations Act 2001:

Signature of director

Name

Signature of director/secretary

Name

EXECUTED by **[SHIPPER] ABN [#]** in
accordance with section 127 of the
Corporations Act 2001:

Signature of director

Name

Signature of director/secretary

Name

EXECUTED by **[SECURITY HOLDER]
ABN [#]** in accordance with section 127 of
the Corporations Act 2001:

Signature of director

Name

Signature of director/secretary

Name

Schedule 8 - Curtailment Plan

PART A

| Order of Priority | System Curtailment |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Any Capacity Service insofar as it is for Shipper's relevant share of the Distribution Networks' IPQ |
| 2 | Alcoa's Priority Quantity |
| 3 | Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), P1 Service (including Aggregated P1 Service) and B1 Service, apportioned in accordance with the provisions of Part B of this Schedule 8 |
| 4 | The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity), T1 Service (including Aggregated T1 Service), P1 Service (including Aggregated P1 Service) and B1 Service, which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 8 |
| 5 | Firm Service |
| 6 | Tp Service |
| 7 | Other Reserved Service (other than Tp Service) |
| 8 | Spot Capacity, in the manner described in clause 17.9(c)(iii) |

| Order of Priority | Point Specific Curtailment |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Any Capacity Service insofar as it is for the shipper's relevant share of the Distribution Networks' IPQ |
| 2 | Alcoa's Priority Quantity |
| 3 | Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (excluding Aggregated T1 Service), P1 Service (excluding Aggregated P1 Service) and B1 Service at the relevant point apportioned in accordance with the provisions of Part B of this Schedule 8 |
| 4 | The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity), T1 Service (excluding Aggregated T1 Service), P1 Service (excluding Aggregated P1 Service) and B1 Service at the relevant point which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 8 |
| 5 | Firm Service that is Contracted Capacity at the relevant point |
| 6 | Tp Service |
| 7 | Other Reserved Service (other than Tp Service) that is Contracted Capacity at the relevant point |
| 8 | Aggregated T1 Service and Aggregated P1 Service at the relevant point |
| 9 | Other Reserved Service (if any) nominated by and scheduled to the shipper at the relevant point at which the shipper does not have Contracted Capacity in that Other Reserved Service in accordance with the provision of the shipper's contract for the Other Reserved Service |
| 10 | Spot Capacity, in the manner described in clause 17.9(c)(iii) |

PART B

- (a) The amount of Capacity available after allowing for Items 1 and 2 in Part A of this Schedule 8, up to the next 253.5TJ/d of Capacity, must be apportioned as follows:
- (i) ½ of the available Capacity must be apportioned to Alcoa; and
 - (ii) ½ of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i).
- (b) The amount of Capacity available after allowing for Items 1, 2 and 3 in Part A of this Schedule 8 must be apportioned as follows:
- (i) the Alcoa Proportion of the available Capacity must be apportioned to Alcoa; and
 - (ii) the balance of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i), or if there is available Capacity after all T1 Service, P1 Service and B1 Service has been provided for then to Items below T1 Service, P1 Service and B1 Service in the applicable column of the table in Part A of this Schedule 8, which among shippers with the relevant Type of Capacity Service must be apportioned in accordance with clause 17.9(c)(i).
- (c) The Alcoa Proportion must be determined in accordance with the following:

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

where:

AP = the Alcoa Proportion;

AE = the aggregate of all Alcoa's additional entitlements to Capacity under the Alcoa Exempt Contract which have arisen as a result of Alcoa giving notices requiring additional Capacity under the provisions of the Alcoa Exempt Contract since the date of the Alcoa Exempt Contract which entitlements have not been discontinued or relinquished by Alcoa; and

PE = the aggregate of all increases in Full Haul Capacity on the DBNGP which have resulted from Capacity expansion programmes as contemplated in the Alcoa Exempt Contract since the date of the Alcoa Exempt Contract, less the lesser of 1/3 of the capacity of the last such Capacity expansion programme or 30TJ/d.

EXECUTED by the Parties:

Executed as an agreement by
DBNGP Holdings Pty Ltd ABN 16 110 721 081
in accordance with section 127 of the *Corporations Act*:

Director/Secretary

Name (please print)

Director

Name (please print)

Executed as an agreement by
DBNGP (WA) Nominees Pty Ltd ABN 78 081 609
289 in accordance with section 127 of the
Corporations Act:

Director/Secretary

Name (please print)

Director

Name (please print)

Executed as an agreement by
DBNGP (WA) Transmission Pty Ltd ABN 69 081
609 190 in accordance with section 127 of the
Corporations Act:

Director/Secretary

Name (please print)

Director

Name (please print)

Executed as an agreement by
[Shipper] ABN [insert] in accordance with section
127 of the *Corporations Act*:

Director/Secretary

Name (please print)

Director

Name (please print)