



**BALLERA TO WALLUMBILLA NATURAL GAS  
PIPELINE**

**ANNEXURE B**

**ADDITIONAL TERMS AND CONDITIONS**

**SUBMISSION VERSION  
17 AUGUST 2000**

**Epic Energy Queensland Pty Limited  
ABN 67 066 656 219  
Level 7  
239 Adelaide Terrace  
PERTH WA 6000**

**CONTACT: Alistair Butcher  
TELEPHONE: (08) 9492 3880**

## TABLE OF CONTENTS

<b>1</b>	<b>INTERPRETATION .....</b>	<b>5</b>
1.1	Construction.....	5
1.2	Unit Measurement.....	6
1.3	Application of Access Principles.....	6
1.4	Definitions .....	6
<b>2</b>	<b>COMMISSIONING GAS.....</b>	<b>6</b>
<b>3</b>	<b>IMPOSTS AND GOODS AND SERVICES TAX .....</b>	<b>7</b>
3.1	Imposts.....	7
<b>4</b>	<b>SYSTEM USE GAS .....</b>	<b>9</b>
4.1	System Use Gas.....	9
4.2	Calculation and Adjustment.....	9
<b>5</b>	<b>MAINTENANCE AND OPERATION OF FACILITIES.....</b>	<b>10</b>
5.1	Emergency Repairs.....	10
5.2	Estimated Quantities.....	10
5.3	Co-ordination of Operations.....	10
<b>6</b>	<b>MEASUREMENT EQUIPMENT .....</b>	<b>11</b>
6.1	Installation and Operation .....	11
6.2	Check Metering Station.....	11
6.3	Notice of Equipment Tests .....	11
6.4	Failure of Meters.....	12
6.5	Books and Records.....	12
<b>7</b>	<b>QUALITY .....</b>	<b>12</b>
7.1	Gas Quality at Receipt Points .....	12
7.2	Gas Quality at Delivery Points .....	12
7.3	Quality Tests .....	13
7.4	Epic Energy May Accept Out-of-Specification Gas.....	13
7.5	The Shipper's Liability for Out-of-Specification Gas .....	13
7.6	Processing Rights .....	14
7.7	Odourisation.....	14

<b>8</b>	<b>RECEIPT AND DELIVERY PRESSURES .....</b>	<b>14</b>
8.1	Receipt Pressure .....	14
8.2	Delivery Pressures .....	15
<b>9</b>	<b>MAXIMUM HOURLY QUANTITY.....</b>	<b>15</b>
<b>10</b>	<b>POSSESSION OF GAS AND RESPONSIBILITY.....</b>	<b>16</b>
10.1	Control and Possession .....	16
10.2	Responsibility.....	16
10.3	Co-mingling of Gas.....	16
<b>11</b>	<b>WARRANTY OF TITLE TO GAS .....</b>	<b>17</b>
11.1	Warranty.....	17
11.2	Indemnity.....	17
11.3	Title .....	17
<b>12</b>	<b>NOMINATIONS .....</b>	<b>17</b>
12.1	Customer reporting System.....	17
12.2	Prior to CRS.....	18
12.3	Notification by Transporter .....	19
12.4	Unauthorised Deliveries .....	19
12.5	Arrangements prior to Receipt and after Delivery.....	19
<b>13</b>	<b>SCHEDULING .....</b>	<b>19</b>
13.1	General Scheduling of Receipts and Deliveries .....	19
13.2	Scheduling Priorities.....	20
<b>14</b>	<b>CURTAILMENT OF RECEIPTS AND DELIVERIES.....</b>	<b>21</b>
14.1	Insufficient Capacity.....	21
14.2	Operational Flow Orders.....	22
14.3	Provision of Notice and Responsibility.....	23
14.4	Curtailment Compliance .....	23
14.5	Emergencies, Pipeline Integrity, Etc .....	23
<b>15</b>	<b>ALLOCATION OF DELIVERIES AND CORRECTION OF IMBALANCES ..</b>	<b>24</b>
15.1	Allocation of Receipts and Deliveries.....	24
15.2	Change in Allocation Procedures.....	25
15.3	Records of Scheduled Quantities.....	25
15.4	Correction of Imbalances on Other Systems .....	25

<b>16</b>	<b>DISPUTE RESOLUTION .....</b>	<b>25</b>
	16.1 Resolution of Technical and Financial Matters.....	25
<b>17</b>	<b>INVOICING AND PAYMENT .....</b>	<b>27</b>
	17.1 Invoicing .....	27
	17.2 Payment .....	28
	17.3 Shipper's Dispute .....	28
	17.4 Interest on Disputed or Incorrect Amount .....	28
	17.5 Incorrect Invoices.....	29
	17.6 Default Interest.....	29
	17.7 Failure to Pay Invoice.....	29
<b>18</b>	<b>FORCE MAJEURE.....</b>	<b>30</b>
	18.1 Definition .....	30
	18.2 Consequences of Force Majeure .....	30
	18.3 Notification and Diligence .....	31
	18.4 Liability Not Relieved .....	32
	18.5 Prolonged Force Majeure .....	32
<b>19</b>	<b>COMPLIANCE WITH LAW, REGULATION AND AGREEMENT .....</b>	<b>32</b>
<b>20</b>	<b>TERMINATION.....</b>	<b>32</b>
<b>21</b>	<b>NOTICES.....</b>	<b>33</b>
	21.1 Notices.....	33
<b>22</b>	<b>ASSIGNMENT.....</b>	<b>34</b>
	22.1 Inurement.....	34
	22.2 Assignment.....	34
<b>23</b>	<b>CONFIDENTIALITY.....</b>	<b>35</b>
	23.1 Disclosure with Consent.....	35
	23.2 Disclosure on Conditions.....	35
	23.3 Advance Notice of Disclosure.....	36
	23.4 Confidentiality Undertaking.....	36
	23.5 Continuing Obligation.....	36
<b>24</b>	<b>INSURANCES.....</b>	<b>37</b>

<b>25</b>	<b>MISCELLANEOUS PROVISIONS</b> .....	<b>37</b>
25.1	Waiver of Default .....	37
25.2	Limitation of Liability.....	38
25.3	Governing Law .....	38
25.4	Entire Agreement.....	38
25.5	Severability.....	38
25.6	No Benefit to other persons .....	38
25.7	Interpretation of Agreement .....	39
25.8	Enforceability .....	39
25.9	No Partnership .....	39
25.10	Stamp Duty.....	39
25.11	Change in Regulatory Environment .....	39
 <b>SCHEDULE</b>		
	Part 1 – Metering Equipment (Clause 6) .....	40
	Part 2 - Metering at Receipt and Delivery Points (Clause 6).....	43

## **1 INTERPRETATION**

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### **1.1 CONSTRUCTION**

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in the Gas Transportation Agreement Terms and Conditions, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) clause headings are inserted for convenience only and shall not affect the interpretation of the Gas Transportation Agreement Terms and Conditions;
- (f) references to dollars and \$ are references to Australian dollars;
- (g) references to time are references to Brisbane time;
- (h) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it; and includes any subordinate legislation or statutory instruments issued pursuant to that legislation or as it may be modified, re-enacted or substituted;
- (i) reference to a governmental authority includes any successor authority;
- (j) a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of the Additional Terms and Conditions; and
- (k) a reference to any agreement (including the Gas Transportation Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time.

## **1.2 UNIT MEASUREMENT**

Terminology used to describe units shall, unless otherwise agreed, be in accordance with Australian Standard AS1000 "The International System of Units (SI System) and Its Application", the Commonwealth "National Measurement Act 1960" and regulations thereunder, Australian Standard AS1376 "Conversion Factors 1973" and the Australian Gas Association publication "Metric Units and Conversion Factors for Use in the Australian Gas Industry."

## **1.3 APPLICATION OF ACCESS PRINCIPLES**

- (a) These Additional Terms and Conditions apply to Gas Transportation Agreements in addition to the Access Principles and the Definitions.
- (b) Together the Access Principles, the Definitions, and these Additional Terms and Conditions make up the Gas Transportation Agreement Terms and Conditions.
- (c) Where there is an inconsistency between these Additional Terms and Conditions or the Definitions and the Access Principles, the Access Principles are to apply to the extent of such inconsistency in the absence of any expressed contrary intent.

## **1.4 DEFINITIONS**

Terms defined in these additional Terms and Conditions have the meaning in the Definitions, which is at Annexure C to the Access Arrangement.

## **2 COMMISSIONING GAS**

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The Shipper shall provide, at no cost to Epic Energy, all Gas required for the commissioning of New Facilities.

### 3 IMPOSTS AND GOODS AND SERVICES TAX

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#### 3.1 IMPOSTS

(a) **Supply Tax**

The Shipper shall pay Epic Energy a monthly amount equal to the cost of:

- (i) changes to, or to the method of imposition of, any Supply Tax which was applicable and in effect at the date of this contract; and
- (ii) any new Supply Tax, which is imposed on Epic Energy during the relevant month. If a Supply Tax is a GST then the provisions set out in Clauses 3.1(b) to 3.1(f) shall apply.

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

(b) **Definitions**

In this Clause 3.1, the following terms will have the following meanings:

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

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

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

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

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

"**cost savings**" shall mean in respect of the supply of any goods or services under this contract, the cost savings made by the Provider as a result of New Tax System changes other than the imposition of GST on any such supply, in so far as they are properly allocated to those



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

“**New Tax System changes**” has the meaning which it bears in the TPA.

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

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

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

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

**(c) Registration**

Epic Energy and the Shipper agree that each of them, or their duly appointed agent, will register under the GST Act.

**(d) Recipient Must Pay**

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

A) The provider may increase the basic consideration or the relevant part thereof by an amount which is equal to the GST rate, and

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

(ii) If, at any time, the GST rate is increased, the Provider may, in addition to the GST rate, increase the basic consideration by the GST adjustment rate and such amount shall be payable in accordance with Clause 3.1(d)(i)(A)

**(e) GST Invoice**

Where the basic consideration is to be increased to account for GST pursuant to Clause 3.1(d), the Provider shall issue a tax invoice to the Recipient at the time the payment is made.

**(f) Variation to Basic Consideration**

If, as a result of the New Tax System changes, there is an abolition (in whole or part) of, or a reduction in the level of, wholesale sales taxes or other indirect taxes (“**the relevant taxes**”) which apply to goods which are sold or supplied by the Provider, then, as from the date of any such abolition or reduction (and upon any subsequent abolition or reduction) of the relevant taxes the provisions of the agreement dealing with the calculation of the basic consideration shall be amended as necessary to ensure that, as far as reasonably practicable, the cost savings are passed on to the Recipient.

## **4 SYSTEM USE GAS**

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### **4.1 SYSTEM USE GAS**

The Shipper shall provide at no cost to Epic Energy any System Use Gas necessary for Epic Energy to provide Services under the Shipper’s Gas Transportation Agreement.

### **4.2 CALCULATION AND ADJUSTMENT**

Epic Energy shall estimate the total System Use Gas requirements of the SWQP twice in each Year, once in February and once in August, and more frequently to the extent required to project the operational requirements of the SWQP more accurately.

- (a) Epic Energy shall calculate the System Use Gas Percentage which shall be equal to the projected System Use Gas requirements of the SWQP for the following 6 Month period (or such lesser period as Epic Energy reasonably determines in order to project the operational requirements of the SWQP more accurately) divided by the total projected throughput of the SWQP for the same period. Epic Energy shall, upon request of the Shipper, provide the Shipper with adequate data and information necessary to verify Epic Energy’s calculation of the System Use Gas Percentage and any adjustment made pursuant to paragraph (d) of this clause.
- (b) The Shipper shall furnish its share of System Use Gas on each Day, which shall equal the quantities nominated by the Shipper at the Receipt Points (exclusive of any System Use Gas) multiplied by the System Use Gas Percentage.
- (c) The System Use Gas Percentage in the next 6 Month period (or such lesser period determined by Epic Energy pursuant to Clause 4.2(a) above) shall be adjusted to reflect any over or under supply of System Use Gas during the preceding 6 Month period.

- (d) If the Shipper fails to nominate sufficient quantities of Gas to allow for System Use Gas, then Epic Energy may adjust the nomination to account for such requirements and the Shipper's nomination shall be deemed adjusted accordingly.

## **5 MAINTENANCE AND OPERATION OF FACILITIES**

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### **5.1 EMERGENCY REPAIRS**

If Epic Energy determines that it is necessary to protect the operational integrity and safe operation of the SWQP, or to comply with any applicable laws and regulations, Epic Energy shall, after giving as much notice to the Shipper as is reasonably practicable in the circumstances, be permitted to curtail deliveries of Gas without incurring liability to the Shipper to the extent necessary to carry out the required repairs and maintenance.

### **5.2 ESTIMATED QUANTITIES**

Upon request, the Shipper shall from time to time provide to Epic Energy estimates (on a non-binding basis) of the daily, monthly and annual quantities of Gas to be transported under the Gas Transportation Agreement, and such other operating data as may reasonably be requested by Epic Energy in order to schedule and plan Epic Energy's operations.

### **5.3 CO-ORDINATION OF OPERATIONS**

- (a) The Shipper will use its best endeavours to:
  - (i) coordinate any dispatching or operational matters with Epic Energy and with any Interconnect Party. Where appropriate, this will include providing Epic Energy with access to appropriate data and records, electronic or otherwise, and in particular to measurement information necessary or desirable to coordinate activities; and
  - (ii) to ensure that arrangements for the supply of Gas to the Receipt Point and acceptance of Gas at the Delivery Point are compatible with the Shipper's system operations.
- (b) The Shipper will:
  - (i) take all appropriate actions to cooperate with Epic Energy and any Interconnect Party, including the alteration of receipts and deliveries to alleviate conditions which threaten the operational integrity of the SWQP, and any facilities upstream or downstream of the SWQP; and
  - (ii) cooperate with Epic Energy to the fullest extent practicable in the operation of its facilities and will provide information and

data so as to facilitate the receipt, transportation and delivery of Gas in accordance with the Gas Transportation Agreement.

## **6 MEASUREMENT EQUIPMENT**

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### **6.1 INSTALLATION AND OPERATION**

- (a) Epic Energy shall install at the Shipper's expense, or agree to permit the Shipper to install (subject to any conditions Epic Energy deems necessary) at the Shipper's expense, at or near each Receipt Point or Delivery Point, a metering station properly equipped with meters, gas chromatograph, flow computer and other necessary measurement equipment ("**Metering Station**") and Interconnection Facilities. Such equipment shall remain (where installed by Epic Energy) or become (where installed by the Shipper) the property of Epic Energy. The Shipper shall also bear the expense of furnishing and installing such equipment in any instance in which the Shipper requests a new or additional Receipt Point or Delivery Point.
- (b) The standards and requirements for the equipment described in clause 6.1(a) shall be as set out in the Schedule to these Additional Terms and Conditions.
- (c) The Shipper must ensure that pulsation in the Gas stream delivered at the Receipt Point does not interfere with the operation or accuracy of the Metering Equipment.

### **6.2 CHECK METERING STATION**

- (a) The Shipper may install, maintain and operate, at its own expense checking metering equipment, provided that such equipment shall not be installed on property containing Epic Energy's metering equipment at or near the Receipt or Delivery Points without Epic Energy's prior written consent
- (b) Notwithstanding clause 6.2(a), measurement of Gas for purposes of the Gas Transportation Agreement shall be done by means of the Metering Equipment installed pursuant to Clause 6.1, except in cases specifically provided to the contrary in this Clause 6.4.

### **6.3 NOTICE OF EQUIPMENT TESTS**

- (a) The shipper may install, maintain and operate, at its own expense, check measuring equipment, provided that such equipment shall not be installed on property containing Epic Energy's Metering Equipment at or near the Receipt or Delivery Points without Epic Energy's prior written consent.

- (b) Notwithstanding clause 6.2(a), measurement of Gas for purposes of the Gas Transportation Agreement shall be done by means of the Metering Equipment installed pursuant to Clause 6.1, except in cases specifically provided to the contrary in this Clause 6.

#### **6.4 FAILURE OF METERS**

If a Metering Station (or part thereof) is out of service or registering inaccurately, then the quantity of Gas delivered shall be determined:

- (a) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or, in the absence of (a), then
- (b) by estimating the quantity of delivery by deliveries during the periods under similar conditions when the meter was registering accurately; or, in the absence of both (a) and (b), then
- (c) by using the registration of any check meter or meters if installed and accurately registering.

#### **6.5 BOOKS AND RECORDS**

- (a) Epic Energy and the Shipper must prepare and maintain proper books and records, including meter readings and calibrations, of all matters pertaining to the transportation of Gas under the Gas Transportation Agreement. The Parties will keep those records for a minimum of 7 years.
- (b) A Party may, upon reasonable notice and its cost examine such books and records of the other Party that are directly related to the provision of the Transportation Service to verify any statement, invoice or claim under a Gas Transportation Agreement.

### **7 QUALITY**

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#### **7.1 GAS QUALITY AT RECEIPT POINTS**

Subject to clause 7.4 the Gas delivered by, or on behalf of, the Shipper to Epic Energy at a Receipt Point shall, at all times, be in accordance with the Gas Specifications.

#### **7.2 GAS QUALITY AT DELIVERY POINTS**

The Gas delivered by Epic Energy to the Shipper or to another person for the Shipper's account at a Delivery Point shall (provided that Gas delivered by or on behalf of the Shipper complies with clause 7.1) meet the Gas Specifications.

### 7.3 QUALITY TESTS

(a) **The Shipper to undertake Tests**

The Shipper shall undertake and pay for all testing and testing equipment necessary to ensure that the quality and properties of Gas at the Receipt Point meets the Gas Specifications. These tests shall include, but not be limited to, tests to determine the gas composition, total sulphur, hydrogen sulphide, mercaptans, carbon dioxide, nitrogen and oxygen content of the Gas, and the hydrocarbon dew point and water vapour content of such Gas, and any other substances which may be injurious to the SWQP or which do not meet the Gas Specifications, by approved standard methods in general use in the gas industry. Tests shall be made frequently enough to ensure that the Gas conforms to the Gas Specifications.

(b) **Costs of Tests**

Epic Energy shall have the right to collect from all shippers delivering Gas to Epic Energy at a common Receipt Point their pro rata share of the cost of any additional gas analysis and quality control equipment which Epic Energy, at its reasonable discretion, determines is required to be installed at such Receipt Point to monitor the quality of the Gas delivered.

### 7.4 EPIC ENERGY MAY ACCEPT OUT-OF-SPECIFICATION GAS

Epic Energy may at any time agree with a Shipper to accept gas into the SWQP which does not comply (in one or more respects) with the Gas Specifications (“**Out-of-Specification Gas**”).

### 7.5 THE SHIPPER’S LIABILITY FOR OUT-OF-SPECIFICATION GAS

If any Out-of-Specification Gas supplied by the Shipper enters the SWQP without Epic Energy’s prior written consent (which consent is in Epic Energy’s sole discretion), then despite any other provision of the Gas Transportation Agreement Terms and Conditions —

- (a) the Shipper shall be liable to Epic Energy for any and all loss and damage arising from that delivery, including indirect loss and damage; and
- (b) Epic Energy is, to the extent necessary to allow it to deal with that entry of Gas:
  - (i) entitled to vent the Gas and the Shipper shall be deemed not to have supplied a quantity of Gas at a Receipt Point equivalent to the quantity of all Gas necessarily vented by Epic Energy; and

- (ii) is relieved of any obligation to deliver gas to the Shipper by an amount no greater than the quantity of gas necessarily vented by Epic Energy pursuant to Clause 7.5(b)(i);  
and
- (c) The Shipper shall pay Epic Energy a surcharge calculated by multiplying each GJ of that Out-of-Specification Gas delivered at a Receipt Point by the Out-of-Specification Gas Rate.

## **7.6 PROCESSING RIGHTS**

All oil and liquid hydrocarbons separated from the Gas prior to receipt by Epic Energy shall remain the property of the Shipper. All liquids and liquefiable hydrocarbons recovered by Epic Energy after receipt of Gas by Epic Energy and prior to delivery of Gas by Epic Energy to the Shipper shall be and remain the exclusive property of Epic Energy.

## **7.7 ODORISATION**

Epic Energy shall have no obligation to odorise Gas delivered to the Shipper nor to maintain any odorant level. If Epic Energy is required by law to odorise the Gas, the Shipper shall reimburse Epic Energy for all costs incurred in odorising that Gas.

# **8 RECEIPT AND DELIVERY PRESSURES**

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## **8.1 RECEIPT PRESSURE**

- (a) Gas shall be supplied to Epic Energy at the Receipt Point at pressures sufficient to allow the Gas to enter the SWQP; provided that it shall not be delivered at pressures greater than the lesser of-
  - (i) the maximum allowable operating pressure of the SWQP or any portion of the SWQP that is utilised to transport the Shipper's Gas; or
  - (ii) 15,000 kPa,unless the Parties otherwise agree.
- (b) Epic Energy is under no obligation to modify its line pressures or to install compression or other facilities to:
  - (i) permit the entry of the Shipper's Gas in the SWQP; or
  - (ii) provide any Services.

## **8.2 DELIVERY PRESSURES**

Epic Energy shall deliver Gas to the Shipper at the Delivery Point at the pressure existing in the SWQP from time to time provided that the delivery pressure shall not exceed the MAOP.

## **9 MAXIMUM HOURLY QUANTITY**

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- (a) The shipper must not in any hour on a Day:
  - (i) deliver to Epic Energy at a Receipt Point; or
  - (ii) take delivery from Epic Energy at a Delivery Point,quantities of Gas in excess of the Shipper's MHQ at the applicable Receipt Point or Delivery Point.
  
- (b) If the Shipper exceeds its MHQ at the Receipt Point or a Delivery Point in any hour of a Day, then the Shipper shall, upon request by Epic energy, pay to Epic Energy a charge calculated by multiplying each GJ of Gas by which the Shipper has exceeded its MHQ at a Receipt Point or Delivery Point, by the Excess MHQ Rate.



## **10 POSSESSION OF GAS AND RESPONSIBILITY**

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### **10.1 CONTROL AND POSSESSION**

As between Epic Energy and the Shipper:

- (a) The Shipper shall be deemed to be in control and possession of Gas prior to its supply to Epic Energy at a Receipt Point and after the delivery of the Gas by Epic Energy for the Shipper's account at a Delivery Point; and
- (b) Epic Energy shall be in control and possession of the Gas following receipt of the Gas from the Shipper at a Receipt Point and prior to delivery of the Gas, less any System Use Gas, to the Shipper at a Delivery Point.

### **10.2 RESPONSIBILITY**

- (a) The Shipper shall have no responsibility or liability with respect to any Gas after it has been supplied to Epic Energy at the Receipt Points on account of anything which may be done, happen or arise with respect to that Gas, prior to the delivery of the Gas, less System Use Gas, to the Shipper at the Delivery Points;
- (b) Epic Energy shall have no responsibility or liability with respect to any Gas prior to its supply to Epic Energy at the Receipt Points or after its delivery to the Shipper at the Delivery Points on account of anything which may be done, happen or arise with respect to that Gas prior to receipt at the Receipt Points or after delivery at the Delivery Points

### **10.3 CO-MINGLING OF GAS**

Gas received by Epic Energy from the Shipper at a Receipt Point may be co-mingled with other Gas in the SWQP. Subject to Epic Energy's obligation to deliver at a Delivery Point an equivalent quantity of Gas (in GJs) received at a Receipt Point (less System Use Gas) in accordance with clause 7.2, Epic Energy shall be entitled to co-mingle Gas received and to deliver different molecules to the Shipper.

## **11 WARRANTY OF TITLE TO GAS**

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### **11.1 WARRANTY**

The Shipper warrants that:

- (a) at the time of supply of Gas to Epic Energy at a Receipt Point the Gas is free of any liens,
- (b) it has good title to, and the right to supply that Gas at the Receipt Point for transportation by Epic Energy under the Gas Transportation Agreement,
- (c) it has full power and authority to enter into the Gas Transportation Agreement.

### **11.2 INDEMNITY**

The Shipper shall indemnify Epic Energy and save it harmless from any loss, damage or expense arising from or out of any adverse claim of title to the Gas referred to in clause 11.1.

### **11.3 TITLE**

Except for System Use Gas and as provided in clause 10.1 (b), title to the Gas received by Epic Energy at Receipt Points shall not pass to Epic Energy.

## **12 NOMINATIONS**

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### **12.1 CUSTOMER REPORTING SYSTEM**

- (a) Epic Energy may establish a Customer Reporting System (“**CRS**”) for purposes which include nominations and scheduling of receipts and deliveries.
- (b) The Shipper is responsible for and shall bear its own costs of installing, maintaining and operating any equipment or software required to enable the Shipper to access and interface with the CRS.
- (c) When the CRS is installed:
  - (i) The pro forma agreement set out in the Gas Transportation Guide shall govern the shipper’s use of and access to the CRS (including provisions relating to nominations procedures which

may supersede the nominations procedures set out in clause 11.2); and

- (ii) The CRS shall become the medium through which to provide nominations, scheduling and other operational communications.

## **12.2 PRIOR TO CRS**

Until a CRS of the nature referred to in Clause 12.1 is installed, the Shipper will comply with the following nomination procedures:

### **(a) Beginning of the Month Nominations by Shipper**

- (i) Unless otherwise agreed, the Shipper shall provide Epic Energy with a completed Nomination Form no later than three (3) Business Days prior to the beginning of each Month in which Gas will be supplied by the Shipper.
- (ii) The Shipper may provide Epic Energy with a nomination for more than one Month in advance, which shall remain in effect until the Shipper provides Epic Energy with a revised nomination.
- (iii) In the absence of the receipt by Epic Energy of a completed Nomination Form for the beginning of each Month or a nomination for any extended period in accordance with paragraph (ii) above, the nomination that was previously in effect shall remain in full force and effect.

### **(b) Change in Nomination**

- (i) If the Shipper wishes to change its nomination, made under clause 12.2(a) for any Day in the applicable Month, then the Shipper shall provide Epic Energy with a completed Nomination Form for all quantities to be transported on that Day at least 24 hours prior to the commencement of any subsequent Day (unless a lesser period of time is agreed). Provided that the Nomination Form is received at least 24 hours prior to the commencement of the relevant Day (and is within the Shipper's MDQ), the Shipper's nomination for that Day shall be adjusted accordingly.
- (ii) If, for any reason receipts or deliveries vary from the nominated and scheduled quantities, then the Shipper shall provide, or direct persons nominated by the Shipper to provide, notice of any changes to Epic Energy

### **(c) Manner of Submitting Nominations**

The Nomination Form shall be provided to Epic Energy by facsimile or electronic communication to the location, or such other location as Epic Energy may advise in the Gas Transportation Guide or otherwise.

### **12.3 NOTIFICATION BY TRANSPORTER**

If any of the quantities of Gas nominated by the Shipper are not scheduled for transport by Epic Energy pursuant to Clause 13, Epic Energy shall advise the Shipper by telephone (to be confirmed in writing), facsimile or electronic means as soon as possible (and in any event no later than 12 hours after the last time specified in Clause 12.2 for lodging nominations by the Shipper) of the quantities of Gas not scheduled for transport and the reason that those quantities were not scheduled.

### **12.4 UNAUTHORISED DELIVERIES**

If the Shipper supplies Gas at a Receipt Point prior to the submission of a Nomination Form, Epic Energy, at its election, may charge the Shipper at the Unauthorised Overrun Rate for each GJ of Gas received by Epic Energy at the Receipt Point prior to the submission of a Nomination Form.

### **12.5 ARRANGEMENTS PRIOR TO RECEIPT AND AFTER DELIVERY**

The Shipper shall, where reasonably necessary to fulfil its obligations under the Gas Transportation Agreement, make arrangements with other persons for the supply of Gas to the Receipt Point and for the acceptance of Gas at the Delivery Point. Those arrangements shall include entering into all necessary gas transportation agreements or other arrangements and submitting any necessary nominations to upstream or downstream facilities that are compatible with the nominations provided to Epic Energy.

## **13 SCHEDULING**

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### **13.1 GENERAL SCHEDULING OF RECEIPTS AND DELIVERIES**

Epic Energy and the Shipper agree that the following procedures shall apply regarding general scheduling of receipts and deliveries:

- (a) Following the receipt of a nomination by the Shipper in accordance with Clause 12, Epic Energy shall schedule the receipts and deliveries of Gas nominated by the Shipper in accordance with this clause 13;
- (b) Where the Shipper is unsure of the ability of the Interconnect Party to receive or deliver Gas, the Shipper shall notify Epic Energy and shall confirm with the Interconnect Party at the Receipt Point the receipt of the quantities nominated by the Shipper for receipt at the Receipt Point and shall confirm with the Interconnect Party at the Delivery Point the acceptance of the quantities nominated by the Shipper for delivery at the Delivery Point;

- (c) Epic Energy shall schedule for receipt at the Receipt Point the lesser of:
- (i) the quantity of Gas nominated by the Shipper at a Receipt Point,
  - (ii) the quantity of Gas nominated by the Shipper at a Delivery Point,
  - (iii) the quantity of Gas confirmed for delivery at a Receipt Point by the Interconnect Party at a Receipt Point, and
  - (iii) the quantity of Gas confirmed for receipt at a Delivery Point by the Interconnect Party at a Delivery Point,
- less System Use Gas and any Gas required to correct a Shipper's Imbalance.
- (d) In no event will Epic Energy be obligated to schedule for delivery at a Delivery Point more Gas than is scheduled to be received at the Receipt Point (which shall not in any event exceed the Shipper's MDQ less any System Use Gas);

### **13.2 SCHEDULING PRIORITIES**

- (a) If there is not sufficient capacity to transport all the quantities of Gas nominated by all shippers on the SWQP on a Day that those quantities are to be transported by Epic Energy, then Epic Energy shall schedule the quantities nominated by the shippers (including the Shipper) in the priority and sequence described below:
- (i) First - Quantities nominated by shippers with agreements for Full Forward Haul Service (or agreements for services substantially the same as Full Forward Haul Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service shippers, not to exceed their respective MDQs or Receipt and Delivery Point MDQs. If the capacity available is not sufficient to serve all those shippers' nominated quantities, then the available capacity shall be allocated among those shippers (of equal priority) pro rata on the basis of MDQ or Receipt and Delivery Point MDQs. Such scheduling limitations shall be applied only to the portion or portions of the SWQP that is capacity constrained.
  - (ii) Second - Quantities nominated by shippers with agreements for Full Forward Haul Service (or agreements for services substantially same as Full Forward Haul Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service shippers in excess of their respective MDQs or in excess of their respective Receipt and Delivery Point MDQs pursuant to Authorised Overrun Services. If the capacity available is not sufficient to serve all those shippers' nominated and Authorised Overrun Quantities (of equal priority), then the available capacity shall be allocated among those shippers pro rata based on nominated Authorised Overrun Quantities.

- (iii) Third - Quantities nominated by shippers with agreements for Services other than Full Forward Haul Service (or agreements for services substantially the same as Full Forward Haul Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service. If the capacity available is not sufficient to serve all shippers requesting such Services, then Epic Energy shall allocate the available capacity on a pro rata basis among those shippers on the basis of nominated quantities.
  
- (b) If there is not sufficient capacity to transport all the quantities of Gas any Back Haul will be scheduled in accordance with the priorities set out in paragraph (a) to the extent that sufficient Forward Haul is scheduled on such Day.
  
- (c) The scheduling priorities and capacity allocation methodologies set out in this clause 13.2 shall control and govern the provision of service on the SWQP notwithstanding anything to the contrary which may be expressed or implied in a Gas Transportation Agreement or any other agreement setting forth the operational protocol between Epic Energy and a shipper.

## **14 CURTAILMENT OF RECEIPTS AND DELIVERIES**

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### **14.1 INSUFFICIENT CAPACITY**

- (a) If on any Day after scheduling the Gas for Transportation Service for all shippers in accordance with Clause 13, the capacity of the SWQP or any portion of it, or any Receipt Point or Delivery Point, is, for any reason, insufficient to serve all the quantities of Gas scheduled for all shippers in accordance with Clause 13, then Epic Energy shall be permitted to curtail or interrupt the receipt, transportation or delivery of Gas (as the case may be) in accordance with the sequence and priorities set out below to the extent necessary to maintain priority of service:
  - (i) First - Quantities scheduled for transportation pursuant to agreements for Services other than Full Forward Haul Service (or agreements for services substantially the same as Full Forward Haul Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service. If the capacity available is not sufficient to serve all shippers requesting such services, then Epic Energy shall allocate the available capacity on a pro rata basis among shippers on the basis of nominated quantities,
  
  - (ii) Second - Quantities scheduled for transportation to shippers with agreements for Full Forward Haul Service (or agreements for services substantially the same as Full Forward Haul

Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service shippers in excess of their respective MDQs or in excess of their respective Receipt and Delivery Point MDQs pursuant to Authorised Overrun Services. If the capacity available is not sufficient to serve all those shippers' scheduled Overrun Quantities, then the available capacity shall be allocated among those shippers pro rata based on scheduled Overrun Quantities

- (iii) Third - Quantities scheduled for transportation to shippers with agreements for Full Forward Haul Service (or agreements for services substantially the same as Full Forward Haul Service including part haul and back haul services for which the shipper pays a monthly charge to reserve capacity in the SWQP) and Existing Firm Service, not to exceed their respective MDQs or their respective Receipt and Delivery Point MDQs. If the capacity available is not sufficient to serve all those shippers' scheduled quantities at their respective Receipt Points and/or Delivery Points, then the available capacity shall be allocated among those shippers pro rata on the basis of their MDQs or Receipt and/or Delivery Point MDQs. Such scheduling limitations shall be applied only to the portion or portions of the SWQP that are capacity constrained
- (b) The scheduling priorities and capacity allocation methodology set out in this Clause 14.1 shall control and govern service on the SWQP notwithstanding anything to the contrary which may be expressed or implied in a Gas Transportation Agreement or any other agreement between Epic Energy and a shipper regarding operational matters at the Receipt Point.

## **14.2 OPERATIONAL FLOW ORDERS**

- (a) Epic Energy shall have the right at any time to issue orders to the Shipper or the Shipper's Receipt Point or Delivery Point operators to alter gas receipts and deliveries:
  - (i) to alleviate conditions which threaten the integrity of the SWQP; and
  - (ii) to maintain pipeline operations that are necessary to provide efficient and reliable firm haulage services.
- (b) Epic Energy may provide notice of such orders to the Shipper either in writing (including by fax) or by electronic means.
- (c) The Shipper shall take, or cause its respective operators of its Receipt Point and/or Delivery Point to take the actions requested by Epic Energy.
- (d) Without limiting Epic Energy's available remedies, if the Shipper fails to comply, or fails to cause its operator to comply, with such operational flow orders, then Epic Energy may charge the Shipper the

Unauthorised Overrun Rate for each GJ of Gas by which the Shipper or its operator deviates from the operational flow order. Notwithstanding the above, Epic Energy shall be entitled to take any reasonable actions to maintain the operational integrity of its system. Epic Energy shall not be liable for its failure to deliver gas to the Shipper that is caused by the failure of shippers to take actions in accordance with operational flow orders issued by Epic Energy.

### **14.3 PROVISION OF NOTICE AND RESPONSIBILITY**

- (a) Epic Energy will provide the Shipper with notification of any curtailment, interruption or discontinuance to be invoked by Epic Energy in accordance with Clause 14 at a time and in a manner that is reasonable under then existing conditions, and will in any event confirm in writing any such notification or curtailment notice that was issued verbally.
- (b) The Shipper will be solely responsible for informing all affected Interconnect Parties and downstream entities of all notifications made under this clause 14.

### **14.4 CURTAILMENT COMPLIANCE**

- (a) Shipper will be allowed 1 hour (or such greater time as is stipulated by Epic Energy) as being required to protect the integrity of the SWQP system or to protect Epic Energy's ability to accept and deliver properly scheduled quantities of Gas for all shippers on the Day (or subsequent Days), to comply with the requirements of any Curtailment Notice and in any event must not exceed its MHQ.
- (b) If the Shipper does not comply with the requirements of a Curtailment Notice within the time period stipulated by Epic Energy, Epic Energy may take action to give effect to those requirements.

### **14.5 EMERGENCIES, PIPELINE INTEGRITY, ETC**

In addition to Epic Energy's rights set out elsewhere in the Gas Transportation Agreement, and despite anything to the contrary contained in the Gas Transportation Agreement, Epic Energy will be entitled to curtail, interrupt or discontinue the Transportation Services either totally or partially for any period of time which Epic Energy considers to be necessary because of any condition, situation or circumstance that Epic Energy considers will or may:



- (a) present a threat of danger to the life, health or property of any person;  
or
- (b) jeopardise the operational efficiency or integrity of the SWQP system;  
or
- (c) in order to comply with the requirement of the Licence, any government agency or any law.

In the event of any such curtailment, interruption or discontinuation, the other provisions of this Clause 14 will apply **except** that the 1 hour period referred to in Clause 14.4 may be reduced by Epic Energy (to zero if necessary).

## **15 ALLOCATION OF DELIVERIES AND CORRECTION OF IMBALANCES**

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### **15.1 ALLOCATION OF RECEIPTS AND DELIVERIES**

If on a Day the quantities of Gas actually received at a Receipt Point or delivered at a Delivery Point do not equal the quantities scheduled by Epic Energy in accordance with clauses 13.1 and 13.2, then those quantities actually received or delivered by Epic Energy (as the case may be) shall be allocated among shippers and Services as follows:

**(a) Predetermined Allocation Methodology**

The Shipper shall cause the Interconnect Party at the applicable Receipt or Delivery Point to advise Epic Energy in advance of Gas flow of the methodology to be used in allocating receipts and deliveries at the applicable Receipt or Delivery Point, provided that those methodologies must allocate receipts and deliveries based upon nominations which have been confirmed with the Interconnect Party. Epic Energy shall not accept an allocation from an Interconnect Party if the Shipper or any person authorised by the Shipper notifies Epic Energy that the Interconnect Party is not authorised to provide such an allocation; or

**(b) Pro Rata Allocation Methodology**

If the Interconnect Party does not provide predetermined allocations in accordance with paragraph (a) then Epic Energy may allocate quantities to the Shipper in proportion to the Shipper's pro rata share of scheduled quantities in accordance with clauses 13.1 and 13.2 at the applicable Receipt or Delivery Point.

## **15.2 CHANGE IN ALLOCATION PROCEDURES**

Upon the provision of not less than 14 Days notice to Epic Energy, the Shipper may change its allocations and allocation methodologies prospectively at the beginning of any Month. Allocations and methodologies may not be changed during a Month and may never be changed retrospectively.

## **15.3 RECORDS OF SCHEDULED QUANTITIES**

Epic Energy shall keep accurate records of the quantities of Gas scheduled for transportation in accordance with clauses 13.1 and 13.2, any scheduling variances and any imbalances. These records shall be available for the Shipper to review at its request, and at its cost.

## **15.4 CORRECTION OF IMBALANCES ON OTHER SYSTEMS**

Except as provided by the Gas Transportation Agreement or as required by good engineering practice, Epic Energy shall not be responsible for eliminating any imbalances between the Shipper and any other person operating connecting facilities, and shall not be obliged to adjust or deviate from its standard operating and accounting procedures in order to alleviate those imbalances. If Epic Energy takes any action pursuant to this clause, that shall not relieve the Shipper of any liability the Shipper may otherwise have to Epic Energy.

# **16 DISPUTE RESOLUTION**

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## **16.1 RESOLUTION OF TECHNICAL AND FINANCIAL MATTERS**

### **(a) Technical and Financial Matters**

For the purposes of this clause

- (i) A “**technical matter**” means a matter involving issues relating to the transportation of Gas under the Gas Transportation Agreement which is only capable of determination by reference to engineering or scientific knowledge and practice and
- (ii) A “**financial matter**” means a matter involving financial calculations which is only capable of determination by audit or reference to accounting knowledge or practice.

### **(b) Reference to Independent Expert**

If any claim, dispute or question (**Dispute**) arises between the Shipper and Epic Energy confined to a technical matter or a financial matter, then the Parties shall refer the Dispute to the determination of an independent expert (**Independent Expert**).

**(c) Appointment of Independent Expert**

The Party wishing to have the issue determined by the Independent Expert shall give written notice to that effect to the other Party specifying the nature of the Dispute. The Parties shall meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 30 Days of the notice, then either Party may refer the matter:

- (i) if it is a technical matter, to the President for the time being of the Institute of Engineers of Australia; or
- (ii) If it is a financial matter, to the President for the time being of the Institute of Chartered Accountants in Australia; or
- (iii) In either case, if the relevant body referred to in subparagraphs (i) or (ii) no longer exists then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the relevant body;

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

**(d) Expert not an Arbitrator**

The Independent Expert appointed under paragraph (c) shall act as an expert and not as an arbitrator and shall have no interest or duty which conflicts, or which may conflict, with his function as the Independent Expert and shall not be a former or current employee or representative of the Shipper or Epic Energy or of a Related Company of either of them. The person nominated as the Independent Expert shall be required by the Parties to disclose fully any interest or duty which may conflict with his position before his appointment as Independent Expert.

**(e) Evidence and Representation**

Each Party may be legally represented at any hearing before the Independent Expert and shall be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute. The Parties shall make available to the Independent Expert all materials requested by him and all other materials which are relevant to his determination. The Independent Expert shall not be bound by the rules of evidence. Subject to any privileges under law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination shall be kept confidential.

**(f) Powers**

The Independent Expert shall have the power to inform himself independently as to the facts to which the Dispute relates and to take such measures as he thinks fit to expedite the determination of the Dispute.

**(g) Determination**

The Independent Expert shall make a determination on the Dispute and shall determine what, if any, adjustments may be necessary between the Parties. The determination of the Independent Expert shall be final and binding upon the Parties.

**(h) Costs**

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

- (i) unless the Parties otherwise agree, the amount of the costs of determination of the issue by the Independent Expert shall be borne equally by the Shipper and Epic Energy.
- (ii) The remuneration of the Independent Expert shall, unless the Parties otherwise agree before the submission of the issue to the Independent Expert, or if there is a disagreement over the amount of that remuneration, be finally determined by the President for the time being of the appropriate professional Institute referred to in paragraph (c) of this clause.

In the absence of agreement between the Parties under sub-paragraph (i) the Independent Expert shall determine which Party shall bear the costs referred to in sub-paragraph (i) and in what proportion, having regard to the degree to which he considers that Party was at fault or unreasonable in failing to agree to the matter under reference to him; and that Party shall bear those costs accordingly; and

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

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## **17 INVOICING AND PAYMENT**

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### **17.1 INVOICING**

- (a) On or before the 10th day of each Month, Epic Energy shall render an invoice to the Shipper for services rendered during the preceding Month and shall furnish to the Shipper a reconciliation and measurement statement in respect of that Month showing:
  - (i) the quantity of Gas received at each Receipt Point;
  - (ii) the quantity of Gas delivered at each Delivery Point;
  - (iii) the Shipper's share of System Use Gas used; and
  - (iv) the calculation of the Monthly Reservation Charge for the following Month, any reductions thereof and other charges provided for under the Gas Transportation Agreement.

- (b) When information necessary for invoicing purposes is in the control of the Shipper, the Shipper shall furnish such information to Epic Energy on or before the fifth day after the end of the Month.

## **17.2 PAYMENT**

The Shipper will pay each invoice by direct payment to a bank account nominated by Epic Energy within 15 days of receipt of the invoice from Epic Energy.

## **17.3 SHIPPER'S DISPUTE**

If the Shipper in good faith dispute part of all of an amount invoiced:

- (a) the Shipper shall, within 7 Days after receipt of the invoice, notify Epic Energy in writing specifying the amount in dispute and the reasons for the dispute; and
- (b) the Shipper shall pay in accordance with Clause 17.2 that part of the amount invoiced not in dispute; and
- (c) the shipper may, subject to Clause 17.4, withhold that part of the amount invoiced in dispute; and
- (d) each Party will appoint an officer to meet with the other Party's officer to try to resolve the dispute and if the officers are unable to resolve the dispute within 7 Days then either Party may refer the matter to an Independent Expert for determination as a financial matter in accordance with Clause 16.

## **17.4 INTEREST ON DISPUTED OR INCORRECT AMOUNT**

If, as a result of the resolution of:

- (a) A dispute of the nature described in Clause 17.3; or
- (b) An incorrect invoice as described in Clause 17.5,

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

- (c) In the case of the Shipper, the date the amount should have been paid in accordance with this Clause 17; or
- (d) In the case of Epic Energy, the date Epic energy received the payment from the Shipper.

### **17.5 INCORRECT INVOICES**

- (a) If the Shipper:
  - (i) Has been overcharged or undercharged; and
  - (ii) Has paid the invoice(s) to which the overcharge(s) or undercharge(s) relate(s),

Then, within 14 Days after the error has been discovered and the amount has either been agreed by the Parties or determined pursuant to Clause 17.3, either:

  - (iii) Epic Energy will repay the Shipper the amount of the overcharge (together with Interest in accordance with Clause 17.4); or, as the case may be;
  - (iv) The Shipper will pay to Epic Energy the amount of the undercharge (together with Interest in accordance with Clause 17.4).
- (b) A Party may not claim from the other any amount overcharged or undercharged if more than 18 months have elapsed since the date of the Invoice in question.

### **17.6 DEFAULT INTEREST**

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

### **17.7 FAILURE TO PAY INVOICE**

- (a) If the Shipper fails to pay an invoice in the time required by this clause 16 (other than amounts which the Shipper in good faith disputes and which have not been the subject of a final determination by the Independent Expert), then Epic Energy may suspend the provision of Services to the Shipper from the 14<sup>th</sup> Day following the Day on which payment was due.
- (b) If Epic Energy has suspended Services to the Shipper for a period of not less than 21 Days, then without limiting Epic Energy's other rights and remedies against the Shipper, Epic Energy may terminate the Gas Transportation Agreement.

## **18 FORCE MAJEURE**

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### **18.1 DEFINITION**

For the purposes of the Gas Transportation Agreement, Force Majeure means any event or circumstance not within the control of a Party and which by the exercise of due diligence, that Party is not reasonably able to prevent or overcome, including without limiting the generality of the nature of those events or circumstances:

- (a) acts of God, including without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- (b) strikes, lockouts, bans, slowdowns or other industrial disturbances;
- (c) acts of enemy, wars, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
- (d) fire or explosion;
- (e) epidemic or quarantine;
- (f) order of any court or the order, act, or omission or failure to act of any government or governmental authority having jurisdiction, failure to obtain any necessary governmental consent or approval;
- (g) accident, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance for which notice has not been given), freezing of wells or pipelines;
- (h) In the case of the Shipper, declaration of an event of force majeure (defined in terms substantially similar to those set out in this clause) by another person under the provisions of any transportation agreement, or gas supply agreement, or other agreement which has been entered into by the Shipper with that person, which affects the ability of the Shipper to perform its obligations under the Gas Transportation Agreement.

It is acknowledged that lack of finances, lack of funds, changes in market conditions for transportation and the purchase and sale of gas, the lack of necessary gas reserves, or inability to borrow funds shall not in any circumstances be events of Force Majeure under the Gas Transportation Agreement.

### **18.2 CONSEQUENCES OF FORCE MAJEURE**

- (a) Subject to clause 18.3, non-performance as a result of Force Majeure by any of the Parties of any obligation or condition required by the Gas Transportation Agreement to be performed:

- (i) shall be excused during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure; and
- (ii) shall not to that extent give rise to any liability to any other Party for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with that non-performance.
- (iii) In respect of any Month in which an event of Force Majeure occurs or is continuing the Monthly Reservation Charge shall not be reduced and is payable by the Shipper in accordance with the Gas Transportation Agreement.

### **18.3 NOTIFICATION AND DILIGENCE**

A Party which is, by reason of Force Majeure, unable to perform any obligation or condition required by the Gas Transportation Agreement to be performed shall:

- (a) notify the other Party as soon as possible giving
  - (i) reasonably full particulars of the event or circumstances of Force Majeure,
  - (ii) the date of commencement of the event or circumstance and an estimate of the period of time required to enable it to resume full performance of its obligations, and
  - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure as expeditiously as possible, but nothing in this clause 18 shall require a Party to settle a strike, lockout, ban, slowdown or other industrial disturbance against its judgment, and it is acknowledged that settlement of any such disturbance shall be entirely within the discretion of the Party affected;
- (c) resume performance as expeditiously as possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of performance;
- (d) notify the other Party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur; and
- (e) notify the other Party when resumption of performance has occurred.



#### **18.4 LIABILITY NOT RELIEVED**

Such events or circumstances affecting the performance under the Gas Transportation Agreement by either Epic Energy or the Shipper, however, shall not relieve that Party of liability in the event, and to the extent that, its negligence caused or contributed to its failure to perform under the Gas Transportation Agreement or in the event of its failure to use all reasonable endeavours to remedy the situation and to remove the event or circumstances giving rise to the Force Majeure in an adequate manner with all reasonable dispatch; nor shall such events or circumstances affecting such performance relieve either Party from its obligations to make payments of amounts then due in respect of Gas previously delivered.

#### **18.5 PROLONGED FORCE MAJEURE**

If a Party has invoked the provisions of this clause 18 and the same event of Force Majeure prevents or inhibits the performance of any obligation or condition required to be performed under the Gas Transportation Agreement for a period of 12 Months, then Epic Energy and the Shipper shall consult in good faith to decide what action should be taken to carry out the intentions of the Gas Transportation Agreement. If the Parties are unable to agree that the Force Majeure can reasonably be resolved, then either Party may terminate the Gas Transportation Agreement by giving to the other not less than 2 Months prior written notice to that effect; and thereafter neither Party shall be under any further obligation to the other, but each Party shall remain responsible for the performance of their respective obligations under the Gas Transportation Agreement arising prior to the date of termination.

### **19 COMPLIANCE WITH LAW, REGULATION AND AGREEMENT**

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The Parties will co-operate on a reasonable basis to ensure compliance with all laws, regulations, and governmental authorisations, including maintaining and obtaining all necessary governmental authorisations to perform their respective obligations under the Gas Transportation Agreement.

### **20 TERMINATION**

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- (a) If a Party ("**Defaulting Party**") fails to perform any of its material obligations under the Gas Transportation Agreement, then the other Party ("**Non-Defaulting Party**") may give written notice to the Defaulting Party specifying the nature of the default and the actions that must be taken to remedy such default.
- (b) If the Defaulting Party has not, within thirty Days after receipt of that notice, remedied, or commenced the appropriate action to remedy the failure, or the Non-Defaulting Party has not waived its rights in respect of that failure, then the Non-Defaulting Party may give a written notice to the Defaulting Party expressing its intent to terminate the Gas Transportation Agreement (for any

default affecting all Services under the Gas Transportation Agreement), or to terminate the Services under the Gas Transportation Agreement that are affected by the default (for any default affecting only a portion of the Services under the Gas Transportation Agreement).

- (c) Within thirty Days of receipt of such notice, the Defaulting Party must show what actions it has or is taking to remedy such default. If at that time, the Defaulting Party has not taken the appropriate action to remedy, or has not commenced the appropriate action to remedy and pursued such remedy with due diligence, then the Non-Defaulting Party may, subject to paragraph (d), terminate the Gas Transportation Agreement or the portion of the Services to which the default relates.
- (d) The exercise of any termination rights in accordance with this clause will be without prejudice and will not affect any right of action or remedy which has accrued or may accrue in favour of either Party.

## **21 NOTICES**

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### **21.1 NOTICES**

- (a) Any notice under the Gas Transportation Agreement, shall be given in writing (unless otherwise specified) and shall be considered as having been given if delivered:
  - (i) personally,
  - (ii) by facsimile,
  - (iii) by mail with all postage and charges prepaid to either the Shipper or Epic Energy at the place designated, or
  - (iv) by CRS.
- (b) Any communications sent by facsimile shall be deemed to have been received on the date of dispatch if a transmission report from the sending facsimile machine indicates that the facsimile was sent in its entirety to the facsimile number of the addressee. If a notice is sent by facsimile after 5pm in the place to which the notice is sent, then the notice will be deemed to be received on the next Business Day.
- (c) Any communication sent by CRS shall be deemed delivered on the Day the communication is sent, as evidenced by the date imprinted on the CRS communication.
- (d) Routine communications shall be considered as duly delivered when mailed by ordinary mail.
- (e) Normal operating instructions may be made by telephone, electronic media or facsimile.

## **22 ASSIGNMENT**

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### **22.1 INUREMENT**

The Gas Transportation Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees.

### **22.2 ASSIGNMENT**

- (a) Except as set out in the Access Arrangement (in respect of a Bare Transfer or conditional transfer) and this clause 22, no assignment or transfer of the Gas Transportation Agreement by either Party shall be made without the written consent of the other Party, which shall not be unreasonably withheld.
- (b) No such consent of Epic Energy or the Shipper shall be required when an assignment by the Shipper or Epic Energy is the result of, and part of, a corporate acquisition, or a merger or reorganisation relating to Epic Energy or the Shipper or to a Related Company, or by one Shipper to another Shipper, provided that the assignor shall not be relieved of or released from any rights, duties, liabilities and obligations so assigned without the written consent of the other Party, which shall not be unreasonably withheld.
- (c) Subject to paragraphs (a) and (b) and to the right of the non-assigning Party to require execution of a deed of assignment on terms agreed upon by Epic Energy and the Shipper, the assignor under an assignment consented to by the non-assigning Party in accordance with this clause shall be relieved and released of all rights, duties, liabilities and obligations so assigned, except to any and all such rights, duties, liabilities and obligations that have arisen prior to the permitted assignment.
- (d) Nothing contained in this clause shall prevent either Party from pledging, mortgaging or assigning its rights under the Gas Transportation Agreement as security for its indebtedness and either Party may assign to the pledgee or mortgagee (or to a trustee for the holder of such indebtedness) any money due or to become due under the Gas Transportation Agreement; provided that the pledgee, mortgagee or assignee enters into a deed with the non-assigning Party which is reasonably satisfactory to the non-assigning Party to observe and be bound by the provisions of the Gas Transportation Agreement as if it were a Party to the Gas Transportation Agreement.
- (e) Any assignment under this clause shall become effective on the first day of the Month following the execution by the assignee of a deed under which the assignee shall undertake in favour of the non-Assigning Party to observe and perform, and to be bound by the Gas Transportation Agreement in every way as if the assignee were a Party to the Gas Transportation Agreement instead of the assignor.

- (f) Upon the reasonable request of either Party, the other Party shall acknowledge in writing any permitted assignment described in this clause and, subject to the provisions of this clause 22.2, the right of any permitted assignee (and any assignee upon enforcement of any assignment made as security for indebtedness) to enforce the Gas Transportation Agreement against the other Party, and shall also deliver such certificates and copies of corporate documents as may be reasonably requested by the permitted assignee relating to that Party, the Gas Transportation Agreement or other relevant matter.

## **23 CONFIDENTIALITY**

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### **23.1 DISCLOSURE WITH CONSENT**

- (a) Except as provided in clause 23.2, the terms of the Gas Transportation Agreement, and all data and information acquired or received by a Party pursuant to the Gas Transportation Agreement shall remain confidential and shall not be disclosed to any other person for any purpose without the prior written consent of the other Party.
- (b) Where a Party seeks consent to make a disclosure, it shall notify the other Party of the content of the proposed disclosure and the identity of all persons to whom the disclosure is intended to be made.
- (c) A disclosure proposed to be made in accordance with the consent of the other Party shall only be made if any person to whom the disclosure is intended to be made agrees in writing on terms acceptable to the consenting Party to keep the information confidential.

### **23.2 DISCLOSURE ON CONDITIONS**

Subject to the provisions of this clause 23, a Party may, without obtaining consent under clause 23.1 disclose data and information which would otherwise require consent under that clause in any of the following circumstances and upon the following conditions:

- (a) to the extent required by applicable laws or by regulations of any government or governmental agency having jurisdiction over that Party;
- (b) to the extent required by any securities commission having jurisdiction over that Party, or by the rules of any stock exchange on which are listed the shares in the capital of that Party or a Related Company of that Party;

- (c) to the extent that the information is at that time lawfully generally available to the public, other than as a result of a breach of the Gas Transportation Agreement;
- (d) to the extent required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from the Gas Transportation Agreement; or as required for a determination by the Independent Expert under clause 16;
- (e) to any Related Company of a Party;
- (f) to a bank or other financial institution in connection with the organisation of the Party's financial affairs;
- (g) to a third person which has entered into a contract with a Party for the sale of substantially all of a Party's assets or a contract for the sale of shares of a Party or a Related Company of a Party; and
- (h) to the employees, directors, consultants, contractors, lawyers, auditors and other persons for the purposes of the Gas Transportation Agreement and the transactions contemplated by the Gas Transportation Agreement.

### **23.3 ADVANCE NOTICE OF DISCLOSURE**

A Party shall, whenever practicable and permitted by law, prior to making any disclosure permitted by paragraphs (a), (b), (c) or (d) of clause 23.2, advise the other Party of the form and content of the proposed disclosure and will provide the other Party with a reasonable opportunity to comment on the proposed disclosure.

### **23.4 CONFIDENTIALITY UNDERTAKING**

A Party shall, prior to making any disclosure to a person as permitted by paragraphs (e), (f) and (g), and to any contractor or consultant permitted by paragraph (h) of clause 23.2, require any person to whom it intends to make the disclosure to enter into a written undertaking in favour of, and in a form acceptable to, the Parties to keep the information to be disclosed confidential in accordance with clause 23.1.

### **23.5 CONTINUING OBLIGATION**

The obligations of confidentiality under this clause 23 shall survive the termination of the Gas Transportation Agreement, and notwithstanding that a corporation has ceased to be a Related Company of a Party shall be observed for a period of 2 Years from the date of termination of the Gas Transportation Agreement or cessation as the case may be.

## **24 INSURANCES**

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- (a) Subject to Clause 24(d), the Shipper shall procure and maintain at its own expense throughout the duration of the Gas Transportation Agreement the following insurances with insurers having a reputation satisfactory to a reasonable and prudent person —
- (i) worker's compensation insurance in accordance with the *Workcover Queensland Act 1996*, and for the Shipper's common law liability to workers;
  - (ii) property damage insurance against damage, loss or destruction of the Shipper's plant and equipment at the Receipt Point or Delivery Point; and
  - (iii) liability insurance for such amount as Epic Energy may reasonably require (not exceeding \$100 million indexed for CPI) against risk of loss, damage, death or injury to property or personnel (however caused) of Epic Energy, the Shipper or the public in connection with, related to or arising out of the Gas Transportation Agreement.
- (b) The Shipper shall arrange for Epic Energy's interest to be noted on those policies to the satisfaction of Epic Energy so that Epic Energy is covered under those policies and for the insurers to waive rights of subrogation against Epic Energy.
- (c) The Shipper shall, prior to the commencement of the Gas Transportation Agreement and prior to the commencement of each Year thereafter, provide Epic Energy with certificates of currency of the insurances and endorsements required by this Clause.
- (d) Epic Energy may waive compliance by the Shipper with any or all of the requirements of paragraphs (a), (b) and (c) of Clause 24 if Epic Energy;
- (ii) is satisfied that the Shipper has adequate alternative arrangements;
  - (iii) accepts the Shipper as a self-insurer; or
  - (iv) determines that there is other sufficient reason to do so.

## **25 MISCELLANEOUS PROVISIONS**

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### **25.1 WAIVER OF DEFAULT**

No waiver by any Party of any of its rights in respect of any default by the other Party in the performance of any provisions of the Gas Transportation Agreement shall operate or be construed as a waiver of any other right in respect of any other default, including a future default or defaults, whether of a like or of a different character.

## **25.2 LIMITATION OF LIABILITY**

Subject to clause 7.5, any damages resulting from a breach of the Gas Transportation Agreement by either Epic Energy or the Shipper shall be limited to the actual damages incurred by the Party claiming damages, PROVIDED THAT neither Party shall be liable for any claims or causes of action arising under the Gas Transportation Agreement for consequential or incidental damages including, but not limited to, any claims of indirect losses, loss of business opportunity or of lost profits, liability to a third party, or for punitive or exemplary damages.

## **25.3 GOVERNING LAW**

The Gas Transportation Agreement shall be construed in accordance with the laws of the State of Queensland and the Parties submit to the jurisdiction of the courts of that State and agree to be bound by any decisions of those courts and any courts having jurisdiction to hear appeals from those courts.

## **25.4 ENTIRE AGREEMENT**

These Additional Terms and Conditions, read with the Access Principles, the Definitions and an accepted Gas Transportation Request, constitute the entire agreement between Epic Energy and the Shipper pertaining to the Transportation Service and supersede all prior agreements, representations, warranties, promises and understandings, correspondence or negotiations, oral or written, which the Parties may have in connection with the Transportation Service. Trade usage or custom shall not override any term of the Gas Transportation Agreement.

## **25.5 SEVERABILITY**

If any provision of the Gas Transportation Agreement is construed as illegal or void, then the legality or validity or enforceability of any other provision of the Gas Transportation Agreement shall not be affected, and the illegal or invalid or void provisions shall be deemed to be deleted from the Gas Transportation Agreement to the same extent and effect as if they were never incorporated in the Gas Transportation Agreement, but all other provisions of the Gas Transportation Agreement shall continue in force unless the deletion of the provisions has substantially altered the commercial efficacy of the Gas Transportation Agreement.

## **25.6 NO BENEFIT TO OTHER PERSONS**

Neither Epic Energy nor the Shipper intend that the provisions of the Gas Transportation Agreement are to benefit, or affect contractually in any way, any other person. No person, other than valid assignees, shall have any right to enforce the terms of the Gas Transportation Agreement against the Shipper or Epic Energy.

## **25.7 INTERPRETATION OF AGREEMENT**

In the interpretation and construction of the Gas Transportation Agreement, no presumption shall be made against any Party on the grounds that that Party drafted the Gas Transportation Agreement or any provision of the Gas Transportation Agreement.

## **25.8 ENFORCEABILITY**

Each Party represents that it has all necessary power and authority to enter into and perform its obligations under the Gas Transportation Agreement and that the Gas Transportation Agreement is binding on that Party and enforceable against it in accordance with its terms.

## **25.9 No PARTNERSHIP**

Nothing in or arising out of the Gas Transportation Agreement shall constitute a partnership between the Shipper or any of them, or between the Shippers or any of them and Epic Energy for any purpose.

## **25.10 STAMP DUTY**

The Shipper is responsible for and must pay any stamp duty assessed or payable in respect of the Gas Transportation Agreement.

## **25.11 CHANGE IN REGULATORY ENVIRONMENT**

If there is a change in the regulatory environment which causes Epic Energy to incur additional costs:

- (a) Epic Energy may apply to the Regulator for an adjustment of the charges payable by the Shipper pursuant to a Gas Transportation Agreement.
- (b) any adjustment to the charges approved by the Regulator pursuant to Clause 25.11 will apply from the date determined by the Regulator.



## SCHEDULE

### MEASURING EQUIPMENT

#### PART 1 – METERING EQUIPMENT (CLAUSE 6)

##### 1. METERING EQUIPMENT

'Metering Equipment' is equipment for measuring the quantity, quality and condition of Gas at Receipt Points and Delivery Points. The equipment must include remotely controlled flow devices, must be capable of making data concerning quality, quantity and condition of Gas available for instantaneous transmission to Epic Energy's control centre, must comply with the specifications and other technical requirements published from time to time by Epic Energy and include SCADA and communications equipment and protocols compatible with Epic Energy's equipment.

##### 2. CERTIFICATION

- (a) Where the Metering Equipment is owned and operated by Epic Energy, Epic Energy will furnish certification of the accuracy and the initial calibration for the metering equipment to the Shipper at or before the commencement of deliveries of Gas under the Gas Transportation Agreement.
- (b) Where the Metering Equipment is owned and operated by the Shipper or a third party, the Shipper will furnish certification of the accuracy and the initial calibration for the metering equipment to Epic Energy at or before the commencement of deliveries of Gas under the Gas Transportation Agreement.

##### 3. METER DESIGN

- (a) Epic Energy will:
  - (i) determine the nature, design and specifications of;
  - (ii) determine the configuration of and communication protocols for;
  - (iii) review all plans for; and
  - (iv) inspect the installation of,  
all Metering Equipment to be installed at a Delivery Point or a Receipt Point.
- (b) No Receipt Point or Delivery Point will be connected to the Pipeline System unless it complies in all respects with Epic Energy's specifications.

**4. FLOW DEVICES**

- (a) Orifice metering systems will be constructed and installed in accordance with the provisions of American Gas Association ('**AGA**') Report No. 3, such that a maximum uncertainty of  $\pm 0.5\%$  of flow co-efficient is achieved.
- (b) Turbine metering systems will be constructed and installed in accordance with the provisions of AGA Report No. 7, such that a maximum uncertainty of  $\pm 1\%$  of flow co-efficient is achieved.
- (c) Positive displacement metering systems will be constructed and installed in accordance with the provisions of ANSI B109-3 (1986), such that a maximum uncertainty of  $\pm 1\%$  of flow co-efficient is achieved.
- (d) Ultrasonic metering systems will be constructed and installed in accordance with the provisions of AGA Report No. 9 such that the maximum uncertainty in velocity, is  $\pm 0.7\%$ .
- (e) Other metering systems will be constructed and installed in accordance with established industry standards as adopted by Epic Energy.

**5. DIFFERENTIAL PRESSURE FOR ORIFICE METERING**

Differential pressure will be measured using microprocessor based 'smart' type transmitters, with 4-20 mA analog output signals temperature compensated to minimise the effect of inaccuracies due to ambient temperature changes. The uncertainty of transmitters will be a maximum of 0.1% or better of the calibrated range. Calibrated ranges will be selected to minimise the uncertainty of readings. Epic Energy will have the right, but not the obligation, to install high and low pressure differential pressure transmitters based on turn down requirements of metering. If fitted, Epic Energy will ensure that they will be switched automatically by the flow computer to select the optimum operating range.

**6. PRESSURE**

Pressure will be measured using microprocessor based 'smart' type transmitters, with 4-20 mA analog output signals temperature compensated to minimise the effect of inaccuracies due to ambient temperature changes. Uncertainty of transmitters will be a maximum of  $\pm 0.1\%$  of the calibrated range. Calibrated ranges will be selected to minimise the uncertainty of readings.

**7. TEMPERATURE**

The temperature transmitter uncertainty will be a maximum of  $\pm 0.1\%$  for instruments at Metering Stations  $\pm 0.25\%$  elsewhere, of the calibrated range and the calibration range will be selected to minimise the uncertainty of readings.

**8. FLOW COMPUTER**

- (a) For each Metering Station, a self-contained proprietary type flow computer will be installed. Instantaneous values for at least the following inputs and outputs will be recorded and available for display from the flow computer or from SCADA trend data:

<b>Inputs</b>	<b>Outputs</b>
Differential pressure (high (orifice meter))	Differential pressure (orifice meter)
Differential pressure (low) (orifice meter)	Pressure
Pressure	Temperature
Temperature	Density
Relative density (ideal)	Instantaneous volumetric flow (corrected and Uncorrected)
Relative density (real)	Cumulative volumetric flow
Carbon dioxide	Instantaneous energy flow
Nitrogen	Cumulative energy flow
Dry Gross Heating Value (real)	Instantaneous mass flow (ultrasonic meter)
Frequency (turbine meter)	Cumulative mass flow (ultrasonic meter)
	Control valve position
	Gas quality

- (c) The flow computer will be manually configured with input data for calculation factors, constants and Standard Conditions as well as fall back values for out of limit input signals and alarm outputs. Configuration data will be available on a local display. The flow computer input and output circuits and central processing unit will not increase the uncertainty of any measurement or calculation by more than  $\pm 0.1\%$  of the range of that measurement or calculation.
- (d) At least 31 Days of hourly information will be backed up and stored on the flow computer.
- (e) Communication connections and protocol must be acceptable to Epic Energy and must be compatible with, and connected to, Epic Energy's SCADA system.

**9. ENERGY AND RELATIVE DENSITY**

- (a) The energy content of the Gas will be monitored at all Receipt Points and Delivery Points by an on-line gas chromatograph designed to take a continuous sample of Gas from the SWQP.
- (b) A sample probe will be used to extract the sample from the SWQP and the dead volume between the line and the analyser will be minimised. Sample condensation will be avoided. The samples will be analysed in accordance with ASTM D1945 'Standard Method for Analysis of Natural Gas by Gas Chromatography', and the calculations for Gross Heating Value and relative density will be determined in accordance with ISO 6976 'Natural Gas - Calculation of Calorific Value, Density and Relative Density' and AGA Report No 8 'Compressibility and Supercompressibility for Natural Gas and Other Hydrocarbon Gases'.
- (c) The gas chromatograph will provide instantaneous outputs of dry Gross Heating Value in MJ/m<sup>3</sup>, real and ideal relative density, and compositions of carbon dioxide and nitrogen.
- (d) The gas chromatograph will be factory tested and calibrated using a certified natural gas gravimetric standard and will perform with an accuracy of  $\nabla$  0.08 MJ/m<sup>3</sup> for Gross Heating Value and  $\pm$  0.003 for relative density. The gas chromatograph will include the facility for recalibrating itself automatically against a certified calibration Gas at least once per day.

**PART 2 - METERING AT RECEIPT AND DELIVERY POINTS (CLAUSE 6)**

**1. VOLUMETRIC MEASUREMENT**

- (a) Volumetric measurement in cubic meters per hour (m<sup>3</sup>/hr) will be calculated by a flow computer from flow meter signals, associated instruments and density and composition signals from an on-line gas chromatograph. The volumetric flow rate will be continuously recorded and integrated.
- (b) All measurements, calculations and procedures used in determining volume, except for the correction for the deviation from the Ideal Gas Law, will be made in accordance with the instructions contained in:
  - (i) AGA 3 for the Orifice Plate Metering Systems;
  - (ii) AGA 7 for Turbine Metering;
  - (iii) ANSI B109-3 for Positive Displacement (PD) Metering;
  - (iv) AGA 9 for Ultra Sonic Metering; and
  - (v) relevant industry standards and such other standards as may be specified by Epic Energy for any other metering system,together with all presently existing supplements and appendices to those reports or any revisions of them acceptable to the Parties.

- (c) Those instructions will be converted where necessary for compliance with Australian Standard AS1000 'The International System of Units (SI) and its Application', the Commonwealth *National Measurement Act 1960* and regulations under that Act and the Australian Gas Association publication 'Metric Units and Conversion Factors for use in the Australian Gas Industry' or any revision of those publications acceptable to the Parties.
- (d) The correction for deviation from the Ideal Gas Law will be determined from the data contained in AGA 8, or any revision of that report acceptable to the Parties. The compositional data used in these calculations will be primarily derived from the on-line gas chromatograph.

## **2. ENERGY MANAGEMENT**

The energy flow rate will be calculated by the flow computer in GJs per hour (GJ/hr) from the product of Gross Heating Value and the volumetric flow, all at the Standard Conditions. The heating value will be continuously derived from the same on-line gas chromatograph used for determining the relative density and composition used in the volumetric flow calculation. The energy flow rate will be recorded and continuously integrated.

## **3. OTHER MEASUREMENT**

The temperature and pressure will be measured and recorded, so that the readings are representative of the conditions prevailing at the upstream face of each orifice plate, each turbine meter and each positive displacement meter or other meters.

## **4. PRESSURE**

Pressure meters and transmitters are to measure gauge pressure. Calculations using gauge pressures are to incorporate local barometric pressure effects.

## **5. CALIBRATION INSPECTION AND TESTING**

### **(a) Scheduled Tests**

Epic Energy will carry out at Monthly intervals (or such longer period as may be agreed by the Parties) Validation Tests of the metering equipment in accordance with the procedures set out in this clause 5. Epic Energy will give at least 14 Days notice of the time and date of such tests and will supply a list of items to be tested to the Shipper. If the Shipper fails to witness such tests after the required notification is given, the test results will nevertheless be deemed to be acceptable. Upon request, the representatives of the Shipper at such tests will be supplied with copies of the field data and calculations following such tests, and the Shipper will be supplied with a full set of test results.

### **(b) Unscheduled Tests**

If Metering Equipment is out of service or needs repair, the Shipper will be invited to attend the investigation, repair and retest provided no delays are incurred which could jeopardise the integrity of the metering equipment, or in Epic Energy's judgment, would adversely affect Epic Energy's ability to meet any of its obligations.

**(c) Test Results**

The results of such tests will be deemed to be correct if corroborated by the next scheduled monthly test. If such test results are not corroborated by the routine monthly test, those test results will be ignored and the correction procedures set out below will be implemented.

**(d) Permissible Limits**

The permissible limits of tolerance for accuracy is plus or minus one (1) percent.

**(e) Correction Procedure**

If at any time, any of the Metering Equipment is found to be unserviceable or registering inaccurately, it will be adjusted immediately to its specification. The previous reading of such Metering Equipment will be corrected for any period of inaccuracy which is definitely known or agreed upon, provided that the period for such correction will not extend beyond one half of the time elapsed since the date of the last previous validation test. Measurement during the correction period will be determined by Epic Energy on the basis of the best data available, using the first of the following methods which, when considered in the following order, is feasible:

- (i) recordings by any other metering equipment acceptable to Epic Energy and the Shipper; or
- (ii) trend data recorded by Epic Energy or the Shipper, where this data can be proven to represent an accurate estimate of the actual measurement; or
- (iii) by making the appropriate correction if the deviation from the accurate reading is ascertainable by calibration test or mathematical calculation;
- (iv) by estimation acceptable to Epic Energy and the Shipper based upon receipts or deliveries under similar conditions during a period when the Metering Equipment was registering accurately; or
- (v) by using the registration of any check meter if installed and accurately registering.

**6. CALIBRATION EQUIPMENT AND PROCEDURES**

Calibration equipment will have measurement accuracy at least 4 times better than the metering equipment which it will be used to calibrate. Calibration equipment will be provided with NATA endorsed certification of its accuracy, traceable to national standards. The appropriate certificates will be available for inspection during business hours at the offices of Epic Energy.

**7. ADDITIONAL TESTS**

The Shipper will have the right at any time in its discretion to require Epic Energy to carry out tests in addition to the scheduled and unscheduled tests referred to in clauses 5(a) and 5(b) of the schedule. The Shipper will reimburse Epic Energy for the cost of the additional tests unless it is shown from the results of those tests that the equipment being tested is not operating within the permissible limits of tolerance (1%).

**8. INSPECTION OF EQUIPMENT RECORDS**

The Shipper will be permitted to:

- (a) have access to the relevant measuring and testing equipment at all reasonable times for inspection purposes,
- (b) be present during testing of the quality and quantity of Gas, and
- (c) be present when measuring or testing equipment is cleaned, installed, repaired, inspected, calibrated or adjusted.

Epic Energy will give reasonable notice to the Shipper prior to undertaking these activities, and will make any changes to the activities reasonably required by the Shipper for the purposes of the Schedule. To the extent such changes would result in significant and unreasonable additional cost, Epic Energy and the Shipper will negotiate in good faith to determine how such changes are to be handled.