

COMMENCEMENT AND REVIEW OF ACCESS ARRANGEMENT

1. COMMENCEMENT AND REVIEW

1.1 Commencement

Subject to the *Gas Pipelines Access (South Australia) Law*, this Access Arrangement will commence on the date specified by the Regulator in its approval of this Access Arrangement.

1.2 Revisions Submission Date

The Service Provider will submit revisions to this Access Arrangement to the Regulator on 1 July 2005.

1.3 Revisions Commencement Date

The revisions to this Access Arrangement referred to in clause 1.2 are intended to commence on 1 January 2006.

1.4 Application of the Code

This Access Arrangement must be read subject to applicable provisions of the Code including those provisions dealing with Exclusivity Rights.

PIPELINE SYSTEM AND CAPACITY MANAGEMENT POLICY

2. PIPELINE SYSTEM

2.1 Description

The '**Pipeline System**', which is operated by the Service Provider pursuant to Pipeline Licence No. 1 issued under the *Petroleum Act 1940 (SA)* by the Minister of Energy ('**Licence**'), as at the Lodgment Date:

- (a) comprises a 781 kilometre trunkline of 559 mm diameter from Moomba to Adelaide;
- (b) has, at intervals of approximately 100 kilometres, 7 compressor stations each comprising 2 gas turbines, one of approximately 4000 kilowatts in size and the other approximately 5,100 kilowatts in size;
- (c) has 13 lateral pipelines, with a major lateral to Port Pirie and Whyalla south of compressor station 6 (including a compressor station comprising a single reciprocal gas fuelled compressor at Whyte Yarcowie), and a major lateral to Angaston at Wasleys;
- (d) has a major loop in the trunkline, a distance of 42 kilometres from Wasleys to Torrens Island meter station; and
- (e) has a total of 24 existing Delivery Points at each of which points pressure regulation is carried out prior to the delivery of Gas. Except for the Delivery Points at Freeling, Penfield Roses, Sheoak Log and Wasleys Metro Farms, telemetered Gas metering facilities are installed.

The Pipeline System and its various laterals, compressor stations and Delivery Points is more fully described in Attachment A of Schedule 1 and is diagrammatically represented in Diagrams 1, 2 and 3 in Schedule 1.

2.2 Primary Capacity

Subject to specific operating parameters, the main transmission facilities of the Pipeline System, as configured at the Lodgment Date, have Capacity to provide FT Service and Services to the Existing Users under the Existing Transportation Agreements of 323 TJ per Day. That aggregate amount of Capacity, which may vary over time as New Facilities are constructed pursuant to the Extensions/Expansions Policy, is the '**System Primary Capacity**'. The System Primary Capacity is not however dedicated only to the provision of FT Service and Services under the Existing Transportation Agreements. In accordance with clause 23, FT Service and Services under the Existing Transportation Agreements rank higher in priority to IT Service for utilisation of System Primary Capacity.

2.3 Pipeline System Information

- (a) A register of Capacity in relation to the Receipt Points and Delivery Points on the Pipeline System as at the Lodgment Date is set out in Attachment B of Schedule 1.

- (b) Historical demand profiles for the Pipeline System for the 1997 and 1998 calendar years are set out in Attachment C of Schedule 1, with historical demand profiles for each Month of the 1997 and 1998 calendar years set out in Attachment D of Schedule 1.
- (c) Information regarding average daily and peak demand for the Pipeline System, load profile for the Pipeline System, and numbers of customers as at the Lodgement Date, is set out in Attachment E of Schedule 1.
- (d) The register of Capacity, the historical demand profiles and the other information referred to above, will be regularly updated by the Service Provider and posted on the EBB.

3. **CAPACITY MANAGEMENT POLICY**

The Pipeline System is a Contract Carriage Pipeline.

SERVICES POLICY, REFERENCE TARIFFS AND REFERENCE TARIFF POLICY

4. SERVICES POLICY

4.1 Services

- (a) This clause 4 describes the Services that are offered by the Service Provider pursuant to this Access Arrangement (and therefore embodies the Service Provider's **'Services Policy'**). Those Services are FT Service - a Reference Service; and IT Service - a Rebatable Service.
- (b) The Service Provider is prepared to negotiate (subject to operational availability) regarding any other Service or element of a Service sought by a Prospective User (**'Non-Specified Service'**). The terms and conditions for a Non-Specified Service ~~shall~~ will be negotiated by the Service Provider and the Prospective User. The only mandatory aspects of ~~these~~ this Access Arrangement ~~Terms~~ relevant to a Non-Specified Services ~~is~~ are the application procedure set out in clause 7A and the ~~q~~Queuing ~~p~~Policy set out in clause ~~10~~10.

4.2 FT Service

(a) Composition of FT Service

FT Service will consist of the following:

- (i) the receipt by the Service Provider on a Day of the User's Gas at one or more Receipt Points in an amount equal to the Final Nominated Receipt Quantity for that Day;
- (ii) the transportation through the Pipeline System of a quantity of Gas equal to the sum of the Final Nominated Delivery Quantities for that Day; and
- (iii) the delivery by the Service Provider to the User on that Day at one or more Delivery Points (excluding those Delivery Points the subject of the Existing Transportation Agreements) of a quantity of Gas equal to the sum of the Final Nominated Delivery Quantities for that Day (which sum must not exceed the MDQ),

without interruption or curtailment except as is expressly permitted under the Agreement and otherwise subject to the terms and conditions of the Agreement.

(b) Provision of FT Service

On any Day during the Term, the User may require FT Service on and subject to the terms and conditions of the Agreement.

4.3 IT Service

(a) Composition of IT Service

IT Service will consist of the following:

- (i) the receipt by the Service Provider on a Day of the User's Gas at one or more Receipt Points in an amount equal to the Final Nominated Receipt Quantity for that Day;
- (ii) the transportation through the Pipeline System of a quantity of Gas equal to the sum of the Final Nominated Delivery Quantities for that Day; and
- (iii) the delivery by the Service Provider to the User on that Day at one or more Delivery Points of a quantity of Gas equal to the sum of the Final Nominated Delivery Quantities for that Day,

subject to interruption or curtailment in accordance with this clause 4.3 and clauses 24, 25 and 34 and otherwise subject to the terms and conditions of the Agreement.

(b) Capacity Available for IT Service

The Capacity that the Service Provider will make available for IT Service on a Day is the Capacity (if any) remaining (as reasonably and prudently determined by the Service Provider) after allowing for the Capacity required to meet the obligations of the Service Provider to all FT Users, the Existing Users and persons with contracts for Non-Specified Services which rank in priority ahead of IT Service.

(c) Provision of IT Service

IT Service will only be available on a Day:

- (i) if Capacity is available in accordance with clause 4.3(b); and
- (ii) where Existing Delivery Facilities are to be utilised, either:
 - (A) the IT User has entered into an Existing Facilities Access Agreement in relation to those Existing Delivery Facilities; or
 - (B) the Service Provider has nevertheless agreed to provide IT Service.

(d) Curtailment

Subject to the terms of any Existing Facilities Access Agreement, IT Service may be interrupted or curtailed on a Day as a consequence of the exercise of Existing User Rights. The Service Provider will use reasonable and prudent efforts to minimise any such interruption or curtailment, however the Service Provider's ability to do so is limited by the rights of the Existing Users under the Existing Transportation Agreements.

(e) No Liability for Existing User Rights

Notwithstanding that an Existing Facilities Access Agreement has been executed, the User has no claim (on any account) against the Service Provider in the event that an interruption or curtailment in IT Service occurs as a consequence of the exercise of Existing User Rights

and:

- (i) a person relying on supply of Gas from the User is thereby adversely affected;
- (ii) the IT User has a positive Imbalance as a consequence; and/or
- (iii) the IT User is not able to subsequently correct that Imbalance pursuant to clause 19.2, or to trade any of that Imbalance pursuant to clause 20.1,

and the User indemnifies the Service Provider in relation to those consequences.

(f) **No Liability for Excess Imbalance Charge**

The User will not be liable to pay any Excess Imbalance Charge that arises as a result of a positive Imbalance as a consequence of an interruption or curtailment to its IT Service in the circumstances set out in this clause 4.3.

(g) **Acknowledgements by User**

Further to clauses 4.3(d) and (e):

- (i) the Service Provider will apply the Existing User Rights in priority to the terms of any Existing Facilities Access Agreement; and
- (ii) the IT User's sole remedy in such circumstances will lie against the Existing User that is the counterparty to the Existing Facilities Access Agreement.

5. **TARIFF POLICY**

5.1 **Reference Tariff – FT Service**

The '**Reference Tariff**' for FT Service comprises:

- (a) all charges that relate to the provision of FT Service (which, at the Lodgement Date, are as set out in Schedule 4); together with
- (b) any applicable Capital Contribution or Surcharge and any contribution to Imposts under clause 30.5.

5.2 **Reference Tariff Policy – FT Service**

- (a) The following principles were used by the Service Provider to determine the Reference Tariff ('**Reference Tariff Policy**'):
 - (i) The Service Provider calculated the Total Revenue Requirement based on forecast costs for each year of the Access Arrangement Period using the 'cost of service' methodology described in section 8.4 of the Code, ie:
 - (A) a return on the Capital Base;

- (B) depreciation of the Capital Base; and
 - (C) the operating, maintenance and other non-capital costs incurred in providing FT Service.
- (ii) The Service Provider determined a gross initial Capital Base utilizing an optimized replacement cost calculation and by taking into account the other factors described in section 8.10 of the Code.
 - (iii) Accrued depreciation was calculated based upon the estimated remaining asset life consistent with sections 8.32 and 8.33 of the Code. Accrued depreciation reduced the optimized replacement cost to establish the starting point for the net initial Capital Base. The Service Provider has no Redundant Capital.
 - (iv) Consistent with section 8.16 of the Code, the initial Capital Base was increased by forecasted capital expenditures required to implement the proposed Reference Service and maintain the safety, integrity and reliability of currently contracted Capacity in the Pipeline System.
 - (v) The Capital Base is to be adjusted annually on 1 January by the Capital Cost Revaluation which will be equal to the CPI for the 12 month period ending on the previous 30 September.
 - (vi) There are no forecasted capital expenditures associated with New Facilities Investment required to serve new customers included in the calculation of the Total Revenue Requirement. The Service Provider currently has no Speculative Investment Fund.
 - (vii) The rate of return employed by the Service Provider in calculating the Total Revenue Requirement, (consistent with sections 8.30 and 8.31 of the Code), was the Service Provider's weighted average cost of capital.
 - (viii) The Total Revenue Requirement is designed to be recovered from FT Users on the basis of their respective Primary Capacity Quantities through a two part tariff as follows:
 - (A) The Capacity Charge Rate has been developed to reflect those parts of the Pipeline System that are committed to the delivery of the particular Primary Capacity Quantities of the User. This results in a surcharge being payable (in addition to the Capacity Charge Rate) by the User where the Whyalla Lateral is to be used to deliver Primary Capacity Quantities to one or more Delivery Points in the Iron Triangle Zone (excluding Port Pirie) (**Whyalla Lateral Surcharge**).
 - (B) The FT Commodity Charge Rate is uniform across the entire Pipeline System.
 - (ix) However, as access to the entire existing Capacity of the Pipeline System is fully contracted under Existing Transportation Agreements throughout the initial Access

Arrangement Period, the Total Revenue Requirement, for the purposes of the initial Access Arrangement Period only, was reduced to the level of revenue that will be recovered under the Existing Transportation Agreements. A Reference Tariff price path was then developed such that the Total Revenue Requirement would be recovered from the provision of FT Service as if:

- (A) all of the System Primary Capacity (of 323TJ/Day) was fully contracted; and
 - (B) annual throughput was to equal current forecasts during the initial Access Arrangement Period.
- (x) During the initial Access Arrangement Period, this Total Revenue Requirement will be recovered from the Existing Users. The Capacity Charge Rate, the Whyalla Lateral Surcharge and the FT Commodity Charge Rate have been developed consistent with clause 5.2(a)(viii) above, at a level that reflects current cost recovery.
 - (xi) The initial Reference Tariffs (including the Whyalla Lateral Surcharge) are set out in Schedule 4. The Total Revenue Requirement and the resulting Reference Tariffs will escalate annually with inflation pursuant to clause 30.2 of this Access Arrangement consistent with the provisions of the Existing Transportation Agreements.
- (b) The numerical calculations used to support the Reference Tariff are set out in the Access Arrangement Information.

5.3 Rebate – IT Service – Incentive and Risk Sharing Mechanism

The Incentive Mechanism (as contemplated by section 8.45(c) of the Code) in relation to IT Service will operate as follows:

- (a) each Month the Service Provider will apply a rebate to:
 - (i) each Existing User and FT User who enters into an Existing Facilities Access Agreement with an IT User; and
 - (ii) each Existing User and FT User who does not enter into an Existing Facilities Access Agreement with an IT User, but in respect of those Existing Delivery Facilities to which the Service Provider nonetheless provides access to an IT User;:-
- (b) the rebate will:
 - (i) be calculated each Month;
 - (ii) be applied as a deduction from the amount invoiced to the FT User under clause 31.1 and to the Existing User under the relevant Existing Transportation Agreement;
 - (iii) apply only to the amount of Capacity in the relevant Existing Delivery Facilities which is actually utilised to provide IT Service to the IT User (and will not apply to utilisation of Capacity in the main trunkline or to the use of Spare Capacity);
 - (iv) in the case of an Existing User 'n':

- (A) who enters into an Existing Facilities Access Agreement, be the aggregate of the Lateral Fixed Cost Component, the Delivery Point Fixed Cost Component~~(s)~~ and the Incentive Component; or
- (B) who does not enter an Existing Facilities Access Agreement, but in respect of those Existing Delivery Facilities to which the Service Provider nonetheless provides access to an IT User, be the aggregate of the Lateral Fixed Cost Component and the Delivery Point Fixed Cost Component,

each of which will be calculated as follows:

- (C) Lateral Fixed Cost Component in respect of a lateral for Existing User 'n' (LFCC_n) = $\text{VIT}_n / \text{TVL} \times \text{LFC}$

where:

' VIT_n ' is that amount of the total volume of Gas delivered to the IT User from that lateral during the Month which is attributable to the Existing Facilities Access Agreement entered into between Existing User 'n' and the IT User;

' TVL ' is the total volume of Gas that is delivered from that lateral during the Month;

' LFC ' is the specific tariff paid by Existing Users to the Service Provider in respect of that lateral during the Month.

- (D) Delivery Point Fixed Cost Component in respect of a Delivery Point for Existing User 'n' (DPFCC_n) = $\text{VDIT}_n / \text{TVDP} \times \text{DPFC}$

where:

' VDIT_n ' is that amount of the total volume of Gas delivered to the IT User from that Delivery Point during the Month which is attributable to the Existing Facilities Access Agreement entered into between Existing User 'n' and the IT User;

' TVDP ' is the total volume of Gas that is delivered from that Delivery Point during the Month;

' DPFC ' is the specific tariff paid by Existing Users in respect of that Delivery Point during the Month.

- (E) Incentive Component in respect of the entering into of the Existing Facilities Access Agreement by Existing User 'n' (IC_n) = $([\text{ITR} - \sum_{n=1 \text{ to } N} (\text{LFCC}_n + \text{DPFCC}_n)] / 2) \times \text{VIT}_n / \sum_{n=1 \text{ to } N} \text{VIT}_n$

where:

'TTR' is the total revenue received by the Service Provider from the IT User for IT Service using the relevant facilities during the Month; and

if the **'IC_n'** has a negative value, it will be taken to be zero;

- (v) in the case of an FT User 'n', be an amount equal to **'FTIC_n'** in the following formula:

$$\mathbf{FTIC}_n = (\mathbf{FTITR}/2) \times \mathbf{FTVIT}_n / \sum_{n=1 \text{ to } N} (\mathbf{FTVIT}_n)$$

where:

'FTITR' is the total revenue received by the Service Provider from the IT User for IT Service using the relevant Existing Delivery Facilities during the Month; and

'FTVIT_n' is that amount of the total volume of Gas delivered to the IT User from the Delivery Point(s) that comprises part of the relevant Existing Delivery Facilities during the Month which is attributable to the Existing Facilities Access Agreement entered into between FT User 'n' and the IT User;

- (c) if the calculation of rebates in accordance with clause 5.3(b) for a Month in respect of an IT User would result in rebates being payable in aggregate in excess of **'TTR'** or (as the case may be) **'FTITR'** for that Month then, despite clause 5.3(b), the aggregate amount of the rebates payable for that Month will be equal to **'TTR'** or **'FTITR'** respectively; and
- (d) no rebate will be payable:
- (i) in respect of any Other User that has contracted for a Service prior to the Commencement Date; or
 - (ii) where the FT User or the Existing User (as appropriate) and the IT User are the same party or are Related Bodies Corporate.

An example of the calculation of rebates payable under the Incentive Mechanism described above is set out in the Appendix.

REQUESTS FOR SERVICE, QUEUING POLICY AND EXTENSIONS/EXPANSIONS POLICY

6. FT SERVICE - REQUESTS FOR SERVICE AND EVALUATION

6.1 Application of Clause

This clause 6 only applies to Requests for Service for FT Service.

6.2 Lodgement of Request for Service

A duly completed Request for Service must be lodged with the Service Provider:

- (a) by a Prospective User seeking FT Service;
- (b) by the User where it seeks to vary service in accordance with clause 6.97; and
- (c) by the User where it seeks to increase its MDQ (as such a request will be treated as a request for a separate, new contract).

6.3 Required Information and Payment

A Request for Service must:

- (a) be in the form set out in Schedule 5;
- (b) be accompanied by such information and documentation as the Service Provider may reasonably require for the purposes of clause 9.1;
- (c) be lodged with the Service Provider:
 - (i) on the EBB, where the person making the Request for Service is an EBB User; or;
 - (ii) at the address specified in, ~~the Access Arrangement from time to time~~ or pursuant to, clause 41.5, where the person making the Request for Service is not an EBB User; and
- (d) show a Commencement Date being the first day of a Month which Month cannot be in a year that is later than that indicated below:

Year Request for Service is made:	Year of latest commencement of Service:
2000 – 2003	2006
2004	2007
2005	2008

The Prospective User must pay a non-refundable Application Fee to the Service Provider on the Day that the Request for Service is lodged. An Application Fee is not required for a request to vary

service in accordance with clause 6.7.

6.4 **Incomplete or Deficient Request**

If:

- (a) a Request for Service:
 - (i) is incomplete or deficient; or
 - (ii) does not meet the requirements of clause 6.3; or
- (b) the Service Provider is not reasonably satisfied that the Prospective User will be able to meet its obligations under the Agreement,

then, the Service Provider will communicate the deficiencies to the Prospective User. If the deficiencies are not satisfactorily addressed within 30 Days of the date of (original) notification of them to the Prospective User, then subject to clause 9.2, the Request for Service may be rejected and the Prospective User will be advised accordingly ~~on the EBB~~ within 10 Days on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User).

6.5 **Complete Request and Placement ~~and in~~ Queue**

If a Request for Service is complete and meets the requirements of clause 6.3 ('**FT Request**'), the Service Provider will:

- (a) within 10 Days, acknowledge receipt of that FT Request on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User) together with confirmation of the date and time of receipt; and
- (b) place the FT Request in the queue in accordance with clause 10.

6.6 **Log**

- (a) Each FT Request will be recorded in a log maintained by the Service Provider on the EBB, with requests received on the same Day being logged concurrently.
- (b) For the purposes of the log, each Prospective User will be allocated an identification number but the link between an identification number and the Prospective User will be confidential to the Prospective User and the Service Provider.

6.7 **Vary Service**

- (a) The User seeking to vary service means the User seeking to transfer all or part of its MDQ to a new Delivery Point, or to an existing Delivery Point at which there is adequate Available Capacity to provide FT Service for the MDQ sought to be transferred.
- (b) A request to vary service will only be considered by the Service Provider if the User has access to sufficient Capacity in the Pipeline System to enable the relevant Delivery Point to

be utilised for FT Service, and, if the User does have such access, will be accepted by the Service Provider unless (in the Service Provider's reasonable opinion):

- (i) it would not be technically or economically prudent for it to do so;
 - (ii) it would prejudice the rights of another FT User for it to do so; or
 - (iii) the Delivery Point is an Excluded Point and there is no agreement or Release by the relevant IT User to permit use of that Delivery Point.
- (c) If a request to vary service is accepted by the Service Provider then the existing Agreement will be amended to reflect the variation.

7. IT SERVICE - REQUESTS FOR SERVICE AND EVALUATION

7.1 Application of Clause

This clause 7 only applies to Requests for Service for IT Service.

7.2 Lodgement and Required Information

A Request for Service must:

- (a) be in the form set out in Schedule 5;
- (b) be accompanied by such information and documentation as the Service Provider may reasonably require for the purposes of clause 9.1;
- (c) be lodged with the Service Provider either:
 - (i) on the EBB, where the person making the Request for Service is an EBB User; or
 - (ii) at the address specified in, ~~the Access Arrangement from time to time; or pursuant to, clause 41.5, where the person making the Request for Service is not an EBB User;~~ and
- (d) show a Commencement Date being the first day of a Month,

and the Prospective User must pay a non-refundable Application Fee to the Service Provider on the Day that the Request for Service is lodged.

7.3 Incomplete or Deficient Request

If:

- (a) a Request for Service:
 - (i) is incomplete or deficient; or
 - (ii) does not meet the requirements of clause 7.2; or

- (b) the Service Provider is not reasonably satisfied that the Prospective User will be able to meet its obligations under the Agreement,

then the Service Provider will communicate the deficiencies to the Prospective User. If the deficiencies are not satisfactorily addressed within 30 Days of the date of (original) notification of them to the Prospective User, then subject to clause 9.2, the Request for Service may be rejected and the Prospective User will be advised ~~on the EBB~~ accordingly within 10 Days on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User)

7.4 Complete Request, Queue & Log

Where a complete Request for Service that meets the requirements of clause 7.2 ('IT Request') is received:

- (a) the Service Provider will acknowledge receipt of the request on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User) within 10 Days; and
- (b) the IT Request will be:
 - (i) placed in the queue in accordance with clause 10;
 - (ii) recorded in a log maintained by the Service Provider; and
 - (iii) for the purposes of the log, each Prospective User will be allocated an identification number, but the link between an identification number and the Prospective User will be confidential to the Prospective User and the Service Provider.

7.5 Extension of IT Service Contract

A new Request for Service is not required for, and the Queuing Policy will not apply to:

- (a) an extension of an IT Service Contract agreed pursuant to clause 11.3(a); or
- (b) the contracting of a Marketable IT Parcel to an Acquirer (whether or not it already holds an Applicable Contract) in respect of a Release.

7A. NON-SPECIFIED SERVICES - REQUESTS FOR SERVICE AND EVALUATION

7A.1 Application of Clause

This clause 7A only applies to Requests for Service for Non-Specified Services.

7A.2 Lodgment and Required Information

A Request for Service must:

- (a) be in the form set out in Schedule 5;

- (b) be accompanied by such information and documentation as the Service Provider may reasonably require for the purposes of clause 9.1;
- (c) be lodged with the Service Provider either:
 - (i) on the EBB, where the person making the Request for Service is an EBB User; or
 - (ii) at the address specified in, or pursuant to, clause 41.5, where the person making the Request for Service is not an EBB User;
- (d) show a Commencement Date being the first day of a Month,

and the Prospective User must pay a non-refundable Application Fee to the Service Provider on the Day that the Request for Service is lodged.

7A.3 Incomplete or Deficient Request

If:

- (a) a Request for Service:
 - (i) is incomplete or deficient; or
 - (ii) does not meet the requirements of clause 7A.2; or
- (b) the Service Provider is not reasonably satisfied that the Prospective User is likely to be able to meet its contractual obligations to the Service Provider,

then the Service Provider will communicate the deficiencies to the Prospective User. If the deficiencies are not satisfactorily addressed within 30 Days of the date of (original) notification of them to the Prospective User, then subject to clause 9.2, the Request for Service may be rejected and the Prospective User will be advised ~~on the EBB~~ accordingly within 10 Days on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User).

7A.4 Complete Request, Queue & Log

Where a complete Request for Service that meets the requirements of clause 7A.2 ('NSS Request') is received:

- (a) the Service Provider will acknowledge receipt of the request on the EBB (where the Prospective User is an EBB User) or in writing (where the Prospective User is not an EBB User), within 10 Days; and
- (b) the NSS Request will be:

- (i) placed in the queue in accordance with clause 10;
- (ii) recorded in a log maintained by the Service Provider; and
- (iii) for the purposes of the log, the Prospective User will be allocated an identification number, but the link between an identification number and the Prospective User will be confidential to the Prospective User and the Service Provider.

8. CONTRACTING FOR ~~IT~~-SERVICE

8.1 FT Service and IT Service – Where New Facilities are not Required

(a) **Obligations of Service Provider**

If New Facilities are not required to satisfy a particular FT Request or an IT Request, then, following acknowledgement of receipt of an IT-the relevant Request for Service under clause 6.5(a) or clause 7.4(a), the Service Provider will (provided that New Facilities are not required to satisfy the IT Request):

- (i) complete the Schedule of ~~an IT-Service~~ the relevant Applicable Contract in accordance with the details contained in the Request for Service; and
- (ii) forward the completed ~~IT-Service~~ Applicable Contract for execution by the Prospective User.

~~(b) If New Facilities are required to satisfy an IT Request, then the IT Request shall remain in the queue and clause 10.4 and 10.5 shall apply.~~

8.2(b) **Lapse of Request for Service**

Unless:

~~(a)(i)~~ (i) the Service Provider receives the ~~IT-Service~~ Applicable Contract, duly executed by the Prospective User, within 10 Days following the Prospective User receiving the ~~IT-Service~~ Applicable Contract; or

~~(b)(ii)~~ (ii) an Access Dispute arises,

the Request for Service will lapse and be deemed not to have been received by the Services Provider.

8.3(c) **Execution by Service Provider**

A duly executed ~~IT-Service~~ Applicable Contract will take effect in accordance with its terms on the date that it is executed by the Service Provider (which will be as soon as practicable after it has been received by the Service Provider and, in any event, within 7 Days).

8.2 FT Service and IT Service – Where New Facilities are Required

(a) Queuing

If New Facilities are required to satisfy an FT Request or an IT Request, then:

- (i) in the case of an FT Request, the FT Request will remain in the queue and clause 10.4 will apply; and
- (ii) in the case of an IT Request, the IT Request will remain in the queue and clauses 10.4 and 10.5 will apply.

(b) **Obligations of Service Provider**

Where agreement has been reached between the Service Provider and the Prospective User as to the terms (including the terms relating to any Capital Contribution or Surcharge) that are to apply in relation to the construction by the Service Provider of New Facilities that are required to satisfy an FT Request or an IT Request, the Service Provider will:

- (i) complete the Schedule of the relevant Applicable Contract in accordance with the details contained in the Request for Service; and
- (ii) forward the completed Applicable Contract for execution by the Prospective User.

(c) **Lapse of Request for Service**

Unless:

- (i) the Service Provider receives the Applicable Contract, duly executed by the Prospective User, within 10 Days following the Prospective User receiving the Applicable Contract; or
- (ii) an Access Dispute arises,

the Request for Service will lapse and be deemed not to have been received by the Service Provider.

(d) **Execution by Service Provider**

A duly executed Applicable Contract will take effect in accordance with its terms on the date that it is executed by the Service Provider (which will be as soon as practicable after it has been received by the Service Provider and, in any event, within 7 Days).

8.3 **Non-Specified Services**

Following acknowledgement of receipt of an NSS Request under clause 7.4A.4:

- (a) if New Facilities are not required to satisfy the NSS Request, the Service Provider will negotiate with the Prospective User with a view to satisfying the NSS Request; or
- (b) if New Facilities are required to satisfy the NSS Request:
 - (i) the NSS Request will remain in the queue and clause 10.4 will apply; and

- (ii) the Service Provider will negotiate with the Prospective User with a view to satisfying the NSS Request.

9. CREDITWORTHINESS REQUIREMENTS

9.1 Service Provider to be Satisfied

The Service Provider will not be required to commence ~~the Specified a~~ Service for a Prospective User or to continue to provide ~~the Specified a~~ Service to ~~the Prospective User/a~~ User if the Prospective User/User is not able to satisfy the Service Provider of the ability to meet its contractual obligations to the Service Provider. ~~under the Agreement in the terms~~ For that purpose, the Prospective User/User must provide the information set out in Form 3 of Schedule ~~25~~ whenever reasonably requested by the Service Provider.

9.2 Service Provider's Discretion

If the Service Provider is not satisfied that the Prospective User/User will fulfill, or will continue to fulfill, its contractual obligations to the Service Provider ~~or continue to fulfill its obligations under the Agreement under clause 9.1~~, the Service Provider may require, and the Prospective User/User must provide, security for those obligations to the reasonable satisfaction of the Service Provider.

10. QUEUING POLICY AND EXTENSIONS/EXPANSIONS POLICY

10.1 The Queue

- (a) A queue will be established in which all Complying Requests ~~for Service shall will~~ be entered, regardless of whether they can be satisfied at that time.
- (b) At the time a Complying Request ~~for Service~~ is placed in the queue, the Service Provider will advise the Prospective User of:
 - (i) its position ~~on~~ in the queue;
 - (ii) the aggregate ~~e~~Capacity sought under Complying Requests ~~for Service~~, which are ahead in the queue;
 - (iii) whether Spare Capacity is available to satisfy the Complying ~~R~~Request;
 - (iv) whether investigations are required to determine if Spare Capacity is available, and the nature of those investigations;
 - (v) if Spare Capacity is not available, that fact and:
 - (A) an outline of those aspects of the Complying Request ~~for Service~~ which cannot be satisfied together with a non binding indication, based on current commitments, of its estimate of when Spare Capacity may be available; and
 - (B) the investigations that are required to be undertaken to determine the cost of developing Capacity and the other information required by section 5.5 of the Code.

10.2 Priority of Prospective Users ~~on-in~~ the Queue

- (a) A Complying Request ~~for Service~~ will have priority in the queue according to the time and date ~~that the Complying a complete~~ Request ~~for Service~~ is received by the Service Provider.
- (b) Complying Requests ~~for Service~~ will be dealt with according to their priority in the queue.
- (c) The Service Provider may deal with a Complying Requests ~~for Service~~ outside of ~~its their~~ priority provided that the Complying Requests ~~s/~~ ~~for Service~~ ahead in the queue are not ultimately disadvantaged.

10.3 Conditions Applicable ~~on-in~~ Queue

- (a) A Prospective User may reduce but not increase the amount of Capacity sought in a Complying Request ~~for Service~~, which is in the queue.
- (b) Periodically, the Service Provider may seek confirmation from a Prospective User that it wishes to continue with its Request for Service. If a Prospective User fails to respond within 14 days the Request for Service will lapse, its position in the queue will be lost and it will be removed from the queue. Any confirmation will be deemed to be a representation by the Prospective User that the Request for Service is made in good faith.
- (c) A Prospective User must advise the Service Provider immediately it becomes aware it does not wish to proceed with a Request for Service, which Request for Service will then lapse, its position in the queue will be lost and it will be removed from the queue.
- (d) A Request for Service will not lapse and will retain its priority in ~~a the~~ queue in the event of a dispute occurring, until that dispute has been resolved in accordance with the Code.

10.4 Extensions & Expansions Policy

- (a) The Service Provider:
 - (i) will construct New Facilities to meet the needs of Prospective Users where the Service Provider believes that the tests in ~~S~~section 6.22 of the Code have been satisfied;
 - (ii) may otherwise construct New Facilities to meet the needs of Prospective Users;
 - (iii) may from time to time seek a Capital Contribution or a Surcharge from ~~the~~ Prospective Users in respect of the investment in New Facilities; and
 - (iv) will negotiate in good faith with ~~the~~ Prospective Users ~~s~~ the terms that are to apply for the construction of the New Facilities.
- (b) New Facilities that are constructed ~~shall will~~ be part of the Covered Pipeline, unless the Service Provider, by notice to the Regulator (given before those facilities come into service) elects otherwise.

- (c) Any New Facilities that are part of the Covered Pipeline will not affect the Reference Tariff before the next Revisions Commencement Date.

10.5 Excluded Point - IT Service

Despite anything to the contrary contained in this Access Arrangement, where:

- (a) New Facilities have been constructed for a Prospective User pursuant to an IT Request following the Prospective User making a Capital Contribution or paying a Surcharge in respect of those New Facilities; and

- (b) the New Facilities comprise (in whole or in part) a Delivery Point or a Receipt Point,

that Delivery Point or Receipt Point (**Excluded Point**) will not, and will not be entitled to, be taken into account by any Other User for the purposes of the definitions of 'Primary Capacity Quantity', 'Primary Delivery Point', 'Receipt Point' or 'Net Available Capacity' set out in clause 43.1 or any clause of this Access Arrangement which refers to any of those expressions, unless and until:

- (c) the contract for IT Service expires or is terminated;
- (d) where the Excluded Point is a Delivery Point, the Prospective User enters into a contract for FT Service in which the Excluded Point is specified as a Primary Delivery Point; or
- (e) the Prospective User Releases under clause 26.3 to an Other User, its right to access the whole or a part of the Maximum Capacity of the Excluded Point (provided that, upon the expiration of the term of the Release, the Excluded Point will again not be taken into account for the purposes of the specified definitions and clauses, unless and until there is a further application of paragraph (c) or (d) of this clause 10.5).

TERMS AND CONDITIONS FOR PROVISION OF SPECIFIED SERVICES (INCLUDING TRADING POLICY)

11. COMMENCEMENT, TERM AND EXTENSION

11.1 Commencement and Termination of Specified Service

- (a) Subject to clause 11.1(b), provision of the Specified Service by the Service Provider:
 - (i) will commence on the Commencement Date; and
 - (ii) subject to clauses 11.3 and 36, will cease on the Termination Date.
- (b) Despite anything to the contrary contained in this Access Arrangement, the Commencement Date for a Specified Service must be the first Day of a Month.▸

~~(c) Where New Facilities are to be constructed pursuant to clause 10.3 in order to provide the Specified Service, the Month in which the Commencement Date occurs will be the month agreed by the Service Provider and the Prospective User.~~

11.2 Term

- (a) The Term of the Agreement must be at least 2 years.
- (b) The Service Provider will accept reasonable requests for a shorter Term of Agreement for IT Service.

11.3 Extension of Term

- (a) The User has no right to extend the Term beyond the ~~the~~ Term specified in the Agreement. The Service Provider is however prepared to negotiate with the User an extension of the Agreement on terms and conditions to be agreed between the User and Service Provider.
- (b) Unless a right for the User to extend the Term is included in the Agreement prior to the execution of the Agreement, any subsequent negotiation and agreement to extend the Term of the Agreement will be subject to the Queuing Policy.

12. PRINCIPAL RECEIPT AND DELIVERY OBLIGATIONS OF USER

12.1 Receipt Point Quantity Obligations

Subject to clauses 19, 24, 25 and 34, on a Day for which there is a Final Nominated Receipt Quantity, the User must supply the amount of that Final Nominated Receipt Quantity at one or more Receipt Points.

12.2 Delivery Point Quantity Obligations

Subject to clauses 19, 24, 25 and 34, on a Day for which there are Final Nominated Delivery Quantities, the User must take delivery of those Final Nominated Delivery Quantities at the

nominated Delivery Points.

12.3 Hourly Limits

The User must not, on a Day, exceed an MHQ. If the User fails to meet this obligation, a charge will be payable by the User equal to the Excess Imbalance Charge Rate multiplied by the number of GJ's of that excess quantity.

12.4 Receipt Point Pressure and Temperature

- (a) The User must, at each Receipt Point, subject to clause 12.4(b), supply Gas at a temperature of not greater than 60°C and, to the extent that the operating conditions of the Pipeline System allow:
 - (i) supply Gas at a gauge pressure as uniform as practicable;
 - (ii) supply Gas at a gauge pressure as close as possible to 6,800 kPa but, under no circumstances, at a gauge pressure in excess of the MAOP; and
 - (iii) ensure the gauge pressure does not fall below 6,200 kPa without the Service Provider's prior approval (which approval may be given or withheld at the discretion of the Service Provider).
- (b) The User may supply Gas at the Moomba Receipt Point at a temperature greater than 60°C provided that the temperature does not exceed that permitted under Existing Transportation Agreements and that the capacity of the coolers used to reduce the ~~capacity~~temperature of Gas at such Receipt Point is not exceeded when the User's supply of Gas is added to that supplied under the Existing Transportation Agreements.

12.5 Odourisation

- (a) Gas in the Pipeline System will not be odourised by the Service Provider.
- (b) The User must ensure that all Gas of which it takes delivery is odourised at the Delivery Point in accordance with the regulations under the ~~Petroleum Act 1940~~Gas Act 1997 (SA) ~~(unless the User has obtained and continues to maintain an exemption under those regulations and has provided a copy to the Service Provider).~~

13. PRINCIPAL RECEIPT AND DELIVERY OBLIGATIONS OF SERVICE PROVIDER

13.1 Receipt Point Quantity Obligations

Subject to clauses 15.3, 19, 24, 25 and 34, on a Day for which there is a Final Nominated Receipt Quantity, the Service Provider will accept from the User at one or more Receipt Points the quantity of Gas supplied by the User up to that Final Nominated Receipt Quantity.

13.2 Delivery Point Quantity Obligations

Subject to clauses 15.3, 19, 24 and 34, on a Day for which there are Final Nominated Delivery Quantities, the Service Provider will deliver to the User at the nominated Delivery Points the quantity

of Gas supplied by the User on that Day at the nominated Receipt Point(s) (net of the Retention Allowance) up to the Final Nominated Delivery Quantities.

13.3 **Delivery Point Pressure and Temperature**

The Service Provider will deliver Gas at each Delivery Point at a temperature not greater than 48°C and will maintain Pipeline System pressures so that the delivery pressure at a Delivery Point does not:

- (a) fall below the minimum pressure for that Delivery Point as set out in Schedule 1 Attachment B; or
- (b) exceed the maximum pressure for that Delivery Point as set out in Schedule 1 Attachment B.

The User acknowledges that the Service Provider can only fulfill its obligations under this clause 13.3 if the User meets its obligations under clause 12.

14. **RIGHTS OF SERVICE PROVIDER**

14.1 **Co-mingling of Gas**

The Service Provider will have the right to co-mingle Gas supplied by the User with other Gas in the Pipeline System.

14.2 **Processing**

The Service Provider may compress, cool, heat, clean and apply other processes to Gas consistent with its operation of the Pipeline System.

14.3 **Operation of Pipeline System**

Subject to its obligations under the Agreement, the Service Provider reserves the right to decide the manner in which it will operate the Pipeline System.

15. **GAS QUALITY**

15.1 **Gas to Conform to Specification**

Subject to clause 15.2, all Gas supplied by the User at a Receipt Point must conform with the Gas Specification.

15.2 **National Standard**

- (a) If at any time during the Term uniform Gas specifications for transmission pipelines are introduced into the Australian Gas industry and adopted by the Service Provider, they will apply in lieu of the Gas Specification.
- (b) The Service Provider will consult with the User to minimise the adverse impact of any changes under clause 15.2(a) to the extent reasonable and prudent.

15.3 Supply of Non-Specification Gas by User

- (a) The Service Provider does not agree to accept Non-Specification Gas into the Pipeline System if, to do so, would or may result in the Service Provider delivering Non-Specification Gas at a Delivery Point to an Other User.
- (b) If Non-Specification Gas is supplied into the Pipeline System by the User in the circumstances described in clause 15.3(a), the Service Provider:
 - (i) may issue an OFO directing the User to restrict or terminate supplies of Non-Specification Gas into the Pipeline System;
 - (ii) will, if it issues ~~such an~~ OFO, communicate that fact as soon as practicable to the person supplying such Non-Specification Gas to the User (if known) and request that such person terminate the supply of such Non-Specification Gas as soon as possible;
 - (iii) may (if necessary and possible) itself restrict or terminate supplies of Non-Specification Gas into the Pipeline System;
 - (iv) will if there is no other practical means of addressing the matter, vent or flare Gas to remove any or all of the Non-Specification Gas (and, in that event, will post a notification on the EBB); and
 - (v) will incur no liability whatsoever to the User for any financial or other consequences arising from any of the actions referred to in paragraphs (i), (ii), ~~and (iii)~~ and (iv) above.
- (c) Where Gas is vented or flared by the Service Provider pursuant to clause 15.3(b) ~~(iii)~~ (iv) the total quantity of Gas vented or flared (including any Gas meeting the Gas Specification):
 - (i) will be deemed not to have been received into the Pipeline System;
 - (ii) will be to the account of the User (unless the Non-Specification Gas was supplied into the Pipeline System by the User and by one or more Other Users, in which case the total quantity of Gas vented or flared will be pro-rated across those persons on the basis of their respective Scheduled Receipt Quantities at the relevant Receipt Point); and
 - (iii) the User must supply during the Day at the relevant Receipt Point a quantity of Gas meeting the Gas Specification equal to the quantity of vented or flared Gas that is to the account of the User.
- (d) The User will indemnify the Service Provider from and against all losses (including direct, indirect and consequential losses), costs, damages, expenses and penalties that may be suffered or incurred by the Service Provider as a result of, or in connection with:
 - (i) Non-Specification Gas being supplied into the Pipeline System by the User; and
 - (ii) the taking of any of the actions referred to in clause 15.3(b).

15.4 **Quality at Delivery Points**

If on a Day the User supplies Gas into the Pipeline System that conforms to the Gas Specification, then the Service Provider will on that Day deliver Gas to the User that conforms to the Gas Specification.

16. **WARRANTY OF TITLE, CONTROL, POSSESSION AND RESPONSIBILITY**

16.1 **Warranty of Title**

The User warrants that, at the time it supplies Gas to the Service Provider at a Receipt Point, the User will have good title to the Gas, free and clear of all liens, encumbrances and claims of any nature inconsistent with the Service Provider's operation of the Pipeline System.

16.2 **Control, Possession, Responsibility and Title of User**

- (a) The User:
 - (i) is in control and possession of Gas at all times prior to its supply at a Receipt Point and at all times after its delivery to the User at a Delivery Point; and
 - (ii) has legal responsibility and liability for Gas while it is within the control and possession of the User.
- (b) Subject to clause 16.5 the title to Gas supplied by the User to the Service Provider will at all times remain with the User.

16.3 **Custody, Control and Responsibility of Service Provider**

The Service Provider will:

- (a) take custody and control of Gas from a Receipt Point until delivery at a Delivery Point; and
- (b) have legal responsibility and liability for Gas only while it is within the Service Provider's custody and control.

16.4 **Deemed Delivery of Gas**

The Parties agree that by delivering Gas to the User at a Delivery Point in accordance with the terms of the Agreement, the Service Provider will be deemed to have delivered the User's Gas to it. Such delivered Gas at a Delivery Point is and will be deemed to be that received by the Service Provider from the User at the Receipt Point(s).

16.5 **Line Pack**

The Service Provider has title to, and control and possession of, all Line Pack within the Pipeline System as at the Commencement Date, and for the purposes of determining ownership of Line Pack as at the Termination Date, the Line Pack in existence as at the Commencement Date will be deemed to have remained in place for the Term and therefore be owned by the Service Provider as at the Termination Date, subject to the rights of the User under the other provisions of this clause 16.

17. RETENTION ALLOWANCE

17.1 Responsibility for System Use Gas

- (a) The User and all Other Users will be responsible for providing the Service Provider with all System Use Gas.
- (b) The User will supply its share of System Use Gas for a Day by way of the Retention Allowance.
- (c) The Service Provider will use reasonable and prudent efforts to minimise the quantity of System Use Gas that is required for the operation of the Pipeline System.

17.2 Supply of Retention Allowance

- (a) On a Day, the User will supply, and the Service Provider will be entitled to take, the Retention Allowance for that Day at no cost to the Service Provider.
- (b) The Gas comprising the Retention Allowance will be used by the Service Provider for the provision of Services and title to that Gas will not pass to the Service Provider.

17.3 Calculation of Retention Allowance

- (a) This clause 17.3 is subject to clause 17.5.
- (b) By 1700 hours on each Day, the Service Provider will calculate and post on the EBB the Retention Allowance Percentage that the User must supply at the beginning of the following Day.
- (c) The Retention Allowance Percentage for a Day will be calculated as follows:
 - (i) the Service Provider will reasonably and prudently estimate the total quantity of System Use Gas required for the provision of all Services on that Day (**Total System Use Gas Quantity**);
 - (ii) the Service Provider will deduct from that Total System Use Gas Quantity the aggregate quantity of System Use Gas to be supplied on that Day by the Existing Users under the terms of their Existing Transportation Agreements (with the balance being the **Incremental System Use Gas Quantity**); and
 - (iii) that Incremental System Use Gas Quantity will then be expressed as a percentage of the sum of the quantities of Gas nominated to be supplied at all Receipt Points on that day by all FT Users, all IT Users and all persons with contracts for Non-Specified Services.
- (d) The User's Retention Allowance for a Day is the quantity determined by multiplying the Retention Allowance Percentage for that Day by the quantity of Gas supplied by the User at the Receipt Point(s) on that Day.

17.4 **Estimate of Retention Allowance**

If the Service Provider is unable to determine the Retention Allowance for either Specified Service in time to meet the requirements of the nomination procedures set out in clauses 18.3 and 18.5 the Service Provider will:

- (a) apply its best estimate (adopting reasonable and prudent efforts) of the Retention Allowance Percentage;
- (b) make appropriate allowances in its next calculation of the Retention Allowance Percentage; and
- (c) provide with the Invoice for the relevant Month, a reconciliation of actual System Use Gas with the estimated Retention Allowance Percentage for each Day of that Month.

17.5 **Acknowledgement**

The Parties acknowledge that, from the earlier of:

- (a) the Revisions Commencement Date (referred to in clause 1.3); and
- (b) the expiration or termination of the Existing Transportation Agreements,

the Total System Use Gas Quantity for a Day will be allocated by the Service Provider across all persons receiving Services on that Day pro-rata on the basis of the quantities of Gas nominated for delivery to them on that Day, and the pro-rata share of each of those persons will be its Retention Allowance for that Day.

18. **FORECASTING, NOMINATING AND SCHEDULING OF SERVICE**

18.1 **Forecasts for FT Service**

- (a) This clause 18.1 only applies where the Agreement is for FT Service.
- (b) Not later than 10 Business Days prior to:
 - (i) the Commencement Date; and
 - (ii) each 30 September during the Term,

the User must provide to the Service Provider a forecast of the quantities of Gas that the User will nominate for delivery under the Agreement at each Delivery Point in each Month of the following calendar year.

- (c) Not later than 5 Business Days prior to the start of each Month the User must provide to the Service Provider a forecast of the quantities of Gas that the User will nominate for delivery under the Agreement at each Delivery Point on each Day of that Month.

18.2 **Confirmation of Prior Day's Receipts – FT Service**

~~(a) Pre 1 January 2006~~

~~Prior to 1 January 2006, the User:~~

~~(i) will, by making nominations for FT Service in accordance with clause 18.3, be deemed to have warranted that the Producers will supply the quantity of Gas the subject of those nominations (including any Retention Allowance and Imbalance Correction Quantity) on the relevant Day; and (ii) must in any event use its reasonable endeavours to provide (by not later than 1130 hours on each Day or as soon as possible thereafter), the Service Provider with a copy of confirmation from the Producers of the actual quantities of Gas supplied to the User at each Receipt Point on the Previous Day.~~

~~(b) Post 1 January 2006~~

~~From 1 January 2006, by n~~Not later than 0830 hours on each Day, the User must provide the Service Provider with a copy of a confirmation from the Producers of the actual quantity of Gas supplied for the User at each Receipt Point on the previous Day. If a confirmation is not received by that time for a Receipt Point, then the provisions of clause 21.2(c) will apply. ~~the User will be deemed not to have supplied any Gas at that Receipt Point on that previous Day.~~

18.3 Nominations for FT Service

(a) **Application of Clause:**

This clause 18.3 only applies where the Agreement is for FT Service.

(b) **Nominations by User:**

(i) Not later than 1100 hours on each Day, the User must nominate the quantities of Gas for the following Day which are to be delivered by the Service Provider at each Delivery Point (excluding Delivery Points the subject of the Existing Transportation Agreements). The sum of these quantities must not exceed the MDQ. If the sum of the User's nominations exceeds the MDQ, the Service Provider will reduce those nominations on a pro-rata basis so as to total the MDQ. If the User fails to make a nomination by 1100 hours on a Day, it will not be entitled to FT Service on the following Day.

(ii) By making nominations in accordance with this clause 18.3, the User will be deemed to have warranted that the Producers will supply the quantity of Gas the subject of those nominations (including any Retention Allowance and Imbalance Correction Quantity) on the relevant Day.

(c) **Allocation of Nominations:**

After receiving for a Day the User's nominations under clause 18.3(b) and any of the corresponding nominations of other FT Users, the Service Provider will allocate all of the nominated quantities at each Delivery Point among all FT Users as follows:

(i) a nominated quantity that is less than or equal to the Primary Capacity Quantity of an FT User at the Delivery Point will be treated as a nomination by that FT User to

utilise the relevant part or the whole (as the case may be) of that FT User's Primary Capacity Quantity;

- (ii) a nominated quantity that is greater than the Primary Capacity Quantity of an FT User at the Delivery Point will be treated as:
 - (A) a nomination by that FT User to utilise the whole of that Primary Capacity Quantity; and
 - (B) a nomination to utilise up to the Net Available Capacity at the Delivery Point as to the balance; and
- (iii) a nominated quantity in respect of a Delivery Point at which an FT User does not have a Primary Capacity Quantity will be treated as a nomination by that User to utilise up to the Net Available Capacity at that Delivery Point.

If nominations by the User and other **FT** Users to utilise Net Available Capacity at a Delivery Point exceed the Net Available Capacity at that Delivery Point, then the Net Available Capacity will be allocated by the Service Provider between the FT Users who have made those nominations pro-rata on the basis of their respective nominations for the Net Available Capacity (and those nominations will be adjusted accordingly by the Service Provider).

(d) **Service Provider to Post Quantities:**

Not later than 1200 hours on a Day, the Service Provider will post on the EBB the quantity of Gas nominated for delivery to the User at each Delivery Point on the following Day (being the quantity nominated under clause 18.3(b) (as allocated and adjusted by the Service Provider under clause 18.3(c)).

(e) **Retention Allowance and Initial Nominated Delivery Quantity Advice:**

Not later than 1700 hours on a Day, the Service Provider will determine in accordance with clause 17.3(c) the Retention Allowance Percentage for the User on the following Day and, having done so, will post on the EBB:

- (i) the Retention Allowance Percentage;
- (ii) the quantity of Gas nominated for delivery to the User at each Delivery Point on that following Day (being the quantity nominated under clause 18.3(b) as allocated and adjusted under clause 18.3(c)) (**Initial Nominated Delivery Quantity**); and
- (iii) the quantity of Gas required to be supplied by the User in aggregate at Receipt Points on that following Day (being the sum of the Initial Nominated Delivery Quantities as adjusted to take into account the Imbalance Correction Quantity, any Releases, any Imbalance exchange pursuant to clause 20 and the Retention Allowance) (**Initial Nominated Receipt Quantity**).

(f) **Not to Exceed MDQ:**

For the avoidance of doubt, the sum of the Initial Nominated Delivery Quantities must not exceed the MDQ.

(g) **User Responsible for Accuracy of Nomination:**

The User is solely responsible for the accuracy of its nominations and the Service Provider will have no obligation to enquire whether nominations are correct or not.

18.4 **FT Service Confirmations**

(a) **Confirmation Required from Producers:**

Not later than 1730 hours on the Day, the User must provide the Service Provider with a copy of a confirmation from the Producers that they will supply the Initial Nominated Receipt Quantity on the following Day.

(b) **Confirmation Received:**

If the supply of the Initial Nominated Receipt Quantity is confirmed by 1730 hours then:

- (i) the Initial Nominated Receipt Quantity will become the **'Final Nominated Receipt Quantity'** and each Initial Nominated Delivery Quantity will become a **'Final Nominated Delivery Quantity'**; and
- (ii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(c) **Confirmation of Lesser Quantity:**

If the quantity of Gas confirmed for supply at the Receipt Point(s) is less than the Initial Nominated Receipt Quantity, then:

- (i) the Initial Nominated Receipt Quantity will be reduced by the amount of the deficiency (**'Deficiency'**) (to create the **'Final Nominated Receipt Quantity'**);
- (ii) either:
 - (A) each Initial Nominated Delivery Quantity will be reduced by that proportion of the Deficiency (after it has been reduced to reflect its impact on the Retention Allowance) that each Initial Nominated Delivery Quantity bears to the sum of the Initial Nominated Delivery Quantities; or
 - (B) if requested by the User by no later than 1800 hours, one or more of the Initial Nominated Delivery Quantities may be maintained (or reduced to a lesser extent than would be the case under paragraph (A)) on the basis that one or more other Initial Nominated Delivery Quantities are reduced (with the aggregate of all reduced amounts being the same aggregate that would have resulted under paragraph (A)),

to create, in respect of each Delivery Point, a **'Final Nominated Delivery Quantity'**; and

- (iii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(d) **Confirmation of Greater Quantity:**

If the quantity of Gas confirmed for supply at the Receipt Point(s) is greater than the Initial Nominated Receipt Quantity, then:

- (i) the Initial Nominated Receipt Quantity will become the **'Final Nominated Receipt Quantity'** and each Initial Nominated Delivery Quantity will become a **'Final Nominated Delivery Quantity'**; and
- (ii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(e) **No Confirmation is Received:**

If, subject to clauses 18.4(c) and (d), the Initial Nominated Receipt Quantity is not confirmed by 1730 hours on the Day, then:

- (i) the User will be deemed not to have made any nomination for the following Day;
- (ii) the Service Provider will not schedule any receipts from or deliveries to the User for that following Day under the Agreement;
- (iii) the User will not be entitled to FT Service on that following Day under the Agreement; and
- (iv) the Service Provider will post on the EBB confirmation of paragraphs (ii) and (iii).

If contrary to the above paragraphs:

- (i) Gas is injected into the Pipeline System for or on behalf of the User; and
- (ii) the User takes delivery of Gas at a Delivery Point,

then:

- (iii) the Service Provider will be entitled to:
 - (A) exercise any of its rights under the FT Service Contract; and
 - (B) invoice for the Service thereby provided as if it were FT Service; and
- (iv) the Imbalance provisions (of clause 19) will apply to the quantity of Gas delivered.

(f) **Exceeding Final Nominated Receipt Quantity Not Permitted:**

The Service Provider will not accept into the Pipeline System any quantity of Gas on a Day that exceeds the Final Nominated Receipt Quantity for that Day (unless there has been an Authorised Variation for that Day).

18.5 IT Service – Indications, Notice of Availability, Nominations and Confirmations

(a) Application of Clause:

This clause 18.5 only applies where the Agreement is for IT Service.

(b) Confirmation from Producers:

~~(i) Pre 1 January 2006
Prior to 1 January 2006, the User:~~

~~(A) will, by making nominations for IT Service in accordance with clause 18.5(e), be deemed to have warranted that the Producers will supply the quantity of Gas the subject of those nominations (including any Retention Allowance and Imbalance Correction Quantity) on the relevant Day; and~~

~~(B) must in any event use its reasonable endeavours to provide (by not later than 1130 hours on each Day or as soon as possible thereafter), the Service Provider with a copy of confirmation from the Producers of the actual quantities of Gas supplied to the User at each Receipt Point on the Previous Day.~~

~~(ii) Post 1 January 2006~~

~~From 1 January 2006, by nN~~ot later than 0830 hours on each Day, the User must provide the Service Provider with a copy of a confirmation from the Producers of the actual quantity of Gas supplied for the User at each Receipt Point on the previous Day. If a confirmation is not received by that time for a Receipt Point, then the provisions of clause 21.2(c) will apply.
~~the User will be deemed not to have supplied any Gas at that Receipt Point on that previous Day.~~

(c) Indication by Service Provider:

As soon as practicable on each Day, and based upon the forecasts and nominations made by FT Users, the Existing Users and persons with contracts for Non-Specified Services ranking in priority ahead of IT Service, the Service Provider will post on the EBB its reasonable and prudent estimate of the amount of Capacity that might possibly be available for IT Service at each Delivery Point on the following Day. By posting such an amount of Capacity on the EBB, the Service Provider will not be taken to have warranted that that, or any, amount of Capacity will in fact be available for IT Service on the following Day.

(d) Service Provider to Post Capacity Available:

Not later than 1530 hours on each Day, the Service Provider will post on the EBB the amount of Capacity (if any) that it reasonably and prudently determines will be available for IT Service at each Delivery Point on the following Day based:

- (i) on the then prevailing operating conditions and Gas quality being injected into the Pipeline System; and
- (ii) the nominations made by the FT Users, the Existing Users and persons with contracts for Non-Specified Services ranking in priority ahead of IT Service.

(e) **Nominations by User:**

If the Service Provider has posted on the EBB notification of available Capacity for IT Service then, not later than 1600 hours on the Day, the User must nominate the quantities of Gas for the following Day which are to be delivered by the Service Provider at each Delivery Point. By making nominations in accordance with this clause 18.5, the User will be deemed to have warranted that the Producers will supply the quantity of Gas the subject of those nominations (including any Retention Allowance and Imbalance Correction Quantity) on the relevant Day.

(f) **Allocation of Nominations:**

Not later than 1630 hours, and on the basis of all nominations received from IT Users on that Day, the Service Provider will determine and post on the EBB the quantity of Gas that it is able to deliver to IT Users at each nominated Delivery Point. If nominations for IT Service exceed the Capacity that is available at a Delivery Point for IT Service, the Capacity available will be allocated by the Service Provider between all IT Users pro-rata on the basis of their respective nominations (and those nominations will be adjusted accordingly by the Service Provider). ~~and~~

(g) **Retention Allowance and Initial Nominated Quantity Advice:**

Not later than 1700 hours on a Day, the Service Provider will determine, in accordance with clause 17.3, the Retention Allowance Percentage for the User on the following Day, and having done so, will post on the EBB:

- (i) the Retention Allowance Percentage;
- (ii) the quantity of Gas that it is able to deliver to the User at each nominated Delivery Point on the following Day (being the quantity determined by the Service Provider under clause 18.5(f)) ('**Initial Nominated Delivery Quantity**'); and
- (iii) the quantity of Gas that it is able to accept from the User in aggregate at the Receipt Points on that following Day (being the sum of the Initial Nominated Delivery Quantities as adjusted to take into account the Imbalance Correction Quantity, any Imbalance exchange pursuant to clause 20, any Releases and the Retention Allowance) ('**Initial Nominated Receipt Quantity**').

(h) **Confirmation from Producers of Receipt Point Quantities:**

Not later than 1730 hours on the Day, the User must provide the Service Provider with a copy of a confirmation from the Producers that they will supply the Initial Nominated Receipt Quantity on the following Day.

(i) **Confirmation by Producers:**

If the Initial Nominated Receipt Quantity is confirmed by 1730 hours then:

- (i) the Initial Nominated Receipt Quantity will become the **'Final Nominated Receipt Quantity'** and each Initial Nominated Delivery Quantity will become a **'Final Nominated Delivery Quantity'**; and
- (ii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(j) **Confirmation of Lesser Quantity:**

If the quantity of Gas confirmed for supply at the Receipt Point(s) is less than the Initial Nominated Receipt Quantity, then:

- (i) the Initial Nominated Receipt Quantity will be reduced by the amount of the deficiency (**'Deficiency'**) (to create the **'Final Nominated Receipt Quantity'**);
- (ii) either:
 - (A) each Initial Nominated Delivery Quantity will be reduced by that proportion of the Deficiency (after it has been reduced to reflect its impact on the Retention Allowance) that each Initial Nominated Delivery Quantity bears to the sum of the Initial Nominated Delivery Quantities; or
 - (B) if requested by the User by no later than 1800 hours, one or more of the Initial Nominated Delivery Quantities may be maintained (or reduced to a lesser extent that would be the case under paragraph (A)) on the basis that one or more other Initial Nominated Delivery Quantities are reduced (with the aggregate of all reduced amounts being the same aggregate that would have resulted under paragraph (A)),

to create, in respect of each Delivery Point, a **'Final Nominated Delivery Quantity'**; and

- (iii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(k) **Confirmation of Greater Quantity:**

If the quantity of Gas confirmed for supply at the Receipt Point(s) is greater than the Initial Nominated Receipt Quantity, then:

- (i) the Initial Nominated Receipt Quantity will become the **'Final Nominated Receipt Quantity'** and each Initial Nominated Delivery Quantity will become a **'Final Nominated Delivery Quantity'**; and

- (ii) the Service Provider will prepare to schedule the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities under clause 18.6.

(l) **No Confirmation is Received:**

If, subject to clauses 18.5(j) and (k), the Initial Nominated Receipt Quantity is not confirmed by 1730 hours on the Day then:

- (i) the User will be deemed not to have made any nomination for the following Day;
- (ii) the Service Provider will not schedule receipts from or deliveries to the User for that following Day under the Agreement;
- (iii) the User will not be entitled to IT Service on that following Day under the Agreement; and

~~(iv)~~ (iv) the Service Provider will post on the EBB confirmation of paragraphs (ii) and (iii).

If contrary to the above paragraphs:

~~(iv)(i)~~ (i) Gas is injected into the Pipeline System for or on behalf of the User; and

~~(iv)(ii)~~ (ii) User takes delivery of Gas at a Delivery Point,

then:

~~(vi)(iii)~~ (iii) the Service Provider will be entitled to:

- (A) exercise any of its rights under the IT Service Contract; and
- (B) invoice for the Service thereby provided as if it were IT Service; and

~~(vi)(iv)~~ (iv) the Imbalance Provisions (of clause 19) will apply to the quantity of Gas delivered.

(m) **Exceeding Final Nomination Receipt Quantity Not Permitted:**

The Service Provider will not accept into the Pipeline System any quantity of Gas on a Day that exceeds the Final Nominated Receipt Quantity for that Day (unless there has been an Authorised Variation for that Day).

18.6 Scheduling of Receipt and Delivery Quantities

- (a) This clause 18.6 applies whether the Agreement is for FT Service or for IT Service.
- (b) Unless clause 18.4(e) or clause 18.5(l) applies on a Day, the Service Provider will, by no later than 1830 hours on the Day prior to that Day, schedule the amount of the Final Nominated Receipt Quantity and the Final Nominated Delivery Quantities (after giving effect to clauses 23 and 34) and notify the User of the quantity of Gas for the Day which:

- (i) the User is required to supply to the Service Provider at the Receipt Points for provision of the Specified Service; and
- (ii) the Service Provider is required to deliver to the User at each of the nominated Delivery Points,

which quantities will be known as the '**Scheduled Quantities**'.

- (c) The Scheduled Quantities will bind (subject to the Agreement) the User and the Service Provider.

18.7 Variation of Final Nominated Receipt Quantity

- (a) This clause 18.7 applies whether the Agreement is for FT Service or for IT Service.
- (b) The User may at any time request the Service Provider to authorise a variation in the Final Nominated Receipt Quantity for a Day provided that the amount of the variation sought is matched (in aggregate, but net of that Day's Retention Allowance) by variations to specific Final Nominated Delivery Quantities (identified by the User) ('**Authorised Variation**').
- (c) Subject to clauses 18.7(e)(i) and (ii), and where the Agreement is for FT Service, the Service Provider will authorise a reduction in the Final Nominated Receipt Quantity for a Day.
- (d) The Service Provider will have no obligation to authorise an increase in the Final Nominated Receipt Quantity for a Day if, to do so, would adversely affect the quantities of Gas already scheduled for receipt from and delivery to Other Users on that Day.
- (e) In order for the Service Provider to consider a request for approval of an Authorised Variation:
 - (i) the amount of the Authorised Variation must be allocated by the User to one or more specific Receipt Points; and
 - (ii) where an additional quantity of Gas is to be supplied and taken delivery of, the User must provide the Service Provider with a copy of a confirmation from the Producers that they will supply the additional Gas.
- (f) Where an Authorised Variation is approved, it amends the Scheduled Quantities accordingly.
- (g) Where:
 - (i) the Agreement is for FT Service;
 - (ii) the Service Provider authorises an increase in the Final Nominated Receipt Quantity for a Day; and
 - (iii) that results in the User being entitled to take delivery of a quantity of Gas on that Day in excess of the MDQ,

the User must pay, in addition to all other amounts payable under the Agreement, an amount equal to the number of GJ's taken in excess of the MDQ multiplied by the IT Commodity Charge Rate.

18.8 Forms and Notification

All forecasts and nominations, and all requests for Authorised Variations, must be made by the User completing, and forwarding to the Service Provider on the EBB, the appropriate form set out in Schedule 5.

18.9 Sequence of Gas Flow

Despite anything to the contrary contained in this Access Arrangement, the sequence in which Gas is received by the Service Provider from the User on a Day, will be:

- (a) first, the Retention Allowance for that Day;
- (b) secondly, the amount of the Imbalance to be corrected on that Day pursuant to clause 19.2; and
- (c) thirdly, the Scheduled Delivery Quantities for that Day (including any Authorised Variations for that Day).

19. IMBALANCE AND ZONE VARIATION

19.1 Obligation of User

On each Day, the User must use its best endeavours to ensure that there is neither an Imbalance nor a Zone Variation.

19.2 Correction of Imbalance

- (a) Not later than 0900 hours on each Day, the Service Provider will notify the User of any Imbalance and any Zone Variation for the prior Day by publishing the quantities on the EBB.
- (b) The User:
 - (i) must begin to correct an Imbalance as soon as possible after the amount of the Imbalance has been posted on the EBB; but, in any event
 - (ii) must clear the Imbalance on the Day following the Day on which the amount has been posted on the EBB ('Clearance Day') (provided that if the Agreement is for IT Service and there are no Scheduled Quantities for the User for the Clearance Day, then the User must clear the Imbalance on the next Day for which the User has Scheduled Quantities).
- (c) If, at the date of expiration or termination of the Agreement there is an Imbalance, then despite the expiration or termination of the Agreement, the User must:

- (i) if the Imbalance is negative, pay to the Service Provider (within 10 Days after receipt of an invoice) an amount equal to the number of GJ's of the Imbalance multiplied by the Excess Imbalance Charge Rate; and
- (ii) if the Imbalance is positive, make arrangements to sell the amount of the Imbalance to ~~another an Other u~~User, ~~and if~~ such sale is not completed within 30 Days of the date of expiration or termination, ~~such the~~ amount ~~shall will~~ be forfeited by the User without entitlement to compensation. The Service Provider will provide reasonable assistance to the User using the Service Provider's existing facilities (for example, by posting the amount for sale on the EBB) for the purposes of the User obtaining a sale of the amount on reasonable terms.

19.3 Excess Imbalance Charge

- (a) If, on a Day, Actual Deliveries differ by more than 8% from Actual Receipts less (the Retention Allowance plus the Imbalance Correction Quantity) (**Imbalance Buffer Quantity**'), then:
 - (i) the amount of that difference will be the **Excess Imbalance**'; and
 - (ii) an Excess Imbalance Charge will be payable by the User on that amount of the Excess Imbalance not exchanged in accordance with clause 20.1.
- (b) The Excess Imbalance Charge will be calculated by multiplying the number of GJ's of Excess Imbalance by the Excess Imbalance Charge Rate. The Excess Imbalance Charge Rate is set out in the Tariff Schedule. For clarity, no Excess Imbalance Charge will apply to the Imbalance Buffer Quantity.
- (c) The User is not liable to pay the Excess Imbalance Charge ~~where to the extent that~~ the Excess Imbalance was caused by the negligence of, or breach of the Agreement by, the Service Provider.

19.4 Rights of Service Provider

When the Service Provider becomes aware of an Excess Imbalance, or the likelihood of an Excess Imbalance, the Service Provider will post a notification on the EBB. If the User does not remedy the situation immediately after the notification has been posted, the Service Provider may, in addition to its rights under clause 19.3, and if it is of such a nature, issue an OFO and require immediate remedy of the situation. If the situation is not then remedied immediately, the Service Provider will take one or more of the following actions:

- (a) curtail or suspend deliveries to the User at one or more Delivery Points;
- (b) interrupt or cease receipts of Gas from, or confiscate Gas of, the User at one or more Receipt Points.

The Service Provider will not be liable for any losses, costs, damages or expenses that the User may suffer or incur as a result of curtailment, suspension, interruption, cessation or confiscation under this clause 19.4.

19.5 Indemnity

The User will indemnify the Service Provider from and against any losses, costs, damages and expenses suffered or incurred by the Service Provider in respect of any third party that is either affected by an Excess Imbalance or affected by the Service Provider's actions under clause 19.4.

19.6 Notification by Service Provider

On each Day during the Term the Service Provider will (subject to any relevant obligations of confidentiality under the Existing Transportation Agreements), post on the EBB on an hourly basis in respect of each Receipt Point and each Delivery Point:

- (a) the receipt and delivery pressure;
- (b) the average flow rate;
- (c) the cumulative volume of Gas received or delivered; and
- (d) the Service Provider's current estimate of the extent (if any) by which aggregate receipts or aggregate deliveries of Gas on the Day will differ from the aggregate of all Scheduled Receipt Quantities or Scheduled Delivery Quantities on that Day and, therefore, the estimated time (if any) at which the Service Provider may curtail or suspend receipts or deliveries of Gas.

19.7 Zone Variation Charge

- (a) This clause 19.7 only applies where the Agreement is for FT Service.
- (b) If, on a Day, Actual Zone Deliveries differ by more than 8% from the sum of the Final Nominated Delivery Quantities for that Zone (**'Zone Variation Buffer'**) then:
 - (i) the amount of that difference will be the **'Excess Zone Variation'**; and
 - (ii) a Zone Variation Charge will be payable by the User. The Zone Variation Charge will be calculated by multiplying the number of GJ's of the Excess Zone Variation by the Zone Variation Charge Rate. The Zone Variation Charge Rate is set out in the Tariff Schedule.

For clarity, no Zone Variation Charge will apply to the Zone Variation Buffer.

20. IMBALANCE TRADING

20.1 Right to Trade

- (a) The User may exchange all or part of the User's Imbalance for an equal but opposite quantity of an Other User's Imbalance on such terms as they may agree, provided that notice is received by the Service Provider from both the User and the Other User no later than 1030 hours on the Day prior to the Day of exchange. Where an exchange is made, both the

User's Imbalance and the Other User's Imbalance will be adjusted accordingly by the amount of the exchange.

- (b) If the User has contracts with the Service Provider for both FT Service and IT Service the User may exchange equal but opposite quantities of Imbalance that have arisen under those contracts provided that notice is received by the Service Provider no later than 1030 hours on the Day prior to the Day of exchange.
- (c) A notice under clause 20.1(a) or clause 20.1(b) must be made by the User completing, and forwarding to the Service Provider on the EBB, the relevant form set out in Schedule 5.

20.2 **Liability for Charges**

An exchange under clause 20.1 will not affect the User's liability to pay:

- (a) any of the charges payable under the Agreement for the Specified Service rendered by the Service Provider; or
- (b) the Excess Imbalance Charge, in respect of an Excess Imbalance not so exchanged.

21. **ALLOCATION OF RECEIPT POINT QUANTITIES**

21.1 **Sole User**

Where a Receipt Point is used on a Day only by the User, the User will, for the purposes of the Agreement, be taken to have supplied the total quantity of Gas measured as having been supplied at that Receipt Point on that Day.

21.2 **Shared Receipt Point**

Subject to any different allocation arrangements agreed between the Producers, the User and all Other Users using a Receipt Point which are notified to the Service Provider, the following allocation procedures will apply where a Receipt Point is used on a Day by the User and by one or more Other Users:

- (a) if the total quantity of Gas measured as having been supplied at that Receipt Point on that Day is equal to the sum of the Confirmed Quantities, then:
 - (i) the User will, for the purposes of the Agreement, be taken to have supplied on that Day at the Receipt Point, the User's Confirmed Quantity; and
 - (ii) each of the Other Users will be taken to have supplied on that Day at that Receipt Point, their respective Other User's Confirmed Quantity;
- (b) if the total quantity of Gas measured as having been supplied at that Receipt Point on that Day is greater or less than the sum of the Confirmed Quantities, then:
 - (i) the User will, for the purposes of the Agreement; and
 - (ii) each of the Other Users will,

be taken to have supplied on that Day at that Receipt Point, that proportion of the total measured quantity that each of their respective Confirmed Quantities bears to the sum of all of their Confirmed Quantities; or

- (c) if no Confirmed Quantities are provided to the Service Provider ~~on~~for that Day, or if Confirmed Quantities are provided for one or more but not all of the User and each of the Other Users for that Day, then the Service Provider will allocate the actual receipts of Gas into the Pipeline System as follows:
 - (i) if the total quantity of Gas measured as having been supplied at that Receipt Point on that Day is equal to the sum of the Scheduled Receipt Quantities for that Day, as per those Scheduled Receipt Quantities; or
 - (ii) if the position is otherwise, then pro-rata according to the Scheduled Receipt Quantities for that Day.

22. ALLOCATION OF DELIVERY POINT QUANTITIES

22.1 Sole User

Where a Delivery Point is used on a Day only by the User, the User will, for the purposes of the Agreement, be deemed to have taken delivery of the total quantity of Gas measured at that Delivery Point as having been delivered from the Pipeline System.

22.2 Shared Delivery Point

Where a Delivery Point is used on a Day by the User and by one or more Other Users:

- (a) the total quantity of Gas measured as having been delivered from the Pipeline System at that Delivery Point on that Day will be allocated by the Service Provider between the User and the Other Users in accordance with the remaining provisions of this clause 22; and
- (b) the following expressions have the following meanings in the remaining provisions of this clause 22:
 - (i) a **'Facility'** is a facility, premises or location which:
 - (A) does not itself constitute a Delivery Point; but
 - (B) is to use, consume or resupply Gas which is transported to the facility, premises or location from the Pipeline System through a pipeline connected to, but not forming part of, the Pipeline System,and **'Facilities'** means more than one Facility;
 - (ii) **'User's Facilities'** are Facilities that are owned or operated by the User or by one or more customers of the User;

- (iii) **'Other Users Facilities'** are Facilities that are owned or operated by one or more Other Users or by one or more customers of Other Users;
- (iv) a **'meter'** is equipment for measuring the quantity of Gas delivered, which complies with Schedule 8;
- (v) **'Metered Facilities'** are Facilities that each have a Meter;
- (vi) **'User's Metered Facilities'** are Metered Facilities that are owned or operated by the User or by one or more customers of the User;
- (vii) **'Other Users' Metered Facilities'** are Metered Facilities that are owned or operated by one or more Other Users or by one or more customers of Other Users;
- (viii) an **'Unmetered Facility'** is a Facility that does not have a Meter, and **'Unmetered Facilities'** means more than one Unmetered Facility;
- (ix) **'User's Unmetered Facilities'** are Unmetered Facilities that are owned or operated by the User or by one or more customers of the User;
- (x) **'Other Users' Unmetered Facilities'** are Unmetered Facilities that are owned or operated by one or more Other Users or by one or more customers of Other Users;
- (xi) **'Downstream Service Provider'** means the operator of the downstream distribution pipeline system that directly connects with the Pipeline System;
- (xii) **'Conforming Allocation Procedure'** has the meaning given in clause 22.3(a)(ii); and
- (xiii) **'Metropolitan Delivery Point'** means either the Gepps Cross Delivery Point, the Elizabeth Delivery Point or the Taperoo Delivery Point; and **'Metropolitan Delivery Points'** means all of those points.

22.3 Requirement for Metering and Exception to Requirement

- (a) The User will not be entitled to the Specified Service on a Day unless:
 - (i) each of the User's Facilities has a Meter; or
 - (ii) the Service Provider has received from the Downstream Service Provider in respect of each Delivery Point that is to be shared by the User and by one or more Other Users, a procedure for allocating between Unmetered Facilities the total quantity of Gas (net of quantities measured at Metered Facilities if any) measured as having been delivered at each such Delivery Point, which allocation procedure:
 - (A) names the User and each relevant Other User;
 - (B) allocates to the User and to each named Other User a fixed percentage of that net quantity of Gas; and

(C) allocates 100% of that net total quantity of Gas between the User and the named Other User(s),

(such allocation procedure being a '**Conforming Allocation Procedure**').

- (b) Where the Service Provider has received a Conforming Allocation Procedure under clause 22.3(a), it will allocate quantities of Gas in accordance with clauses 22.4 and 22.5.
- (c) In order for clause 22.3(a)(ii) to apply in relation to a Month, the Service Provider must have received the Conforming Allocation Procedure at least 7 Days before the beginning of that Month.
- (d) The Service Provider will, if requested by the User and each relevant Other User, apply a different allocation procedure of the Downstream Service Provider, provided that the different allocation procedure is a Conforming Allocation Procedure and the requirements of clause 22.3(c) are satisfied in relation to that different procedure.

22.4 **Allocations for Unmetered Facilities**

- (a) This clause 22.4:
 - (i) only applies in the circumstances described in clause 22.3(a)(ii); and
 - (ii) is subject to clause 22.5.
- (b) Where, on a Day, Gas is transported to one or more User's Unmetered Facilities and to one or more Other Users' Unmetered Facilities (where each of those Facilities is downstream of the same Delivery Point) but not to any Metered Facilities downstream of the same Delivery Point then, for the purposes of the Agreement:
 - (i) the total quantity of Gas measured as having been delivered from the Pipeline System at that Delivery Point on that Day will be allocated by the Service Provider between the User and the Other Users in accordance with the Conforming Allocation Procedure; and
 - (ii) the User and each of the Other Users will be deemed to have taken delivery of their respective allocations at that Delivery Point on that Day.
- (c) Where, on a Day, Gas is transported:
 - (i) to one or more User's Metered Facilities and to one or more Other Users' Unmetered Facilities (where each of those Facilities is downstream of the same Delivery Point); or
 - (ii) to one or more Users' Unmetered Facilities and to one or more Other Users' Metered Facilities (where each of those Facilities is downstream of the same Delivery Point),

then, for the purposes of the Agreement:

- (iii) the total quantity of Gas measured as having been delivered from the Pipeline System at that Delivery Point on that Day will be allocated by the Service Provider as follows:
 - (A) by allocating to the User the quantities of Gas measured as having been delivered at each of the User's Metered Facilities (if any);
 - (B) by allocating to each of the Other Users the quantities of Gas measured as having been delivered at each of their respective Metered Facilities (if any); and
 - (C) by allocating the balance of the aggregate quantity (that is, after deducting the quantities (if any) referred to in paragraphs (A) and (B) above) between such of the User and the Other Users that have Unmetered Facilities in accordance with the Conforming Allocation Procedure; and
- (iv) the User and each of the Other Users will be deemed to have taken delivery of their respective allocations at that Delivery Point on that Day.

22.5 Allocations for Unmetered Facilities in Adelaide Metropolitan Area

- (a) This clause 22.5 only applies in the circumstances described in clause 22.3(a)(ii).
- (b) Where, on a Day, Gas is transported to one or more User's Unmetered Facilities and to one or more Other Users' Unmetered Facilities (where each of those Facilities is downstream of a Metropolitan Delivery Point) but not to any Metered Facilities downstream of a Metropolitan Delivery Point then, for the purposes of the Agreement:
 - (i) the sum of the quantities of Gas measured as having been delivered from the Pipeline System at the Metropolitan Delivery Points on that Day will be allocated by the Service Provider between the User and the Other Users in accordance with the Conforming Allocation Procedure; and
 - (ii) the User and each of the Other Users will be deemed to have taken delivery of their respective aggregated allocations at the Metropolitan Delivery Points on that Day.
- (c) Where, on a Day, Gas is transported:
 - (i) to one or more User's Metered Facilities and to one or more Other Users' Unmetered Facilities (where each of those Facilities is downstream of a Metropolitan Delivery Point); or
 - (ii) to one or more User's Unmetered Facilities and to one or more Other Users' Metered Facilities (where each of those Facilities is downstream of a Metropolitan Delivery Point),

then, for the purposes of the Agreement:

- (iii) the sum of the quantities of Gas measured as having been delivered from the Pipeline System at the Metropolitan Delivery Points on that Day will be allocated by the Service Provider as follows:
 - (A) by allocating to the User the quantities of Gas measured as having been delivered at each of the User's Metered Facilities (if any);
 - (B) by allocating to each of the Other Users the quantities of Gas measured as having been delivered at each of their respective Metered Facilities (if any); and
 - (C) by allocating the balance of the aggregate quantity (that is after deducting the quantities (if any) referred to in paragraphs (A) and (B) above) between such of the User and the Other Users that have Unmetered Facilities in accordance with the Conforming Allocation Procedure; and
- (iv) the User and each of the Other Users will be deemed to have taken delivery of their respective aggregated allocations at the Metropolitan Delivery Points on that Day.

22.6 Allocation Where Only Metered Facilities Exist

- (a) Subject to clause 22.6(b), if on a Day, Gas is transported to one or more User's Metered Facilities and to one or more Other Users' Metered Facilities (where each of those Facilities is downstream of the same Delivery Point) but not to any Unmetered Facilities downstream of the same Delivery Point then, for the purposes of the Agreement:
 - (i) the total quantity of Gas measured as having been delivered from the Pipeline System at that Delivery Point on that Day will be allocated by the Service Provider between the User and the Other Users in the same proportion that the quantity of Gas measured as having been delivered at each of their respective Metered Facilities bears to the sum of those; and
 - (ii) the User and each of the Other Users will be deemed to have taken delivery of their respective allocations at that Delivery Point on that Day.
- (b) If, on a Day, Gas is transported to one or more User's Metered Facilities and to one or more Other Users' Metered Facilities (where each of those Facilities is downstream of a Metropolitan Delivery Point) but not to any Unmetered Facilities downstream of a Metropolitan Delivery Point then, for the purposes of the Agreement:
 - (i) the sum of the quantities of Gas measured as having been delivered from the Pipeline System at the Metropolitan Delivery Points on that Day will be allocated by the Service Provider between the User and the Other Users in the same proportion that the sum of the quantities of Gas measured as having been delivered at each of their respective Metered Facilities bears to the sum of all of their measured quantities; and
 - (ii) the User and each of the Other Users will be deemed to have taken delivery of their respective aggregated allocations at the Metropolitan Delivery Points on that Day.

23. PRIORITY OF SERVICE

23.1 Priority and Sequence

If on a Day there is insufficient Capacity in the Pipeline System to deliver all Gas nominated by the User and all Other Users on that Day, then the Service Provider will schedule Gas deliveries in the following priority and sequence:

- (a) first, in equal priority:
 - (i) quantities nominated as Primary Capacity Quantities (and confirmed under clause 18.4(a)) by the User (where the Agreement is for FT Service) and all other FT Users within their respective MDQs up to the Maximum Capacity of the relevant Delivery Points; and
 - (ii) quantities nominated by the Existing Users under the Existing Transportation Agreements within their respective MDQs.

If the sum of the confirmed nominations for Primary Capacity Quantities and the nominations under the Existing Transportation Agreements exceeds the available Capacity, the available Capacity will be allocated between the FT Users and the Existing Users pro-rata on the basis of their respective MDQs;

- (b) secondly, quantities nominated (or allocated under clause 18.3(c)) to use Net Available Capacity (and confirmed under clause 18.4(a)) by the User (where the Agreement is for FT Service) and all other FT Users within their respective MDQs, up to the Maximum Capacity of the relevant Delivery Points. If the sum of the confirmed nominations for use of Net Available Capacity exceeds the amount of Actual Net Available Capacity, that available Capacity will be allocated between all FT Users pro-rata on the basis of their respective MDQs;
- (c) thirdly, quantities nominated (and confirmed under clause 18.5 (h)) by the User (where the Agreement is for IT Service) and all other IT Users up to the Maximum Capacity of the relevant Delivery Points. If the sum of the confirmed nominations exceeds the available Capacity for IT Service, that available Capacity will be allocated between the User and the other IT Users pro-rata on the basis of their respective aggregate confirmed nominations;
- (d) fourthly, Authorised Variation quantities of the User (where the Agreement is for FT Service) and all other FT Users up to the Maximum Capacity of the relevant Delivery Points. If the sum of those quantities exceeds the Capacity available to meet those Authorised Variation quantities that available Capacity will be allocated between the FT Users pro-rata on the basis of the amounts of their respective confirmed Authorised Variations; and
- (e) fifthly, Authorised Variation quantities of the User (where the Agreement is for IT Service) and all other IT Users up to the Maximum Capacity ~~Capacity~~ of the relevant Delivery Points. ~~If~~ If the sum of those quantities exceeds the Capacity available to meet those Authorised Variation quantities the available Capacity will be allocated between the IT Users pro-rata on the basis of the amounts of their respective confirmed Authorised Variations.

23.2 Variations to Priority and Sequence – Non-Specified Services

- (a) In the case of a Non-Specified Service, the Service Provider may, by written notice to the User, vary the priority and sequence in clause 23.1 by:
 - (i) inserting one or more additional paragraphs; and/or
 - (ii) modifying one or more existing paragraphs.
- (b) The Service Provider will not vary clause 23.1 so as to accord a Non-Specified Service a higher priority than that for FT Service referred to in clause 23.1(a) (but, for the avoidance of doubt, the Service Provider may accord a Service the same priority as that for FT Service referred to in clause 23.1(a)).

24. CURTAILMENT AND INTERRUPTION

24.1 Rights of Service Provider

If, on any Day, after having determined the Scheduled Quantities and having scheduled quantities of Gas for receipt, transportation and delivery to Other Users, the Capacity of the Pipeline System is, for any reason, inadequate to accommodate the Scheduled Quantities and all of the quantities that have been scheduled for Other Users for that Day then, subject to clause 25:

- (a) the Service Provider will have the right to curtail, interrupt or discontinue Services in the reverse order to that set out in clause 23.1; and/or
- (b) the Service Provider may, by notice to the User ('**Curtaiment Notice**'), require the User to reduce the quantity of Gas being supplied at the Receipt Point(s), or to reduce the quantity of Gas being taken at a Delivery Point(s), or both; and
- (c) the User must comply with any Curtaiment Notice.

24.2 Provision of Notice and Responsibility

- (a) The Service Provider will provide the User with:
 - (i) notification of any curtailment or interruption to be invoked by the Service Provider in accordance with clause 24.1; or
 - (ii) a Curtaiment Notice,

at a time and in a manner that is reasonable and prudent under then existing conditions. Where such a notification or Curtaiment Notice is provided on the EBB, the Service Provider will send a copy of that notification or Curtaiment Notice by facsimile to the User and will also telephone the User to advise that the notification or Curtaiment Notice has been or will be provided.
- (b) The User will be solely responsible for informing all affected Producers and downstream entities of the notification of the curtailment or interruption or the Curtaiment Notice.

24.3 **Curtailment Compliance**

- (a) The User will be allowed 1 hour (or such greater or less time as is stipulated by the Service Provider as being required to protect the integrity of the Pipeline System or to protect the Service Provider's ability to accept and deliver properly scheduled quantities of Gas for the User and Other Users on the Day or subsequent Days), to comply with the requirements of any Curtailment Notice.
- (b) If the User does not comply with the requirements of a Curtailment Notice within the time period stipulated by the Service Provider the Service Provider may take action to give effect to those requirements.

24.4 **Charge**

All Gas taken by the User in violation of a Curtailment Notice after the time referred to in clause 24.3 has passed, will attract a charge calculated by multiplying the number of GJ's of Gas in respect of which the User is at variance from the level of receipts or deliveries specified in the Curtailment Notice by the Default Charge Rate. The Default Charge Rate is set out in the Tariff Schedule.

24.5 **Emergencies, Pipeline Integrity, Etc**

In addition to the rights of the Service Provider set out elsewhere in the Agreement, and despite anything to the contrary contained in the Agreement, the Service Provider will be entitled to curtail, interrupt or discontinue Specified Services either totally or partially for any period of time which the Service Provider considers to be necessary:

- (a) because of any condition, situation or circumstance that the Service Provider considers will or may:
 - (i) present a threat of danger to the life, health or property of any person; or
 - (ii) jeopardise the operational efficiency or integrity of the Pipeline System; or
- (b) in order to comply with the requirements of the Licence, any Governmental Agency or any law.

In the event of any such curtailment, interruption or discontinuation, the other provisions of this clause 24 will apply **except** that the 1 hour period referred to in clauses 24.3 and 24.4 may be reduced by the Service Provider (to zero if necessary).

24.6 **~~No~~ Liability**

The Service Provider will only be liable for any losses, costs, damages or expenses that the User may suffer or incur as a result of:

- (a) any curtailment, ~~or~~ interruption or discontinuation invoked by the Service Provider under clauses 24.1 or 24.5; or
- (b) the User complying or failing to comply with a Curtailment Notice,

where the Service Provider has been negligent or has failed to comply with its obligations under the Agreement.

25. OPERATIONAL FLOW ORDERS

25.1 Description of Contents of OFOs

- (a) An 'OFO' (or '**Operational Flow Order**') is an announcement by the Service Provider:
 - (i) of operating conditions, attributable to conduct of the User that is in breach of the User's obligations under the Agreement, which conduct is adversely affecting or may (in the reasonable opinion of the Service Provider) adversely affect, the provision of Services to one or more Other Users; and
 - (ii) which directs the User to take specific action as a result.

The issue of an OFO is in addition to any other rights that the Service Provider~~r~~ has under the Agreement.

- (b) Each OFO will contain the following:
 - (i) the time and date that it was issued;
 - (ii) the time and date from which the OFO is effective;
 - (iii) the duration of the OFO (provided that if none is specified, the OFO will remain effective until further notice);
 - (iv) the name(s) of any Other User(s) to whom the OFO has also been issued;
 - (v) the action, if any, that the User and any Other User(s) must take;
 - (vi) the reason(s) for the OFO; and
 - (vii) such other information as the Service Provider considers necessary.

25.2 Conditions Under Which an OFO may be Issued

Circumstances for which an OFO may be issued include, but are not limited to the following:

- (a) to alleviate conditions that threaten the operational integrity of the Pipeline System;
- (b) to maintain Line Pack and pressures necessary in order for the Service Provider to maintain Capacity and the ability to receive and deliver properly scheduled quantities of Gas from and to the User and Other Users on a Day and on subsequent Days;
- (c) to ensure adequate Gas is received at the Receipt Points on the Pipeline System and taken by the User at specific Delivery Points on the Pipeline System;

- (d) to alleviate operational problems arising from excessive supplies of Gas at the Receipt Points or excessive deliveries of Gas at specific Delivery Points; and
- (e) other Receipt Point or Delivery Point problems or difficulties not reflected in paragraphs (a) to (d) above.

25.3 Means of Issuing OFOs

- (a) The Service Provider will issue an OFO by posting the OFO on the EBB. Notification that an OFO has been issued will be sent by facsimile to the User and the Service Provider will also telephone the User to advise that the OFO has been or will be issued.
- (b) The User:
 - (i) must monitor the EBB for any OFO applicable to the User; and
 - (ii) will be solely responsible for complying with each OFO.

25.4 Obligations of User

- (a) Upon an OFO being issued, the User must take the actions set out in the OFO, which may include, but are not limited to, the following:
 - (i) only using a Delivery Point in respect of which the User has a Primary Capacity Quantity;
 - (ii) increasing supplies and/or restricting deliveries of Gas at the Receipt Points and/or at specific Delivery Points if less than the Scheduled Receipt Quantity is being received into the Pipeline System;
 - (iii) restricting supplies of Gas if less than the Scheduled Delivery Quantity is being taken delivery of at a Delivery Point; and
 - (iv) limiting the hourly quantities of Gas supplied at any Receipt Point or taken delivery of at any Delivery Point.
- (b) If the User does not comply with the requirements of an OFO within the time period stipulated by the Service Provider (which time period will be reasonable based on the circumstance under which the OFO is issued), the Service Provider is entitled to take action to give effect to those requirements.

25.5 Payment of Charge by User

From the time that an OFO becomes effective until the time it terminates, the User will pay an amount equal to the Default Charge Rate for each GJ of Gas in respect of which the User is at variance, during the period of operation of the OFO, from the level of receipts or deliveries specified in that OFO. The Default Charge Rate is set out in the Tariff Schedule.

25.6 Indemnity

The User will indemnify the Service Provider from and against all losses, costs, damages and expenses suffered or incurred by the Service Provider as a result of:

- (a) the User complying with any OFO;
- (b) the Service Provider taking action pursuant to clause 25.4(b); or
- (c) the Service Provider being directly or indirectly rendered unable to provide Services to any Other User in accordance with that Other User's contract on a Day or subsequent Days, as a result of the User failing to comply with any OFO,

provided that the Service Provider will not be indemnified to the extent that such losses, costs, damages and expenses result from its own negligence or default in complying with its obligations under the Agreement.

26. TRADING POLICY

26.1 Bare Transfers

- (a) The User may undertake a Bare Transfer on a Day.
- (b) The User need not supply the Service Provider with any information in relation to a Bare Transfer.

26.2 FT Capacity Release

- (a) If the User:
 - (i) has a contract for FT Service; and
 - (ii) wishes to transfer ('**Release**') the whole or any part of a Primary Capacity Quantity that it does not expect to utilise fully ('**Marketable FT Parcel**') on the basis that the Service Provider will deal with, invoice, and accept payment from the transferee ('**Acquirer**') as if the Acquirer were the User in respect of that Marketable FT Parcel,

then the following conditions must first be satisfied:

- (iii) the Acquirer must have an existing contract for FT Service or IT Service with the Service Provider; and
- (iv) not later than 0930 hours on the Day prior to the Day of the Release, the User must notify the Service Provider on the EBB in the form set out in Schedule 5 as to:
 - (A) the amount of the Primary Capacity Quantity that is to be the subject of the Release;
 - (B) the duration (or term) of the Release; and

- (C) the conditions on which the Release may be cancelled or terminated by the User or the Acquirer.
- (b) If by 1030 hours before the Day of the Release, the Acquirer posts an acceptance of the Release on the EBB; then:
 - (i) the Acquirer will be deemed to have entered into a contract for FT Service with the Service Provider on the same terms and conditions as the Agreement between the Service Provider and the User, except that:
 - (A) the MDQ of the Acquirer will be the amount of the Marketable FT Parcel;
 - (B) the term of the Acquirer's contract will be the period referred to in clause 26.2(a)(iv)(B); and
 - (C) the term will not be capable of extension by the Acquirer; and
 - (ii) the MDQ of the User will be deemed to have been reduced for the period referred to in clause 26.2(a)(iv)(B) by the amount of the Marketable FT Parcel.
- (c) If the User wishes to Release a Marketable FT Parcel to an Acquirer who does not have an Applicable Contract with the Service Provider, then it may do so provided that the Acquirer first:
 - (i) executes an FT Service Contract in respect of that Marketable FT Parcel; and
 - (ii) satisfies the Service Provider that it will be able to meet all of its obligations under that FT Service Contract.

The User must ensure that the Acquirer provides a Request for Service and all required information.

26.3 IT Release

- (a) If the User:
 - (i) has a contract for IT Service in respect of which there is an Excluded Point; and
 - (ii) wishes to Release the right to access the whole or any part of the Maximum Capacity of that Excluded Point ('**Marketable IT Parcel**') to an Other User (also called the '**Acquirer**'), for the purpose of FT Service or IT Service on the basis that the Service Provider will deal with, invoice, and accept payment from the Acquirer as if the Acquirer were the User in respect of that Marketable IT Parcel for the relevant Service,
- then the following conditions must first be satisfied:
- (iii) the Acquirer must have an existing contract for FT Service or IT Service with the Service Provider; and

- (iv) not later than 0930 hours on the Day prior to the Day of the Release, the User must notify the Service Provider on the EBB in the form set out in Schedule 5 as to:
 - (A) the amount of the Marketable IT Parcel that is to be the subject of the Release;
 - (B) whether the Acquirer is to utilise the Marketable IT Parcel for IT Service or FT Service;
 - (C) the duration (or term) of the Release; and
 - (D) the conditions on which the Release may be cancelled or terminated by the User or the Acquirer.
- (b) If by 1030 hours before the Day of the Release, the Acquirer posts an acceptance of the Release on the EBB, then:
 - (i) where the Acquirer is to utilise the Marketable IT Parcel for IT Service, the Excluded Point will continue to be treated as if it was an Excluded Point;
 - (ii) where the Excluded Point is a Delivery Point and the Acquirer is to utilise the Marketable IT Parcel for FT Service, then the Acquirer's existing contract for FT Service will be deemed, for the period referred to in clause 26.3(a)(iv)(C), to include the Excluded Point as a Primary Delivery Point as if the Marketable IT Parcel was a Primary Capacity Quantity at that point;
 - (iii) for the avoidance of doubt, in the circumstances described in clause 26.3(b)(ii), the Acquirer's MDQ will not increase; and
 - (iv) the additional revenue received by the Service Provider from the Acquirer due to the circumstances described in clause 26.3(b)(ii), will, for the avoidance of doubt, not be taken into account for the purposes of clause 5.3.
- (c) If the User wishes to Release a Marketable IT Parcel to an Acquirer who does not have an Applicable Contract with the Service Provider, then it may do so provided that the Acquirer first:
 - (i) executes an Applicable Contract in respect of that Marketable IT Parcel; and
 - (ii) satisfies the Service Provider that it will be able to meet all of its obligations under that Applicable Contract.

The User must ensure that the Acquirer provides a Request for Service and all required information.

26.4 Conditions on Releases

Nothing in clauses 26.2 and 26.3 will prevent or restrict the Service Provider from imposing other conditions on the terms on which a Release may be cancelled or terminated, if those conditions are reasonable on commercial and/or technical grounds.

26.5 Posting of Marketable Parcels

The Service Provider will post on the EBB a register of Marketable Parcels notified to it pursuant to the Code by the User and by Other Users.

26.6 Change of Delivery Points

- (a) Subject to clause 26.6(b), a User may:
- (i) change a Primary Delivery Point from one specified in the Agreement ('**Existing Point**') to another existing Delivery Point ('**New Point**'); or
 - (ii) reallocate some of its Primary Capacity Quantity from an Existing Point to another Existing Point or to a New Point,

(~~called both referred to as~~ a '**R**reallocation') by making a request to the Service Provider on the EBB in which the User provides:
 - (iii) a description of the Primary Delivery Point that it wishes to change or the amount of the Primary Capacity Quantity that is to be the subject of the **R**reallocation (as the case may be);
 - (iv) a description of the New Point or Existing Point (as the case may be);
 - (v) the date from which the **R**reallocation is to occur (which must be at least 2 Business Days after the date on which the request is made); and
 - (vi) the reason for the **R**reallocation.
- (b) The Service Provider will agree to, and will undertake, the **R**reallocation provided that there is adequate Available Capacity at the New Point or Existing Point (as the case may be) to undertake the **R**reallocation.
- (c) Requests for **R**reallocation will be dealt with in the order in which the Service Provider receives them.
- (d) If there is not sufficient Available Capacity at the New Point or Existing Point (as the case may be) to undertake the **R**reallocation, then:
 - (i) the Service Provider will, within 2 Business Days after the date on which the request was made, ~~advise-notify~~ the User of that fact and the amount of Available Capacity that is available for the purposes of **R**reallocation; and
 - (ii) the User's request will lapse if the User does not notify the Service Provider within 2 Business Days after the date of the Service Provider's ~~advice-notification~~ under clause 26.6(d)(i) that it either agrees to accept a **R**reallocation of the amount of the Available Capacity as ~~advised-notified~~ by the Service Provider, or a lesser amount as nominated by the User,

unless the Service Provider and the User instead agree upon terms for the construction of New Facilities in order to undertake the ~~R~~Reallocation.

26.7 Movement of ~~Consumer~~Customer

~~In the event that a person (“Customer”), to whom the User sells Gas which has been transported using a Primary Capacity Quantity, ceases to purchase such Gas from the User and in lieu purchases such Gas from another user or prospective user, the Primary Capacity Quantity applicable to such Gas may be released by the User and contracted by that other user or prospective user, otherwise than under clause 26.2 and without following the queuing process set out in clause 10. If a person to whom an FT User sells Gas by utilising a Primary Delivery Point:~~

~~(a) ceases to purchase all or some of that Gas from that FT User; and~~

~~(b) in lieu, purchases Gas from an Other User or a Prospective User,~~

~~the FT User must ensure that it complies with the requirements of section 13 of the *Gas Pipelines Access (South Australia) Law* by not engaging in any conduct for the purpose of preventing or hindering the access of the Other User or Prospective User to a Service. The acquisition by such Other User or Prospective User under this clause 26 of any released by the FT User under this clause 26, in accordance with its obligations under this clause 26.7, shall not be subject to the queuing process set out in clause 10.~~

27. ELECTRONIC BULLETIN BOARD

27.1 Establishment of EBB

Subject to clause 27.1(b):

- (a) the Service Provider will establish and maintain an electronic bulletin board ('**EBB**') for the purposes described in this Access Arrangement (and for such other purposes as are notified by the Service Provider from time to time); and
- (b) the forms to be completed and posted on the EBB for the current purposes referred to in clause 27.1(a) are set out in Schedule 5. The Service Provider may amend the format and/or content of any of the forms from time to time as it considers appropriate.

27.2 Information and Access

- (a) A person may obtain information concerning the EBB by contacting the Service Provider.
- (b) Access to the EBB will be provided on an interactive, non-discriminatory, timely basis only to the following persons:
 - (i) the User and Other Users that have a current contract for Services with the Service Provider; and
 - (ii) a person that has:

- (A) executed an EBB System Agreement in a form required by the Service Provider;
- (B) been assigned an EBB User ID and password by the Service Provider; and
- (C) paid the EBB User Charge,

each of such persons being an 'EBB User'.

27.3 EBB User Obligations

- (a) In addition to any other obligations of the EBB User (express and implied) in this Access Arrangement, the EBB User must:
 - (i) abide by such rules for the use of the EBB as are published by the Service Provider from time to time;
 - (ii) confine its use of the EBB to purposes necessary to meet its obligations, and to exercise its rights, under its own contract(s) for Services;
 - (iii) only seek access on the EBB to information that is either:
 - (A) specific to the EBB User; or
 - (B) relevant to all EBB Users;
 - (iv) not, and not attempt to:
 - (A) corrupt; or
 - (B) interfere with,
the operation of the EBB; and
 - (v) implement appropriate security procedures in relation to:
 - (A) the EBB User ID and password assigned to it by the Service Provider; and
 - (B) its access to the EBB,
to prevent unauthorised access to its information or to the EBB.
- (b) The EBB User acknowledges and agrees that:
 - (i) the Service Provider would incur significant costs, expenses and inconvenience if the EBB User were to breach any of the obligations referred to in clause 27.3(a); and
 - (ii) the obligations in clause 27.3(a) are material obligations for the purposes of clause 36.1.

27.4 Procedures to Back-Up, Archive and Retrieve Data

- (a) After the end of each Month, the Service Provider will remove all completed transactions from the EBB for the preceding Month, but notices still current at that time will not be removed.
- (b) Subject to any additional statutory, regulatory or contractual record retention requirements, the Service Provider will retain (for 24 Months for audit purposes) daily back-up files of the data displayed on the EBB.
- (c) The Service Provider will, upon receipt of a request on the EBB from an EBB User:
 - (i) provide to the EBB User, in electronic form and in return for the EBB Public Data Charge, a copy of any data retained by the Service Provider pursuant to clause 27.4(a) excluding any data which is, or which the Service Provider considers to be, confidential or commercially sensitive; or
 - (ii) permit the EBB User to view at the Service Provider's nominated office, and in return for the EBB Proprietary Data Charge, the data retained by the Service Provider pursuant to clause 27.4(a) which relates solely to that EBB User.

27.5 EBB not Operational

If at any time the EBB is not operating or fails to function properly, then all notices, notifications, requests, consents and other communications (including operating protocols) that are required to be given during the period of failure must be given by facsimile.

27.6 Monitoring of EBB

Each EBB User will be solely responsible for monitoring the EBB for information relating to or affecting that EBB User.

28. RECEIPT AND DELIVERY POINTS

28.1 Receipt Points

Unless the Service Provider otherwise agrees:

- (a) any equipment at a Receipt Point that is not owned by the Service Provider and is necessary to enable it to provide the Service:
 - (i) must be made available by the User to the Service Provider at no cost for use by the Service Provider as if it were its property; and
 - (ii) will be operated and maintained at the User's cost by the Service Provider;
- (b) the User must ensure that all equipment at a Receipt Point which is not owned by the Service Provider is designed and constructed in accordance with Schedule 8;
- (c) the equipment at a Receipt Point, irrespective of ownership, must at all times comply with the specifications and other technical requirements for Receipt Points set out in Schedule 8 so as

to record continuously the volume and the energy flow rate and all measurements used in their computation;

- (d) a Receipt Point must have an emergency shutdown valve, flow control valve with pressure control override, and equipment for metering, quality measurement, pressure control, isolation, protection and cleaning, and for making available metering data for instantaneous transmission to the Pipeline System's control centre with SCADA and communications protocols acceptable to the Service Provider, and any other equipment for the safe and reliable receipt of Gas in accordance with the Agreement; and
- (e) despite anything to the contrary contained in the Agreement, if Gas has not been supplied at a Receipt Point during any period of 12 consecutive Months, the Service Provider may, upon giving not less than 180 Days notice to the User (if affected) and all affected Other Users, cease to make use of that Receipt Point for the provision of Services.

28.2 Delivery Points

- (a) Any equipment at or downstream of a Delivery Point which is not owned by the Service Provider and is required by the Service Provider to provide a Service:
 - (i) must be made available by the User to the Service Provider at no cost for use by the Service Provider as if it were its property; and
 - (ii) will be operated and maintained by the Service Provider.
- (b) The User must ensure that all equipment at a Delivery Point which is not owned by the Service Provider is designed and constructed in accordance with Schedule 8.
- (c) The equipment at each existing and new Delivery Point, irrespective of ownership, must at all times comply with the specifications and other technical requirements for Delivery Points set out in Schedule 8 so as to record continuously the volume and the energy flow rate and all measurements used in their computation.
- (d) A Delivery Point must have an emergency shutdown valve, flow control valve with pressure control override, and equipment for metering, quality measurement, pressure control, isolation, protection and cleaning, and for making available metering data for instantaneous transmission to the Pipeline System's control centre with SCADA and communications protocols acceptable to the Service Provider, and any other equipment for the safe and reliable delivery of Gas in accordance with the Agreement.
- (e) Despite anything to the contrary contained in the Agreement, if delivery of Gas has not been taken at a Primary Delivery Point by a person having a contract for FT Service during any period of 12 consecutive Months:
 - (i) the Service Provider may, upon giving not less than 180 Days' notice to the User (if affected) and all affected Other Users, cease to make use of that Delivery Point for the provision of Services; and
 - (ii) in that event, where the User or an Other User has a contract for FT Service:

- (A) that contract will be amended by deleting the reference to there being a Primary Capacity Quantity at that Delivery Point; and
- (B) the User must transfer, pursuant to clause 26.6, the amount of the Primary Capacity Quantity at that Delivery Point so that it becomes, or increases, one or more Primary Capacity Quantities at one or more Delivery ~~P~~Points.
- (f) Notwithstanding the provisions in clause 28.2(b) and (c), if the equipment at a Delivery Point complies with the requirements under an applicable Existing Transportation Agreement and that equipment is in existence and in place as at 1 January 2001, that equipment ~~shall~~ will be deemed to comply with the requirements of clause 28.2(b) or (c), as the case may be, for the duration of such Existing Transportation Agreement.
- (g) Notwithstanding the provisions of this Access Arrangement, it ~~shall~~ will be acceptable to use readings from a system ~~g~~Gas chromatograph to infer the ~~g~~Gas quality at Delivery Points which have a throughput of less than 1 TJ per Day provided that the Service Provider can be satisfied that such chromatograph is analysing Gas that will be delivered at such Delivery Point.

[Note: In the marked up May 18 version of the Access Arrangement appearing on the ACCC website, clauses 28.2(f) and (g) incorrectly appear as clauses 28.1(f) and (g).]

28.3 Approval by Regulator

Any material amendments to any of the specifications or other technical requirements referred to in clauses 28.1 and 28.2, will be submitted to the Regulator for approval as if they were a revision of the Access Arrangement submitted pursuant to section 2.28 of the Code (limited however only to that matter).

28.4 Distribution System Operator

The Service Provider may share metering equipment and exchange metering data with the operator of any distribution pipeline system that directly connects with the Pipeline System.

29. MEASUREMENT AT RECEIPT AND DELIVERY POINTS

The quantity and quality of Gas at each Receipt Point and each Delivery Point will be measured in accordance with Schedule 9.

30. CHARGES

30.1 Obligations to Pay

The User must pay the charges set out in the Tariff Schedule, in the manner and at the times set out in the Tariff Schedule, that relate to the Specified Service in accordance with the Agreement.

30.2 CPI Adjustment

On each 1 January (commencing in 2000) all of the charges set out in the Tariff Schedule will be

adjusted by 95% of the variation (expressed as a percentage) in the CPI for the 12 month period ending on the previous 30 September.

30.3 **Alteration of CPI**

If there is any suspension or discontinuance of the CPI or ~~it~~ its method of calculation is materially altered, then an index which reflects movements in the cost of living in all of the capital cities of Australia will be substituted by the Service Provider.

30.4 **GST**

(a) **GST Exclusive Basis**

The Parties acknowledge and agree that all fees and charges set out in the Agreement have been calculated on a GST-exclusive basis.

(b) **Trade Practices Act**

If, as a result of the New Tax System Changes, there is a reduction in or abolition of any wholesale sales taxes or other indirect taxes ('**Existing Taxes**') then, as from the date of such reduction or abolition, the Consideration (excluding GST) payable by the Recipient for any Regulated Supply will be reduced by the same proportion as the actual total costs of the Supplier (including the Existing Taxes, but excluding any GST effectively borne by the Supplier on its own inputs) are reduced as a consequence of such reduction or abolition.

(c) **Increase for GST**

Where any payment to be made by the Recipient to the Supplier pursuant to the Agreement constitutes (in whole or in part) Consideration for a Taxable Supply by the Supplier, then the amount of that payment (as reduced in accordance with clause 30.4(b), if applicable) will be increased by the prevailing GST Rate (to the intent that the Supplier will retain, after paying GST in respect of that payment, the same amount that it would have received and retained had that GST not been payable).

(d) **Credits**

Where any payment to be made by the Recipient is a reimbursement or an indemnification of an expense or other liability incurred or to be incurred by the Supplier, and the Supplier is entitled to an input tax credit in respect of that expense or other liability, the amount of that payment will be reduced by the amount of that input tax credit before the payment is then increased in accordance with clause 30.4(c).

(e) **Tax Invoices**

The Supplier must issue a Tax Invoice to the Recipient within 7 days of receiving any payment to which clause 30.4(c) applies.

(f) **Definitions**

In this clause 30.4, unless the context otherwise requires:

'**Consideration**', '**GST**', '**Tax Invoice**' and '**Taxable Supply**' have the same meanings as are given to them in the GST Act;

'**GST Act**' means the *A New Tax System (Goods and Services Tax) Act 1999*;

'**GST Rate**' at a particular time, is a reference to the rate at which GST is imposed at that time (expressed as a percentage of the GST exclusive price);

'**Recipient**' means the Party making a payment to the Supplier;

'**Supplier**' means the Party receiving a payment from the Recipient;

'**New Tax System Changes**' has the same meaning as is given to that term in the *Trade Practices Act 1974*; and

'**Regulated Supply**' has the same meaning as is given to that term in the *Trade Practices Act 1974*.

30.5 **Imposts**

(a) **Obligations of Parties**

If, during a Month:

- (i) any new Impost arises; or
- (ii) there is an increase in the amount of an existing Impost; or
- (iii) there is a reduction in the amount of, or the removal of, an existing Impost,

then:

- (iv) in the case of paragraphs (i) and (ii) above, the User must pay to the Service Provider the User's share of that new or increased Impost; and
- (v) in the case of paragraph (iii) above, the Service Provider will credit the User with the User's share of that reduced or removed Impost.

(b) **User's Share**

For the purposes of clause 30.5(a), the User's share will be determined on the basis of the proportion that the deliveries of Gas to the User during the relevant Month bears to the aggregate deliveries of Gas to the User and all Other Users during that Month.

(c) **Timing of Payment/Credit**

Any amount to be paid or credited under clause 30.5(a) in respect of a Month will be set out

in the Invoice for that Month.

31. INVOICING

31.1 Rendering of Invoices

By the 7th Day of each Month, the Service Provider will provide in writing or by electronic means to the User an invoice specifying the amounts due for the Specified Service supplied to the User in the preceding Month and all other amounts payable for that Month under the Agreement ('**Invoice**'). Any failure to provide an Invoice within this period is not a waiver of the User's obligation to pay.

31.2 Contents of Invoice

Each Invoice will be accompanied by:

- (a) a Gas balance report showing for the preceding Month:
 - (i) on a daily basis:
 - (A) the Actual Receipts at each Receipt Point;
 - (B) the Actual Deliveries at each Delivery Point;
 - (C) the Retention Allowance (including the reconciliation referred to in clause 17.4);
 - (D) the Imbalance;
 - (E) the Imbalance Correction Quantity;
 - (F) the Excess Imbalance (if any);
 - (G) the Scheduled Quantities; and
 - (H) the Zone Variation (if any);
 - (b) a calculation of, and a deduction for, the amount of any rebate payable to the User under clause 5.3; and
 - (c) such other User specific information or records as the User may reasonably require to verify the amounts payable (or receivable) pursuant to that Invoice.

31.3 Estimated Information

If actual information necessary for invoicing is unavailable in sufficient time to permit the use of that information in the preparation of an Invoice, the Service Provider may use estimated information for that purpose having regard to previous Months. When the actual information becomes available, the next Invoice rendered by the Service Provider will be adjusted to reflect the difference between the actual and estimated information (even though that information relates to an earlier Invoice). No interest is payable on any such adjustment.

31.4 **Sequence of Gas Flow**

The sequence in which Gas is received on a Day for the purposes of rendering an Invoice will be as set out in clause 18.9.

32. **PAYMENT**

32.1 **Payment by User**

~~(a)~~ The User will pay each Invoice by direct payment to a bank account nominated by the Service Provider by the later of:

~~(i)(a)~~ the 14th Day of the Month occurring; or

~~(i)(b)~~ the 9th Business Day,

after receipt of the Invoice from the Service Provider.

~~(b) Despite clause 32.1(a), if the ninth Day after receipt of an Invoice is not a Business Day, then the due date for payment of that Invoice will be the immediately preceding Business Day.~~

32.2 **User's Dispute**

If the User disputes part or all of an Invoice:

- (a) the User must, by the due date for payment of the Invoice, notify the Service Provider in writing specifying the amount in dispute and the reasons for the dispute; and
- (b) each Party will:
 - (i) appoint an officer to meet with the other Party's officer to try to resolve the dispute; or
 - (ii) refer the matter to an Independent Expert for determination in accordance with clause 37 if the appointed officers fail to resolve the dispute within 5 Business Days after their meeting.

32.3 **Payment in Absence of Manifest Error**

Despite clause 32.2, the User must, in the absence of manifest error, pay the full amount of any disputed Invoice in accordance with clause 32.1.

32.4 **Interest on Disputed or Incorrect Amount**

If, as a result of the resolution of:

- (a) a dispute of the nature described in clause 32.3; or
- (b) an incorrect Invoice as described in clause 32.5,

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

32.5 **Incorrect Invoices**

- (a) If the User:
 - (i) has been overcharged or undercharged under the Agreement; 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 32.2, either:
 - (iii) the Service Provider will repay to the User the amount of the overcharge (together with interest in accordance with clause 32.4); or, as the case may be
 - (iv) the User will pay to the Service Provider the amount of the undercharge (together with interest in accordance with clause 32.4).
- (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.

32.6 **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 until actual payment.

33. **ENTRY RIGHTS**

33.1 **Grant of Right of Entry**

Subject to clause 33.2, each Party grants to the other Party, and to the other Party's officers, employees, agents and contractors, a right of entry for any purposes contemplated by the Agreement to premises owned or controlled by it and upon which any Receipt Point or Delivery Point is located ('Premises').

33.2 **Notice and other Obligations of Party Seeking Entry**

The Party seeking entry to Premises:

- (a) must give at least 24 hours notice to the other Party specifying the time of such proposed entry and the reason entry is required;
- (b) must take all reasonable steps to ensure that its officers, employees, agents and contractors who enter the Premises cause as little inconvenience as possible and observe at all times all safety and security procedures of the Party giving access;

- (c) will be liable for all acts and omissions of its officers, employees, agents and contractors who enter the Premises except where such acts and omissions result from the negligence or default of the Party giving access; and
- (d) must bear its own costs of obtaining entry to the Premises.

33.3 Third Parties' Premises

If any equipment to be owned by or relied upon by either Party for the purposes of the Agreement is, or will be, located on premises of a third party, then the Party owning or relying upon the equipment will use its best endeavours to secure for the other Party a right of entry (equivalent to that in clause 33.1) to the third party's premises.

34. FORCE MAJEURE

34.1 Definition

- (a) For the purposes of the 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 able to prevent or overcome, including (but not limited to) the following events or circumstances if they are beyond the control of that Party:
 - (i) order of any court or the order, act, or omission or failure to act of any government or Governmental Agency and inability to obtain any necessary governmental consent or approval;
 - (ii) failure or delay to secure specialised equipment and/or contractors; and
 - (iii) accidents, freezing of pipelines, breakages of or accidents to plant, machinery, pipelines or associated equipment or the necessity to make repairs or alterations to plant, machinery, pipelines or associated equipment (except as could have been prevented by routine scheduled maintenance).
- (b) The following will not constitute (directly or indirectly) events or circumstances of Force Majeure:
 - (i) changes in market structure, operations or conditions for:
 - (A) transportation, purchase or sale of Gas; or
 - (B) any good or service manufactured or provided by the User;
 - (ii) lack of, or reduction in, Gas reserves, water supply or raw materials;
 - (iii) commercial failure, expiration or termination for whatever reason of a contract;
 - (iv) lack of funds; or
 - (v) strikes or industrial disputes.

34.2 **Non-Performance Excused**

Subject to clauses 34.3 and 34.4, non-performance as a result of Force Majeure by a Party of any obligation will, during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure:

- (a) be excused; and
- (b) not to that extent give rise to any liability to the other Party.

34.3 **Notification and Diligence**

A Party which is, by reason of Force Majeure, unable to perform any obligation must:

- (a) notify the other Party as soon as possible giving:
 - (i) particulars of the event or circumstance of Force Majeure (known at the time of giving notice) including 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
 - (ii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure;
- (b) use reasonable and prudent efforts to remedy or abate the Force Majeure as expeditiously as possible; and
- (c) resume performance as expeditiously as possible after the Force Majeure has abated to an extent which permits resumption of performance, and notify the other Party immediately when resumption of performance has occurred.

34.4 **Consequence of Force Majeure**

- (a) An event or circumstance of Force Majeure does not relieve either Party from its obligations to make payments of amounts then due in respect of Gas previously delivered.
- (b) An event or circumstance of Force Majeure will suspend or reduce the User's obligation to pay any moneys payable under the Agreement (including, where the Agreement is for FT Service, the Capacity Charge) only where, and to the extent that, the Force Majeure event prevents the Service Provider from providing the relevant Service.

35. **LIABILITY AND INDEMNITY**

35.1 **Direct Losses**

Subject to clauses 15.3(d), 18.4(e)(v), 18.5(1)(v), 19.5, 25.6, 35.2 and 35.3, the liability of one Party to the other on any legal basis for breach of an obligation under the Agreement, will be limited to the Direct Losses that are caused by that breach.

35.2 **Exception**

Clause 35.1 does not limit the liability of a Party to pay an amount of money that is due to the other Party.

35.3 **Liability for Fraud or Wilful Disregard**

A Party who is fraudulent or who shows willful disregard in respect of its obligations to the other Party under the Agreement is to be liable to the other Party for, and is to indemnify the other Party against all loss or damage caused by, consequential upon or arising out of the fraud or willful disregard.

36. **DEFAULT AND TERMINATION**

36.1 **Default by User**

An **'Event of Default'** by the User occurs when the User:

- (a) suffers an Insolvency Event;
- (b) defaults in performance of a material obligation (**'Default'**) and, where the Default is capable of being remedied, does not remedy the Default within a period of 21 Days from the date of a notice from the Service Provider requiring the Default to be remedied; or
- (c) fails to pay any amount due to the Service Provider and that amount, plus interest accrued at the Interest Rate plus 2% per annum, is still outstanding 7 Days after the date of a notice of demand from the Service Provider (**'Payment Default'**).

36.2 **Rights of Service Provider**

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

- (a) suspend the Specified Service to the User and, if the Service Provider wishes to do so, provide access to a third party to that amount of the Capacity in the Pipeline System contracted to the User under the Agreement, until (as the case may be);
 - (i) the Insolvency Event has been removed and rectified;
 - (ii) the Default has been remedied; or
 - (iii) the Payment Default has been remedied; and/or
- (b) terminate the Agreement.

36.3 **Continuation of Payment Obligations**

If the Service Provider elects to suspend the Specified Service under clause 36.2(a), the User will not be relieved of any of its obligations to make payments under the Agreement.

36.4 **Default by Service Provider**

The User may terminate the Agreement if the Service Provider:

- (a) defaults in providing the Specified Service to the User under the Agreement and does not remedy that default within 7 Days after the date of a notice from the User requiring that default to be remedied; or
- (b) otherwise defaults in performance of a material obligation and does not remedy that default within a period of 21 Days from the date of a notice from the User requiring the default to be remedied.

36.5 Termination of Agreement for IT Service

Where the Agreement is for IT Service, the User may, at any time after the expiration of 12 Months from the Commencement Date, terminate the Agreement by giving not less than 10 Business Days notice to the Service Provider.

36.6 Other Rights and Remedies

The rights and remedies described in clauses 36.2 and 36.4 are in addition to any other rights and remedies available to the Parties whether in law, in equity or otherwise.

36.7 Prior Rights

Termination of the Agreement will not prejudice the rights of either Party that have accrued prior to the date of termination.

37. DISPUTE RESOLUTION AND INDEPENDENT EXPERTS

37.1 Dispute Resolution

If any dispute, controversy or claim (**Dispute**) in relation to the Agreement arises between the Parties, a Party may seek to have that dispute resolved within a formal process. That process is set out below:

- (a) each Party will appoint a senior manager or executive to meet in an attempt to resolve the Dispute;
- (b) the senior managers or executives will use their best endeavours to resolve the Dispute within a period of 20 Business Days;
- (c) if the Parties believe that it would be beneficial, and they agree, they may retain the non-binding mediation services of an agreed mediator; and
- (d) if the Dispute remains unresolved at the end of the period referred to in clause 37.1(b), and the Dispute is a Technical Matter or a Financial Matter (as those expressions are defined in clause 37.2(a)), then either Party may require that the Dispute be determined by an independent expert (**Independent Expert**) under clause 37.2.

37.2 Resolution of Technical and Financial Matters

(a) Technical and Financial Matters

In this clause 37.2:

- (i) a '**Technical Matter**' means a matter involving issues relating to the receipt, transportation and delivery of Gas under the Agreement which is capable of determination by reference to engineering or scientific knowledge and practice (including the grounds on which the Service Provider has issued a Curtailment Notice or an OFO); and
- (ii) a '**Financial Matter**' means a matter involving financial calculations which is capable of determination by audit or reference to financial or accounting records, knowledge or practice.

(b) **Appointment of Independent Expert**

The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party specifying the nature of the Dispute. The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 20 Business Days of the notice, then either Party may refer the matter:

- (i) if it is a Technical Matter, to the President for the time being of the Institute of Engineers, Australia;
- (ii) if it is a Financial Matter, to the President for the time being of the Institute of Chartered Accountants in Australia; or
- (iii) in either case, if the relevant body referred to in clause 37.2(b)(i) or clause 37.2(b)(ii) no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the relevant body,

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

(c) **Expert not an Arbitrator**

The Independent Expert appointed under clause 37.2(b):

- (i) will act as an expert and not as an arbitrator;
- (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (iii) will not be a current employee or representative of, or a person who provides consultancy services on a regular basis to, the User or the Service Provider or of a Related Body Corporate of either of them; and

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

(d) **Representation and Evidence**

Each Party:

- (i) may be legally represented at any hearing before the Independent Expert;
- (ii) will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute; and
- (iii) will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

(e) **Rules of Evidence**

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

(f) **Confidentiality**

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

(g) **Powers**

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

(h) **Determination**

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

(i) **Costs**

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

- (i) the remuneration of the Independent Expert will, unless the Parties otherwise agree before the reference of the Dispute to the Independent Expert, or if there is a disagreement over the amount of that remuneration, be finally determined by the President for the time being of the appropriate body referred to in clause 37.2(b);
- (ii) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of determination and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in

failing to agree to the matter under reference, and that Party will bear those costs accordingly; and

- (iii) the Service Provider and the User will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert.

38. ASSIGNMENT

38.1 Assignment by the Service Provider

- (a) The Service Provider may, without the consent of the User, assign the whole or any part of its rights under the Agreement to any transferee of an interest in the Pipeline System. The assignment will not be effective until the assignee executes a deed of covenant in favour of the User agreeing to be bound by the Agreement).
- (b) Where the Service Provider has made an assignment under clause 38.1(a), the Service Provider will be released from its obligations under the Agreement (other than accrued obligations) to the extent of the assignment and from the date of assignment.

38.2 Assignment by the User

- (a) The User may assign all of its rights under the Agreement, or an undivided interest in all of its rights under the Agreement, in each case only with the prior written consent of the Service Provider (which consent will not be unreasonably withheld).
- (b) Without limiting the generality of clause 38.2(a), the Service Provider will be entitled to withhold its consent if:
 - (i) the User is in default of the Agreement (and the default has not been waived by the Service Provider); or
 - (ii) the Service Provider is not satisfied as to the ability of the assignee to meet all of the obligations of the User under the Agreement.
- (c) An assignment by the User will be conditional upon, and will not be binding until, the assignee has:
 - (i) executed a deed of covenant in favour of the Service Provider agreeing to be bound by the Agreement. The Service Provider may prescribe a reasonable form of deed, but the User ~~shall~~will be solely responsible for preparation and delivery of the deed to the Service Provider; and
 - (ii) reimbursed the Service Provider's costs, which ~~shall~~will not exceed an amount equal to the Application Fee, ~~where such costs have been~~ reasonably incurred in assessing whether the assignee will be able to meet the obligations of the User under the Agreement.

- (d) Where the User has made an assignment under clause 38.2(a), the User will be released from its obligations under the Agreement (other than accrued obligations) to the extent of the assignment and from the date of assignment.

38.3 **Change of Control of the User**

- (a) A change in the persons who beneficially own or control more than 50% of the User's voting shares will be taken to be an assignment for the purposes of clause 38.2 and will require the written consent of the Service Provider (which consent will not be unreasonably withheld). This clause will not apply where:
 - (i) the User is, or the Holding Company of the User is, a company whose shares are listed on the Australian Stock Exchange Limited; and
 - (ii) the change in control arises by way of a takeover of, or a merger by, that listed company.
- (b) Without limiting the generality of clause 38.3(a), the Service Provider will be entitled to withhold its consent if it is not satisfied that the User would, after the change of control, be able to meet its obligations under the Agreement.

38.4 **Agreement as Security**

- (a) The User may charge or mortgage its interest under the Agreement provided that the chargee or mortgagee acknowledges in writing in a form satisfactory to the Service Provider that upon realisation of the charge or mortgage the chargee or mortgagee will be bound by the terms of the Agreement.
- (b) Nothing in the Agreement prevents or restricts the Service Provider's rights to charge or mortgage its interest in the Agreement.

38.5 **Delegation of Functions by the Service Provider**

The Service Provider may delegate to one or more third parties which are technically competent and reputable, the performance of any or all of its obligations under the Agreement but will remain responsible for the performance of those obligations.

39. **CONFIDENTIALITY**

39.1 **Confidential Information**

Except as provided in clause 39.2, and subject to clause 39.3:

- (a) all data and information that is received by the Service Provider from the User pursuant to the Agreement that is specific to the User's activities as a customer of the Service Provider and is likely to be commercially sensitive (**including** the User's nominations at Receipt Points and Delivery Points but **excluding** data and information required by the Service Provider for:
 - (i) posting on the EBB in accordance with clause 19.6; or

- (ii) inclusion in updates of Attachments C and D of Schedule 1); and
- (b) all data and information that is received by the User from the Service Provider pursuant to the Agreement,

('Confidential Information'), is and must remain confidential and not be disclosed by the receiving Party ('Recipient') to any other person for any purpose except:

- (c) with the prior written consent of the other Party ('Disclosing Party'); or
- (d) in the following circumstances and upon the following conditions:
 - (i) to the extent required by applicable laws or by regulations of any government or Governmental Agency having jurisdiction over the Recipient;
 - (ii) to the extent required by any securities commission having jurisdiction over the Recipient, the Holding Company of a Party or a member of the Holding Company Group;
 - (iii) to the extent that the information is at that time generally available to the public, otherwise than as a result of a breach of the Agreement;
 - (iv) to any member of the Holding Company Group provided such disclosure is for the purposes of the Agreement;
 - (v) to a bank or other financial institution in connection with the organisation of the financial affairs of the Recipient or the Holding Company Group;
 - (vi) to a proposed assignee of the Agreement or a proposed Acquirer to whom a Release is proposed to be made (but only to the extent necessary for the purposes of that Release); or
 - (vii) to the employees, directors, consultants, contractors, lawyers, accountants and auditors of the Recipient for the purposes of the Agreement and the transactions contemplated by the Agreement.

39.2 Obligations

The Recipient must, prior to making any disclosure to a person as permitted by paragraphs (iv), (v) and (vi), and to any contractor or consultant permitted by paragraph (vii), of clause 39.1, 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 Disclosing Party and the Recipient, to keep the Confidential Information to be disclosed confidential in accordance with clause 39.1.

39.3 Acknowledgements

Despite clause 39.1, the User acknowledges and agrees that:

- (a) the Service Provider may disclose measurement data (where pertinent) to the operator of any distribution pipeline system that directly connects with the Pipeline System; and

- (b) despite the security precautions taken by the Service Provider, it may be that a person is able to obtain access to Confidential Information that is posted from time to time on the EBB.

39.4 **Ringfencing**

The Service Provider must, at all times, comply with, and ensure that there is in place appropriate arrangements to ensure compliance with, the ringfencing requirements of Chapter 4 of the Code.

40. **ACCESS TO INFORMATION**

40.1 **No Access**

Subject to clause 40.2, the User will have no right to be provided with any information that relates in any way to:

- (a) any employee, agent, contractor or consultant of the Service Provider; or
- (b) any supplier of goods or services to the Service Provider.

40.2 **Exceptions**

The Service Provider will provide to the User:

- (a) the name and contact details of any person appointed by the Service Provider pursuant to clause 32.2(b)(i) or clause 37.1(a); and
- (b) the name and contact details of, and such other information as the Service Provider considers relevant in relation to, any person to whom obligations are delegated under clause 38.5.

41. **NOTICES**

41.1 **EBB**

- (a) Subject to clauses 41.1(b) and [41.1\(c\)](#), it is intended that each notice, notification, consent, request and other communication ('**Notice**') between the Parties will be given or made on the EBB. Despite this intention, Notices may be communicated in other ways.
- (b) For clauses that require there to be a written Notice, those Notices may be communicated via the EBB but must also be communicated in other, written form.
- (c) If at any time the EBB fails to function properly, then each Notice that is required to be given during the period of failure must be given and confirmed in writing.

41.2 **Written Notices**

Where a Notice is required to be given in writing it will be considered as having been given if delivered:

- (a) personally;
- (b) by facsimile; or
- (c) by mail with all postage and charges prepaid,

to either Party (as the case may be) at the address or facsimile number specified in clause 41.5.

41.3 **Timing - Notices by Facsimile**

Any Notice sent by facsimile will be taken to have been received on the date of dispatch if a transmission report from the sending facsimile machine indicates that the facsimile was received in its entirety at the facsimile number of the addressee. For a Notice sent by facsimile after 5.00pm in the place to which the notice is sent, the Notice will be taken to have been received on the next Business Day.

41.4 **Timing - Notices by Mail**

A Notice sent by mail will be taken to have been received on the third Business Day following the date of posting.

41.5 **Addresses**

The addresses for notices are:

- (a) in the case of the Service Provider, as follows (unless a different address is posted at any time on the EBB by the Service Provider for the purposes of this clause 41.5 in which case that address will prevail):

State Sales Manager South Australia
Epic Energy South Australia Pty Ltd
26 High Street
DRY CREEK SA 5094

Telephone: (08) 8343 8100
Facsimile: (08) 8343 8125

Copy to: Manager Transportation Services
Level 7, GHD House
239 Adelaide Terrace, Perth WA 6000

Telephone (08) 9492 3800
Facsimile: (08) 9492 3888

- (b) in the case of the User, as set out in the Applicable Contract.

42. **MISCELLANEOUS**

42.1 **Amendment**

The Service Provider will promptly notify the User of any amendment of, or variation to, this Access Arrangement or the Tariff Schedule.

42.2 **Entire Agreement**

The Agreement constitutes the entire agreement between the Parties and supersedes all prior representations and agreements in connection with its subject matter.

42.3 **Waivers**

- (a) Any failure or delay by either Party in exercising any of its rights under the Agreement will not operate as a waiver of its rights and will not prevent that Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of the Agreement.
- (b) No waiver by a Party of any of the provisions of the Agreement will be binding unless expressly made in writing. Any waiver will relate only to the matter, non-compliance or breach to which it expressly relates and will not apply to any subsequent matter, non-compliance or breach.

42.4 **Severance**

Any part of the Agreement that is unenforceable may be severed from the Agreement and the remaining provisions of the Agreement will continue in full force and effect.

42.5 **Governing Law**

The Agreement will be construed in accordance with the laws of South Australia 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.

42.6 **Costs and Stamp Duty**

- (a) Each Party will bear its own costs in connection with the preparation, execution and delivery of the Agreement.
- (b) The User will pay all stamp duty payable on or in respect of the Agreement.

42.7 **Further Assurances**

Each Party will sign all such documents and do and procure to be done all such acts and things as may be necessary or desirable from time to time to give full effect to the Agreement.

GLOSSARY AND RULES OF INTERPRETATION

43. DEFINITIONS AND INTERPRETATION

43.1 Definitions

- (a) In this Access Arrangement, '**Access Arrangement Period**', '**Bare Transfer**', '**Capital Base**', '**Capital Contribution**', '**Contract Carriage Pipeline**', '**Contracted Capacity**', '**Covered Pipeline**', '**Exclusivity Rights**', '**Extensions/Expansions Policy**', '**Incentive Mechanism**', '**New Facilities Investment**', '**Prospective User**', '**Queuing Policy**', '**Rebatable Service**', '**Redundant Capital**', '**Reference Service**', '**Reference Tariff**', '**Reference Tariff Policy**', '**Revisions Commencement Date**', '**Services**', '**Services Policy**', '**Speculative Investment**', '**Surcharge**' and '**Total Revenue**' have the meanings given in the Code.

- (b) In this Access Arrangement unless the context requires some other meaning:

'**Access Arrangement**' means this Access Arrangement (as varied from time to time pursuant to the Code);

'**Access Arrangement Information**' means the document issued by the Service Provider under that title (as varied from time to time pursuant to the Code);

'**Access Dispute**' means a dispute in relation to access to Services by a Prospective User which has been notified to the Regulator pursuant to the Code by the Prospective User or the Service Provider;

'**Acquirer**' has, depending on the context, the meaning given in clause 26.2(a)(ii) or clause 26.3(a)(ii);

'**Actual Deliveries**' means, for a Day, the total quantity of Gas delivered to the User from the Pipeline System on that Day as determined in accordance with clause 22;

'**Actual Receipts**' means, for a Day, the total quantity of Gas received into the Pipeline System from the User on that Day as determined in accordance with clause 21;

'**Actual Zone Deliveries**' means, in relation to a Zone for a Day, the total quantity of Gas delivered to the User at Delivery Points within the Zone on that Day as determined in accordance with clause 22;

'**AGA**' means American Gas Association;

'**Agreement**' means the agreement between the User and the Service Provider constituted by the Applicable Contract, the Tariff Schedule and the Access Arrangement, as they may have been varied by the Parties;

'**Applicable Contract**' means the FT Service Contract or the IT Service Contract (as the

case may be);

'**Application Fee**' means the charge bearing that description in respect of ~~FT~~the relevant Service ~~or (as the case may be) IT Service~~, set out in the Tariff Schedule;

'**Authorised Variation**' has the meaning given in clause 18.7(b);

'**Available Capacity**' means, at a point in time in relation to a Delivery Point, the lesser of:

- (i) the Spare Capacity; and
- (ii) the Maximum Capacity of that Delivery Point less the sum of the Primary Capacity Quantities at that Delivery Point,

at that time;

'**Business Day**' means the period from 8.00am until 6.00pm on a Day other than a Saturday, Sunday or public holiday in South Australia;

'**Capacity**' means the capacity of the Pipeline System or (if the context requires) a part of the Pipeline System to deliver, or (if the context requires) receive, Gas;

'**Capacity Charge**' means the charge bearing that description set out in the Tariff Schedule;

'**Capacity Charge Rate**' means the rate bearing that description set out in the Tariff Schedule (plus the Whyalla Lateral Surcharge, if applicable);

'**Capital Cost Revaluation**' has the meaning given in the Access Arrangement Information;

'**Code**' means the National Third Party Access Code for Natural Gas Pipeline Systems as varied from time to time in accordance with the *Gas Pipelines Access (South Australia) Law*;

'**Commencement Date**' means 6.00am on the date for commencement of the relevant Specified Service set out in the Request for Service;

Complying Request means, depending on the context, an FT Request, an IT Request or an NSS Request;

'**Confirmed Quantities**' means, for a Day at a Receipt Point, the User's Confirmed Quantity and each Other User's Confirmed Quantity for that Day at that Receipt Point;

'**CPI**' means the Consumer Price Index, All Groups, weighted average of the 8 capital cities of Australia published by the Australian Bureau of Statistics, or such other index as may be substituted by the Service Provider under clause 30.3;

'**Curtailment Notice**' has the meaning given in clause 24.1(b);

'Day' means:

- (i) subject to paragraph (b), a period during the Term, beginning at 6.00 am (in Adelaide) on one day and ending at 6.00am (in Adelaide) on the following day; or
- (ii) if at any time during the Term a uniform period of time for a Gas Day is introduced into the Australian Gas industry, that uniform period of time;

'Default Charge Rate' means the rate referred to in clause 24.4;

'Delivery Point' means a point of exit from the Pipeline System;

'Direct Losses' means, in relation to a Party, the actual losses or damages sustained by the Party that arise in the usual course but not any special, indirect, consequential or incidental losses or damages (whether or not they were or ought to have been foreseen or known by the other Party) including, but not limited to, loss of business opportunity, business interruption or lost profits, or punitive or exemplary damages;

'EBB' or **'Electronic Bulletin Board'** has the meaning given in clause 27.1;

'EBB Proprietary Data Charge' means the charge bearing that description set out in the Tariff Schedule;

'EBB Public Data Charge' means the charge bearing that description set out in the Tariff Schedule;

'EBB System Agreement' has the meaning given in clause 27.2(b) (and, at the Lodgment Date, is in the form set out in Schedule 5);

'EBB User' has the meaning given in clause 27.2(b);

'EBB User Charge' means the charge bearing that description set out in the Tariff Schedule;

'Excess Imbalance' has the meaning given in clause 19.3(a);

'Excess Imbalance Charge' means the charge referred to in clause 19.3(a);

'Excess Imbalance Charge Rate' means the rate referred to in clause 19.3(b);

'Excess Zone Variation' has the meaning given in clause 19.7(b);

'Excluded Point' has the meaning given in clause ~~10.3 (b)~~ 10.5;

'Existing Delivery Facilities' means:

- (i) in relation to an Existing User, laterals and Delivery Points in existence at the Commencement Date (being those listed in Attachment C of Schedule 1), the Capacity of which is contracted to the Existing User under its Existing Transportation Agreement until 31 December 2005; and
- (ii) in relation to an FT User, laterals and Delivery Points, the Capacity of which is contracted to that FT User;

'Existing Facilities Access Agreement' means an agreement between an Existing User or an FT User (as appropriate) and a (prospective) IT User to grant to that (prospective) IT User rights to utilise Capacity in certain Existing Delivery Facilities (contracted to that Existing User or FT User) to allow the provision of IT Service to that (prospective) IT User;

'Existing Transportation Agreements' means those contracts for Services with Existing Users at the Lodgment Date that were entered into in 1995 (as amended or varied from time to time);

'Existing Users' means the Shippers under the Existing Transportation Agreements, who, at the Lodgment Date, are Terra Gas Trader Pty Limited and Origin Energy Limited;

'Existing User Rights' means rights of Existing Users under the Existing Transportation Agreements and, in particular, the right to vary the quantities of Gas that they have nominated (and have been scheduled) for receipt into, or delivery from, the Pipeline System on a Day;

'Final Nominated Delivery Quantity' means, in respect of a Delivery Point on a Day:

- (i) where the Agreement is for FT Service, and depending on the circumstances - the quantity referred to in clause 18.4(b)(i), clause 18.4(c)(ii) or clause 18.4(d)(i); and
- (ii) where the Agreement is for IT Service, and depending on the context - the quantity referred to in clause 18.5 (h)(i), clause 18.5 (j)(ii) or clause 18.5 (k)(i),

for that Delivery Point for that Day;

'Final Nominated Receipt Quantity' means, on a Day:

- (i) where the Agreement is for FT Service, and depending on the context - the quantity referred to in clause 18.4(b)(i), clause 18.4(c)(i) or clause 18.4(d)(i); and
- (ii) where the Agreement is for IT Service, depending on the context - the quantity referred to in clause 18.5 (h)(i), clause 18.5 (j)(i) or clause 18.5 (k)(i),

for that Day;

'Force Majeure' has the meaning given in clause 34.1(a);

'FT Commodity Charge Rate' means the charge being that description set out in the Tariff Schedule;

'FT Request' ~~means a complete Request for Service for FT Service~~ has the meaning given in clause 6.5;

'FT Service' has the meaning given in clause 4.2 (a);

'FT Service Contract' means the document that creates the contract for provision by the Service Provider of FT Service which, at the Lodgment Date, is in the form set out in Schedule 6 (as may be varied by the Parties);

'FT User' means a person that has entered into an FT Service Contract with the Service Provider;

'Gas' means any hydrocarbons in a gaseous state and any mixture of one or more hydrocarbons in a gaseous state which may contain other gases (including the residue resulting from the treatment or processing of natural gas);

'Gas Specification' means the Gas specification set out in Schedule 3;

'GJ' means gigajoule;

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

'Holding Company' has the meaning given to that expression in the *Corporations Law*, and, in the case of the Service Provider, includes the trustee of a trust fund of which the Pipeline System forms part of the assets held by that trust fund;

'Holding Company Group' means all of the companies that are assets held by the trust fund of which the Holding Company is trustee;

'Imbalance' means, for a Day, the difference between the Actual Receipts **less** (the Retention Allowance **plus** the amount of the Imbalance Correction Quantity) and the Actual Deliveries on that Day, and can be a positive or a negative number;

'Imbalance Correction Quantity' means, for a Day, the quantity of Gas (if any) which has been posted by the Service Provider on the EBB, and which is required to be corrected, under clause 19.2;

'Imbalance Buffer Quantity' has the meaning given in clause 19.3(a);

'Impost' means any tax (excluding income tax and any goods and services tax referred to in clause 30.4), duty, excise, impost, levy, royalty, fee, rate or other charge imposed by any government or Governmental Agency on, or incurred by, the Service Provider and attributable in any way to the provision of a Service, a charge made under the Agreement, or the giving effect by the Service Provider to the provisions of the Agreement;

'Independent Expert' has the meaning given in clause 37.1(d);

'Initial Nominated Delivery Quantity' means, in respect of a Delivery Point on a Day:

- (i) where the Agreement is for FT Service - the quantity referred to in clause 18.3 (e)(ii); and
- (ii) where the Agreement is for IT Service - the quantity referred to in clause 18.5 (g) (ii),

for that Delivery Point for that Day;

'Initial Nominated Receipt Quantity' means, on a Day:

- (i) where the Agreement is for FT Service - the quantity referred to in clause 18.3 (e)(iii); and
- (ii) where the Agreement is for IT Service - the quantity referred to in clause 18.5 (g) (iii),

for that Day;

'Insolvency Event' means in relation to any person:

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

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

'**Invoice**' has the meaning given in clause 31.1;

'**IT Commodity Charge Rate**' means the charge bearing that description set out in the Tariff Schedule;

'**IT Request**' ~~means a complete Request for Service for IT Service~~ has the meaning given in clause 7.4;

'**IT Service**' has the meaning given in clause 4.3~~(e)~~(a);

'**IT Service Contract**' means the document that creates the contract for provision by the Service Provider of IT Service which, at the Lodgment Date, is in the form set out in Schedule 7 (as may be varied by the Parties);

'**IT User**' means a person that has entered into an IT Service Contract with the Service Provider;

'**kPa**' means kilopascal;

'**Licence**' has the meaning given in clause 2.1;

'**Line Pack**' means the Gas in the Pipeline System at a point in time;

'**Lodgment Date**' means the date upon which this Access Arrangement was submitted to the Regulator for approval pursuant to the Code;

'**MAOP**' or '**Maximum Allowable Operating Pressure**' means 7,322 kPa or such other maximum pressure that may be approved or required pursuant to the Licence (as amended from time to time);

'**Marketable FT Parcel**' has the meaning given in clause 26.2(a);

'**Marketable IT Parcel**' has the meaning given in clause 26.3(a);

'**Marketable Parcel**' means, depending on the context, a Marketable FT Parcel or a Marketable IT Parcel. Where the term 'Marketable Parcel' is used in relation to an Other User, it has a corresponding meaning;

'**Maximum Capacity**' means in relation to a Delivery Point, the maximum quantity of Gas that can be delivered from that Delivery Point on a Day as reasonably and prudently determined by the Service Provider (which, at the Lodgment Date, is set out in Schedule 1 Attachment B);

'MDQ':

- (i) means the maximum quantity of Gas that the User has contracted to have delivered in aggregate at the Delivery Points (as specified in the Schedule to the FT Service Contract) on any Day; and
- (ii) is equal to the sum of the User's Primary Capacity Quantities.

Where the term 'MDQ' is used in relation to a contract for FT Service with an other FT User, the term has a corresponding meaning. Where the term 'MDQ' is used in relation to an Existing Transportation Agreement, it means the maximum quality of Gas that the Existing User is entitled to have delivered in aggregate at Delivery Points on a Day under the terms of the Existing Transportation Agreement. There is no MDQ where the Agreement is for IT Service;

'MHQ' or 'Maximum Hourly Quantity' means each of the limits specified in Schedule 2;

'Month' means the period beginning on the first Day of a calendar month and ending on the first Day of the next calendar month. Where the date of termination of the Agreement is other than the first Day of a month, the final Month will be the period from the first Day of the month in which the date of termination occurs to the end of the Day which is the date of termination;

'Net Available Capacity' means, for a Day in relation to a Delivery Point, the Maximum Capacity of that Delivery Point less the sum of all nominations to utilise Primary Capacity Quantities on that Day at that Delivery Point;

'New Facilities' means:

- (i) one or more new Receipt Points; and/or
- (ii) one or more new Delivery Points; and/or
- (iii) any extension to the Pipeline System; and/or
- (iv) any expansion of Capacity; and/or
- (v) any expansion of the Maximum Capacity of an existing Delivery Point;

'Non-Specification Gas' means Gas that does not conform to the Gas Specification;

'Non-Specified Services' means Services other than the Specified Services;

'Notice' has the meaning given in clause 41.1(a);

'NSS Request' has the meaning given in clause 7A.4;

'OFO' has the meaning given in clause 25.1;

'**Other User**' means a person (other than the User) to whom the Service Provider is providing, or (if the context requires) intends to provide, Services. For the avoidance of doubt, it may (depending on the context) include the Existing Users;

'**Other User's Confirmed Quantity**' means, for an Other User for a Day at a Receipt Point, the quantity of Gas confirmed by the Producers to the Service Provider as the amount of Gas supplied for that Other User at that Receipt Point on ~~the previous~~that Day;

'**Other User's Imbalance**' has the meaning given in the contract with the Other User and being equivalent in concept to 'Imbalance' as defined in this clause 43.1;

'**Party**' means either the Service Provider or the User; and '**Parties**' means both the Service Provider and the User;

'**Pipeline System**' means the pipeline system described in clause 2 and Schedule 1;

'**Primary Capacity Quantity**' means that amount of the Capacity of a Delivery Point to deliver Gas on a Day that:

- (i) in the case of an FT User, is specified in the Schedule to that FT User's FT Service Contract; and
- (ii) in respect of an Existing User, is contracted to that Existing User under its Existing Transportation Agreement;

'**Primary Delivery Point**' means a Delivery Point in respect of which there is a Primary Capacity Quantity;

'**Producers**' means the producers or suppliers of Gas with whom the User or (as the case may be) an Other User has entered into a Gas supply contract(s) under which Gas is to be delivered at a Receipt Point(s);

'**reasonable and prudent**' means, in relation to an undertaking, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable laws in the same type of undertaking under the same circumstances and conditions; and '**reasonably and prudently**' has a corresponding meaning;

'**Receipt Point**' means a point of entry to the Pipeline System;

'**Regulator**' means the Australian Competition and Consumer Commission;

'**Related Body Corporate**' has the meaning given to that expression in the *Corporations Law*;

'**Release**' has the meaning given in clause 26.2(a);

'Retention Allowance' means, on a Day, the quantity of Gas determined in accordance with clause 17. Where the term 'Retention Allowance' is used in relation to an Other User, it has an equivalent meaning;

'Retention Allowance Percentage' means, for a Day, the percentage calculated in accordance with clause 17.3(c);

'Request for Service' means an application for provision of a Service (using the form set out in Schedule 5) addressed to the Service Provider which, when executed by the User and delivered to the Service Provider, is an offer for the relevant ~~Specified~~ Service;

'Scheduled Delivery Quantity' means, for a Day, the quantity referred to in clause 18.6(b)(ii). Where the expression 'Scheduled Delivery Quantity' is used in relation to an Other User it means, for a Day, that quantity of Gas scheduled for delivery on that Day to that Other User at a Delivery Point;

'Scheduled Quantities' has the meaning given in clause 18.6(b);

'Scheduled Receipt Quantity' means, for a Day, the quantity referred to in clause 18.6(b)(i). Where the expression 'Scheduled Receipt Quantity' is used in relation to an Other User it means, for a Day, that quantity of Gas scheduled for supply on that Day at a Receipt Point by that Other User;

'Service Provider' means Epic Energy South Australia Pty Ltd (ABN 54 068 599 815);

'Spare Capacity' means, at a point in time, the difference between the System Primary Capacity and the sum of:

- (a) the aggregate of the Primary Capacity Quantities at that point in time; and
- (b) Capacity that is contracted on a firm basis for any Non-Specified Services.

At the Lodgment Date, there is no Spare Capacity;

'Specified Service' means FT Service or IT Service (as the case may be);

'Standard Conditions' means a temperature of 15°C and an absolute pressure of 101.325 kPa;

'System Primary Capacity' means, at a point in time, the aggregate of those amounts of Maximum Capacity which the Service Provider reasonably and prudently determines is available at that time to contract to FT Users for FT Service and to the Existing Users under the Existing Transportation Agreements;

'System Use Gas' means Gas reasonably and prudently required by the Service Provider for the purposes of operating and maintaining the Pipeline System (including compressor fuel,

Gas lost, Gas vented and Gas unaccounted for) and for keeping the Line Pack at a level consistent with the efficient operation of the Pipeline System;

'Tariff Schedule' means the schedule of tariffs and charges for the provision by the Service Provider of Specified Services (as varied from time to time pursuant to the Code with the approval of the Regulator) which schedule, as at the Lodgment Date, is set out in Schedule 4;

'Term' means the period from and including the Commencement Date to the Termination Date of the Agreement;

'Termination Date' means 6.00am on the date for termination of the relevant Specified Service set out in the Request for Service (as that date may be amended by any extension of the Term agreed pursuant to clause 11.3);

'TJ' means terajoule;

'Total Revenue Requirement' has a meaning consistent with 'Total Revenue' in the Code;

'User' means the person specified as the User in the Request for Service;

'User's Confirmed Quantity' means, for a Day at a Receipt Point, the quantity of Gas confirmed by the Producers pursuant to clause 18.2 or (as the case may be) clause 18.5(b) as having been supplied for the User at that Receipt Point on that Day;

'Whyalla Lateral' means the lateral to Port Pirie and Whyalla described in clause 2.1(c) and Schedule 1;

'Whyalla Lateral Surcharge' has the meaning given in clause 5.2(viii);

'Zone' means the Mainline Zone, Iron Triangle Zone or Barossa Zone each of which is more fully described in Schedule 1;

'Zone Variation' means, in relation to a Zone for a Day, the difference between the Actual Zone Deliveries and the sum of the Final Nominated Delivery Quantities for that Zone on that Day;

'Zone Variation Buffer' has the meaning given in clause 19.7(b);

'Zone Variation Charge' means the charge referred to in clause 19.7(b); and

'Zone Variation Charge Rate' means the rate referred to in clause 19.7(b).

43.2 Interpretation

In the construction of this Access Arrangement, unless the context requires otherwise:

- (a) a reference to a clause number or a schedule number is a reference to a clause or schedule of this Access Arrangement;
- (b) words indicating the singular number include the plural number and vice versa;
- (c) words indicating one gender include any other gender;
- (d) headings are for convenience only and do not affect interpretation;
- (e) words indicating persons include natural persons, bodies corporate and unincorporated associations;
- (f) a reference to any statutory law extends to and includes any modification of, or substitution for, that law;
- (g) a reference to any agreement is a reference to that agreement as amended, varied, novated or substituted from time to time;
- (h) references to dollars or \$ are references to Australian dollars;
- (i) where the User comprises two or more persons, an obligation, representation or warranty of the User binds, or is given by those persons, jointly and severally; and
- (j) a reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in Adelaide, South Australia, even if the obligation is to be performed elsewhere.

43.3 Standards

Terminology used to describe units will, unless otherwise stated, be in accordance with Australian Standard AS1000 - 1979 'The International System of Units (SI System) and its Application', the Commonwealth *National Measurement Act 1960* and the regulations under that Act, Australian Standard AS1376 - 1973 'Conversion Factors' and the Australian Gas Association publication 'Metric Units and Conversion Factors for Use in the Australian Gas Industry'.

43.4 User

A reference to the supply by, or delivery to, the User of Gas means:

- (a) supply or delivery under the Agreement; and
- (b) includes supply by, or delivery to, a person on behalf of the User.

43.5 Quantities

References to supply at a Receipt Point or delivery at a Delivery Point are references to, unless the context otherwise requires, quantities so supplied or delivered under the Agreement.

43.6 Precedence of Documents

- (a) If there is any conflict, discrepancy, error or omission between the documents comprising the Agreement, then unless otherwise provided, the documents will rank in order of interpretative precedence as follows:
 - (i) Access Arrangement; and
 - (ii) Applicable Contract.
- (b) If there is any conflict or discrepancy between the clauses of the Access Arrangement and the Schedules to the Access Arrangement, then unless otherwise provided, the clauses and Schedules will rank in order of interpretative precedence as follows:
 - (i) clauses of the Access Arrangement; and
 - (ii) the Schedules.

43.7 **Conflicts between Applicable Contracts**

If the User has an Agreement for FT Service and an Agreement for IT Service and there is any conflict, discrepancy, error or omission between them then, unless otherwise provided, the contracts will rank in order of interpretative precedence as follows:

- (a) Agreement for FT Service; and
- (b) Agreement for IT Service.

APPENDIX

EXAMPLE OF INCENTIVE MECHANISM

(Numbers used are for illustration purposes only and are not necessarily indicative of actual charges)

Assumptions:

IT User utilises part of capacity of a lateral and a delivery point contracted to Existing Users 1 and 2

Existing User 1 volume reserved	= TVL ₁	=240 TJ per month
Existing User 2 volume reserved	= TVL ₂	=300 TJ per month
IT User volume	= VIT = VDIT (assume)	=270 TJ in month
Total volume from lateral in month	= TVL = TVDP (assume)	=540 TJ
Specific lateral charge per month	= LFC	=\$1,000/TJ per month
Specific Delivery Point charge	= DPFC	=\$100/TJ per month
Total revenue from IT User in month	= ITR	=\$342,000
Existing User 1 provides to IT User	= VIT ₁	=130 TJ in month
Existing User 2 provides to IT User	= VIT ₂	=140 TJ in month

$$\text{Lateral Fixed Cost Component for User 'n'} = \text{LFCC}_n = \text{VIT}_n / \text{TVL} \times \text{LFC}$$

$$\text{Delivery Point Cost Component for User 'n'} = \text{DPFCC}_n = \text{VDIT}_n / \text{TVDP} \times \text{DPFC}$$

$$\text{Incentive Component for User 'n'} = \text{IC}_n = [(\text{ITR} - \sum_{n=1 \text{ to } N} [\text{LFCC}_n + \text{DPFCC}_n]) / 2] \times \text{VIT}_n / (\sum_{n=1 \text{ to } N} \text{VIT}_n)$$

Where N = total number of Existing Users using facility.

Calculation of Rebate for Existing User 1 for Month

$$\text{LFCC}_1 + \text{DPFCC}_1 + \text{IC}_1 = \text{VIT}_1 / \text{TVL} \times \text{LFC} + \text{VDIT}_1 / \text{TVDP} \times \text{DPFC} + (\text{ITR} - [\text{LFCC}_1 + \text{DPFCC}_1 + \text{LFCC}_2 + \text{DPFCC}_2]) / 2 \times \text{VIT}_1 / (\text{VIT}_1 + \text{VIT}_2)$$

$$= 130/540 \times (540 \times 1000) + 130/540 \times (540 \times 100) + (342000 - [\text{LFCC}_1 + \text{DPFCC}_1 + \text{LFCC}_2 + \text{DPFCC}_2]) / 2 \times 130 / (130 + 140)$$

$$= 130000 + 13000 + (342000 - [130000 + 13000 + 140000 + 14000]) / 2 \times 130 / 270$$

$$= 143000 + (342000 - 297000) / 2 \times 130 / 270$$

$$= 143000 + 10833 = \$153,833$$

(A) (B)

Calculation of Rebate for Existing User 2 for Month

$$\text{LFCC}_2 + \text{DPFCC}_2 + \text{IC}_2 = \text{VIT}_2 / \text{TVL} \times \text{LFC} + \text{VDIT}_2 / \text{TVDP} \times \text{DPFC} + (\text{ITR} - [\text{LFCC}_1 + \text{DPFCC}_1 + \text{LFCC}_2 + \text{DPFCC}_2]) / 2 \times \text{VIT}_2 / (\text{VIT}_1 + \text{VIT}_2)$$

$$= 140/540 \times (540 \times 1000) + 140/540 \times (540 \times 100) + (342000 - [\text{LFCC}_1 + \text{DPFCC}_1 + \text{LFCC}_2 + \text{DPFCC}_2]) / 2 \times 140 / (130 + 140)$$

$$= 140000 + 14000 + (342000 - [130000 + 13000 + 140000 + 14000]) / 2 \times 140 / 270$$

$$= 154000 + 11667 = \$165,667$$

(A) (B)

Where (A) represents the rebate to the Existing User for use of its contracted capacity and (B) represents the Existing User's share of the Incentive Component for the Month.

**ACCESS ARRANGEMENT FOR MOOMBA TO
ADELAIDE PIPELINE SYSTEM**

AMENDED SINCE LODGMENT

AMENDMENTS SINCE LAST VERSION PROVIDED

VERSION ~~18 MAY 2001~~ 29 JUNE 2001

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