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National Third Party Access Code for Natural Gas Pipeline Systems: First Amending Agreement

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF SOUTH AUSTRALIA

THE STATE OF WESTERN AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY and

THE NORTHERN TERRITORY

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National Third Party Access Code for Natural Gas Pipeline Systems: First Amending Agreement

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| Date | 1999 |
| Parties | |
| 1. | The Commonwealth of Australia |
| 2. | The State of New South Wales |
| 3. | The State of Victoria |
| 4. | The State of Queensland |
| 5. | The State of South Australia |
| 6. | The State of Western Australia |
| 7. | The State of Tasmania |
| 8. | The Australian Capital Territory |
| 9. | The Northern Territory |
| Recitals | |
| A | On 7 November 1997 the Parties signed the Natural Gas Pipelines Access Agreement with the objective of establishing a uniform national framework for third party access to natural gas pipelines. |
| B | Under the Natural Gas Pipelines Access Agreement the Parties agreed upon a uniform "Gas Pipelines Access Law", which included a "National Third Party Access Code for Natural Gas Pipeline Systems". |
| C | In accordance with the Natural Gas Pipelines Access Agreement, the State of South Australia passed the Gas Pipelines Access (South Australia) Act 1997, which applied the Gas Pipelines Access Law (comprising Schedule 1 (Third Party Access to Natural Gas Pipelines) and Schedule 2 (National Third Party Access Code for Natural Gas Pipeline Systems (the <i>Code</i>)) as a law of South Australia. |
| D | In accordance with the Natural Gas Pipelines Access Agreement, each other Party (except the State of Western Australia) passed, or proposes to pass, application legislation applying the Gas Pipelines Access Law as set out in Schedules 1 and 2 to the Gas Pipelines Access (South Australia) Act 1997, as laws of that Party. The State of Western Australia has enacted the Gas Pipelines Access (Western Australia) Act 1998, which has essentially identical effect to the Gas Pipelines Access (South Australia) Act 1997 and applies the Gas Pipelines Access Law as set out in Schedules to the Western Australian Act as law of the State of Western Australia. |

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| E | Section 6 of Schedule 1 of the Gas Pipelines Access Law and section 9 of Schedule 2 of the Gas Pipelines Access Law (the Code) establish a procedure whereby the Code may be amended. |
| F | On 28 September 1999, in accordance with section 9 of the Code and section 6(1) of Schedule 1 of the Gas Pipelines Access Law, the National Gas Pipelines Advisory Committee recommended to Relevant Ministers that certain amendments be made to the Code. |
| G | The Relevant Ministers have unanimously agreed, in accordance with section 6 of Schedule 1 of the Gas Pipelines Access Law, to amend the Code as set out in this Agreement. |

Operative Provisions

1. Interpretation

1.1 This Agreement may be referred to as the National Third Party Access Code for Natural Gas Pipeline Systems: First Amending Agreement.

1.2 In this Agreement, unless the contrary intention appears, capitalised terms not otherwise defined have the meaning given in the Code and:

Code means the National Third Party Access Code for Natural Gas Pipeline Systems set out in Schedule 2 to the Gas Pipelines Access (South Australia) Act 1997 and Schedule 2 to the Gas Pipelines Access (Western Australia) Act 1998; and

Parties means the parties to this Agreement.

2. Commencement

Clauses 3, 4 and 5 of this Agreement have effect on and from the day on which a copy of this Agreement is published in the South Australian Government Gazette.

3. New Section 4.1A

After section 4.1 of the Code **insert**:

“4.1A If requested to do so in writing by an End User, a Service Provider may disclose End User Information about that End User to the End User or to any other person or persons nominated by the End User who carry on, or propose to carry on, a business of supplying Natural Gas, notwithstanding and without contravening either section 4.1(f) or 4.1(g).”

4. Amendment of Section 8

- (a) After section 8.5 of the Code **insert:**

“8.5A Any of the methodologies described in section 8.4 or permitted under section 8.5, may be applied:

- (a) on a nominal basis (under which the Capital Base and Depreciation are expressed in historical cost terms and all other costs and revenues are expressed in current prices and a nominal Rate of Return is allowed); or
- (b) on a real basis (under which the Capital Base, Depreciation and all costs and revenues are expressed in constant prices and a real Rate of Return is allowed); or
- (c) on any other basis in dealing with the effects of inflation,”

provided that the basis used is specified in the Access Arrangement, is approved by the Relevant Regulator and is applied consistently in determining the Total Revenue and Reference Tariffs.

- (b) In section 8.9 of the Code, after paragraph (f) **substitute** a comma for the full stop and **insert** on a new line:

“subject, irrespective of which methodology is applied, to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A.”

- (c) In paragraph (d) of section 8.33 of the Code after “Capital Base” and before the bracket **insert:**

“, subject to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A”

5. Definitions

- (a) In section 10.8 of the Code for the definition of “Associate” **substitute –**

“**Associate**, in relation to a person, has the meaning it would have under Division 2 of Part 1.2 of the Corporations Law if sections 13, 14, 16(2) and 17 of that Law were repealed, except that a person will not be considered to be an Associate

of a Service Provider solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the Service Provider for the provision of a Service.”

(b) In section 10.8 of the Code insert:

“**End User**” means:

- (a) a person who acquires or proposes to acquire Natural Gas from a User; or
- (b) a person who proposes to acquire Natural Gas from a Prospective User.

End User Information means, in relation to an End User, information obtained by a Service Provider, or by its servants, consultants, independent contractors or agents, in the course of conducting its business that relates to the actual Natural Gas usage and usage patterns of that End User, but does not include any such information provided by a User or Prospective User to the Service Provider.”

6. Counterparts

This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

SIGNED by

Senator The Honourable Nick Minchin
Minister for Industry, Science and
Resources of the Commonwealth of
Australia

The Honourable Kim Yeadon MP
Minister for Energy of the State of New
South Wales

The Honourable Steve Bracks MP
Premier, Treasurer and Minister for
Multicultural Affairs of the State of Victoria

The Honourable Tony McGrady MP,
Deputy Premier, Minister for Mines and
Energy and Minister assisting the Deputy
Premier on Regional Development of
the State of Queensland

The Honourable Rob Kerin MLA, Deputy
Premier, Minister for Primary Industries,
Natural Resources and Regional
Development of the State of South
Australia

The Honourable Colin Barnett MLA
Minister for Resources Development,
Energy and Education of the State of
Western Australia

The Honourable Paul Lennon MHA
Deputy Premier, Minister for Infrastructure,
Energy and Resources of the State of
Tasmania

Mr Brendan Smyth MLA, Minister for
Urban Services of the Australian Capital
Territory

The Honourable Daryl Manzie MLA
Minister for Resource Development of the
Northern Territory of Australia