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

Date

18 October 2000

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 *Code*)) 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.

E	Section 6 of Schedule 1 of the Gas Pipelines Access Law and section 9 of the Code establish a procedure whereby the Code may be amended.
F	On 10 May 2000, 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: Second 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, 5 and 6 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. Proposed Amendments to Section 2

(a) After section 2.15 of the Code **insert:**

2.15A The Service Provider may, after the date of the draft decision, resubmit the Access Arrangement, revised so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

(b) For section 2.16 of the Code **substitute**:

2.16 After considering any submissions received by the date specified by the Relevant Regulator under section 2.14, the Relevant Regulator must issue a final decision that:

- (a) if the Service Provider has not submitted a revised Access Arrangement under section 2.15A:
 - (i) approves the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the Access Arrangement originally proposed by the Service Provider and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider; or
- (b) if the Service Provider has submitted a revised Access Arrangement under section 2.15A:
 - (i) subject to section 2.16A, approves the revised Access Arrangement; or
 - (ii) does not approve the revised Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the revised Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider.

(c) After section 2.16 of the Code **insert**:

2.16A The Relevant Regulator may (in the Relevant Regulator's discretion) approve a revised Access Arrangement under section 2.16(b)(i) only if the Relevant Regulator is satisfied that the revised Access Arrangement:

- (a) incorporates or substantially incorporates the amendments specified by the Relevant Regulator in its draft decision; or
- (b) otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

(d) In sections 2.18 and 2.21(c) of the Code for "section 2.16(b)" wherever appearing **substitute** "section 2.16(a)(ii) or (b)(ii)".

(e) For sections 2.19 and 2.20 of the Code **substitute:**

2.19 If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:

- (a) if the Relevant Regulator is satisfied that the revised Access Arrangement incorporates the amendments specified by the Relevant Regulator in its final decision under Section 2.16(a)(ii) or (b)(ii), approves the revised Access Arrangement; or
- (b) if the Relevant Regulator is satisfied that the revised Access Arrangement either substantially incorporates the amendments specified by the Relevant Regulator or otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.16(a)(ii) or (b)(ii), either approves or does not approve the revised Access Arrangement (in the Relevant Regulator's discretion); or
- (c) in any other case, does not approve the revised Access Arrangement.

2.20 If the Service Provider does not submit a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the revised Access Arrangement under section 2.19, the Relevant Regulator must:

- (a) in the case of an Access Arrangement submitted under section 2.2, draft and approve its own Access Arrangement, instead of the Access Arrangement proposed by the Service Provider; or
- (b) in the case of an Access Arrangement submitted voluntarily under section 2.3, not approve the Access Arrangement.

(f) After section 2.37 of the Code **insert:**

2.37A The Service Provider may, after the date of the draft decision, resubmit the revisions to the Access Arrangement, amended so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

(g) For section 2.38 of the Code **substitute:**

2.38 After considering any submissions received by the date specified by the Relevant Regulator under section 2.36, the Relevant Regulator must issue a final decision that:

- (a) if the Service Provider has not submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) approves the revisions to the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the revisions to the Access Arrangement originally proposed by the Service Provider and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider; or
- (b) if the Service Provider has submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) subject to section 2.38A, approves the amended revisions to the Access Arrangement; or
 - (ii) does not approve the amended revisions to the Access Arrangement and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider.

(h) After section 2.38 of the Code **insert:**

2.38A The Relevant Regulator may (in the Relevant Regulator's discretion) approve amended revisions to an Access Arrangement under section 2.38(b)(i) only if the Relevant Regulator is satisfied that the amended revisions:

- (a) incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision; or

- (b) otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.
- (i) In sections 2.40 and 2.43 of the Code for "section 2.38(b)" wherever appearing **substitute** "section 2.38(a)(ii) or (b)(ii)".
- (j) For sections 2.41 and 2.42 of the Code **substitute**:
 - 2.41 If the Service Provider submits amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:
 - (a) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement incorporate the amendments specified by the Relevant Regulator in its final decision under section 2.38(a)(ii) or (b)(ii), approves the amended revisions to the Access Arrangement; or
 - (b) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement either substantially incorporate the amendments specified by the Relevant Regulator or otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.38(a)(ii) or (b)(ii), either approves or does not approve the amended revisions to the Access Arrangement (in the Relevant Regulator's discretion); or
 - (c) in any other case, does not approve the amended revisions to the Access Arrangement.
 - 2.42 If the Service Provider does not submit amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the amended revisions to the Access Arrangement under section 2.41, the Relevant Regulator must draft and approve its own amended revisions to the Access Arrangement, instead of the revisions proposed by the Service Provider.

4. Amendment of section 4

- (a) In section 4.1 of the Code for paragraph (a) **substitute**:
 - (a) be a legal entity registered under the Corporations Law, a foreign company within the meaning of the Corporations Law that has appointed a local agent in accordance with sections 601CF and 601CG of the Corporations Law, a statutory corporation, a government or an entity established by royal charter.

- (b) In section 4.15 of the Code for subparagraph (a)(ii) **substitute:**
- (ii) the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation, taking into account arrangements put in place by the Service Provider (if any) to ensure that Confidential Information the subject of sections 4.1(f) and (g) is not disclosed to the Service Provider or is not disclosed to the servants, consultants, independent contractors or agents of the Service Provider who take part in a Related Business; and
- (c) In section 4.15 of the Code for paragraph (b) **substitute:**
- (b) sections 4.1(h) and (i) where the Relevant Regulator is satisfied that the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation.
- (d) After section 4.15 of the Code **insert:**
- 4.15A In making a decision under section 4.15 of the Code, the Relevant Regulator may treat a tax liability arising from an Exempt Matter as a cost for the purposes of sections 4.15(a)(ii) and 4.15(b).

5. Amendment of section 7

- (a) After section 7.19 of the Code **insert:**

Disclosure of End User Information

- 7.20 Subject to section 7.22, if requested to do so in writing by an End User, a Service Provider must disclose any End User Information about that End User of a type described in the End User's written request that is in the Service Provider's possession or under its control, to the End User or to any other person nominated by the End User who carries on, or proposes to carry on, a business of supplying Natural Gas.
- 7.21 A Service Provider must not disclose the fact that an End User has made a request under section 7.20 to any person (other than a person nominated by the End User under section 7.20).
- 7.22 A Service Provider may, prior to disclosing any End User Information under paragraph 7.20, require the End User or other recipient of the End User Information to pay the

Service Provider a fee to compensate the Service Provider for its reasonable costs of providing the End User Information, provided that fee has been approved in writing by the Relevant Regulator.

6. Amendment of section 10

(a) In section 10.7 of the Code at the end of paragraph (b) **insert:**

- 7.20 and 7.21 (Disclosure of End User Information).

(b) In section 10.8 of the Code for the definition of “Confidential Information” **substitute:**

Confidential Information means information that is by its nature confidential or is known by the Service Provider to be confidential and includes:

- (a) any information relating to the financial position of a User or Prospective User and, in particular, includes information relating to the assets or liabilities of the User or Prospective User and any other matter that affects or may affect the financial position or reputation of the User or Prospective User;
- (b) information relating to the internal management and structure of the User or Prospective User or the personnel, policies and strategies of a User or Prospective User;
- (c) information of a User or Prospective User to which the Service Provider has access, other than information referred to in paragraphs (a) and (b), that has any actual or potential commercial value to the User or Prospective User or the person or corporation which supplied that information; and
- (d) any information in the Service Provider’s possession relating to the User’s or Prospective User’s customers or suppliers and like information.

(c) In section 10.8 **insert:**

Exempt Matter means an Exempt Matter within the meaning of the Gas Pipelines Access Legislation of any Scheme Participant.

Gas Pipelines Access Legislation has the meaning given in the Gas Pipelines Access Law.

7. 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 Candy Broad MLC)
Minister for Energy and Resources)
and Ports of the State of Victoria)

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

The Honourable Wayne Matthew MP,)
Minister for Minerals and Energy and)
Minister assisting the Deputy Premier 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)