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GAS SUPPLY (GAS QUALITY SPECIFICATIONS) ACT 2009

**STANDARD FORM AGREEMENT
WAREHOUSING METHOD—
DBNGP**

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**STANDARD FORM AGREEMENT
WAREHOUSING METHOD—DBNGP**

[Gas Producer] and
[Gas Producer]
(together “**Gas Producer**”)
DBNGP (WA) Transmission Pty Ltd
ABN 69 081 609 190
 (“**Pipeline Operator**”)
DBNGP (WA) Nominees Pty Ltd
ABN 78 081 609 289
 (“**Pipeline Trustee**”)
DBNGP Holdings Pty Ltd
ABN 16 110 721 081
 (“**DBNGP Trustee**”)

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GAS SUPPLY (GAS QUALITY SPECIFICATIONS) ACT 2009

STANDARD FORM AGREEMENT WAREHOUSING METHOD—DBNGP

BETWEEN THE PARTIES

[Gas Producer]	ACN 000000000 of [insert address]
[Gas Producer]	ACN 000000000 of [insert address]
	(together, Gas Producer)
DBNGP (WA) Transmission Pty Ltd	ACN 69 081 609 190 of Level 6 12-14, The Esplanade, Perth, Western Australia (Pipeline Operator)
DBNGP (WA) Nominees Pty Ltd	ACN 78 081 609 289 of Level 6 12-14, The Esplanade, Perth, Western Australia (Pipeline Trustee)
DBNGP Holdings Pty Ltd	ACN 16 110 721 081 of 6 12-14, The Esplanade, Perth, Western Australia (DBNGP Trustee)

BACKGROUND

- A. This is a pipeline impact agreement for the purposes of the Act.
- B. The Gas Producer intends to supply PIA Gas that will flow into the PIA Pipeline.
- C. The PIA Gas (including the Worst-Case PIA Gas) will comply with the standard specification for the PIA Pipeline.
- D. The Pipeline Trustee is the trustee of the Pipeline Trust, and is the registered holder of a licence in respect of the PIA Pipeline under the *Petroleum Pipelines Act 1969*.
- E. The Pipeline Operator operates the PIA Pipeline and has been prescribed for the purposes of the definition of “operator” in the Act.
- F. The DBNGP Trustee is the trustee of the DBNGP Trust and has been prescribed for the purposes of the definition of “operator” in the Act.
- G. The Gas Producer gave the Pipeline Operator (on behalf of the DBP Parties) an application for a pipeline impact agreement in relation to the proposed supply of PIA Gas, which met the application criteria in Regulation 21.
- H. The relevant effects on the capacity, operation and maintenance of the PIA Pipeline of Worst-Case PIA Gas flowing into the PIA Pipeline, and the extent of those effects, have been worked out for each Relevant Section under Regulations 17 and 22 and are not in dispute in accordance with Regulation 23(1) and (2).
- I. The Gas Producer proposed under Regulation 23(3)(a) to enter into the “Standard Form Agreement—Warehousing Method—DBNGP” and gave the Pipeline Operator (on behalf of the DBP Parties) complete, accurate and correct information under Regulation 23(3)(b).
- J. As a result, all the matters in the proposed pipeline impact agreement to be resolved by the Parties are not in dispute for the purposes of section 8(4) of the Act.
- K. This agreement records the terms and conditions upon which the Gas Producer may supply PIA Gas that will flow into the PIA Pipeline.

The Parties agree as follows.

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the contrary intention appears—

ACCC	means the Australian Competition and Consumer Commission.
Access Arrangement	means the access arrangement for the DBNGP under the Access Regime, as changed, varied or replaced from time to time.

Access Regime	means any legislative and administrative or administrative regime from time to time governing the terms and conditions of third party access to Gas Transmission Capacity of the PIA Pipeline, and at the time of this agreement includes the Gas Access Law.
Act	means the <i>Gas Supply (Gas Quality Specifications) Act 2009</i> (WA).
Additional Modelling Costs	means the Pipeline Operator's reasonable costs of modelling or other analyses made necessary by a notice under clause 14(g) or 15(b) and which the Pipeline Operator would not otherwise have incurred but for the notice, and includes another DBP Party's reasonable such costs to the extent (if any) that it incurs them.
Additional System Use Gas	in respect of a Relevant Section means that part of the relevant effect on the PIA Pipeline's operations and maintenance which is the change in the amount of System Use Gas required as a result of the PIA Gas flowing into the PIA Pipeline at the PIA Inlet Point, determined in accordance with the Regulations.
Agreed Capacity Impact	in respect of a Relevant Section means the relevant effect on the PIA Pipeline's capacity of the PIA Quantity of Worst-Case PIA Gas flowing into the PIA Pipeline at the PIA Inlet Point as determined in accordance with Regulation 17 and adjusted from time to time under this agreement including under clauses 14 and 15.
Annual Statement	is defined in clause 17.2
Assigning Party	is defined in clauses 22.2 and 22.3
Back Haul	means a Gas transportation service on the DBNGP where the inlet point is downstream of the outlet point.
Bank Bill Rate	for the day of calculation, the average mid rate for bills having a tenor closest to 90 days, as displayed on the 'BBSY' page of the Reuters Monitor System on that day. However, if the average mid rate is not displayed by 10:30am (Sydney time) on that day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate (expressed as a yield to maturity) set by the Pipeline Operator in good faith and acting reasonably at approximately 10:30am on that day, having regard, to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the 'BBSW' page of the Reuters Monitor System). The rate set by the Pipeline Operator must be expressed as a percentage rate per annum and be rounded up to the nearest sixth decimal place.
Bare Transfer	means a Transfer as described in rule 105(2) of the <i>National Gas Rules 2009</i> of an Eligible Right from one Gas Producer (" Bare Transferor ") to another Gas Producer (" Bare Transferee "). <i>{Note: Rule 105(2) describes this Transfer as one in which the transferor's rights against, and obligations to, the service provider are (subject to an obligation to notify the service provider) unaffected by the Transfer, and permits such a Transfer to occur without the service provider's consent.}</i>
Bare Transferee	means the Gas Producer so named in the definition of "Bare Transfer"
Bare Transferor	means the Gas Producer so named in the definition of "Bare Transfer"
Billing Period	means a period beginning on 08:00 hours at the start of the first Gas Day of a month and ending on 08:00 hours at the start of the first Gas Day of the following month.
Business Day	means a day which is not a Saturday, Sunday or Gazetted public holiday in Perth, Western Australia.
Claim	in relation to any person, means a claim, action, judgment, proceeding, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.
Compelled Transfer	is defined in clause 12(b)(i).

Compulsion notice	is defined in clause 12(b).
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
DBNGP	means the Dampier to Bunbury Natural Gas Pipeline as defined in the Regulations.
DBNGP Operating Agreement	means the document so titled dated 25 March 1998 between the Pipeline Operator and the Pipeline Trustee, under which the Pipeline Trustee appoints the Pipeline Operator to Operate the PIA Pipeline.
DBNGP Trust	is defined in clause 26(a) of this agreement.
DBP Party	means each of the DBNGP Trustee, the Pipeline Trustee and the Pipeline Operator and “DBP Parties” means all of them.
Default	is defined in clause 21.1 of this agreement.
Direct Damage	means loss or damage— <ul style="list-style-type: none"> (a) which is physical damage to plant or equipment or injury to persons; or (b) which is the cost of acquiring alternative fuel or electricity due to the whole or partial interruption of gas deliveries; or (c) which is the cost of additional System Use Gas; or (d) which otherwise is not Indirect Damage.
Dispute	means any dispute or difference concerning— <ul style="list-style-type: none"> (a) anything contained in or arising out of; or (b) the rights, obligations, duties or liabilities of a Party under, this agreement.
Eligible Right	means a right under a Pipeline Services Agreement (the “Underlying Pipeline Services Agreement”) of access to Gas Transmission Capacity— <ul style="list-style-type: none"> (a) [firm service] on terms which give the user priority in the event of a curtailment or interruption equal to or better than the rights of users whose contracts fall within order of priority 1 to 5 of the Column headed “System Curtailment” in Appendix 8 of the Standard Shipper Contract; and (b) [correct inlet and outlet points] in respect of an inlet point or points and an outlet point or points which satisfy clause 9.
Full Haul	means a Gas transportation service on the DBNGP where the outlet point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the inlet point, but does not include Back Haul.
Gas	means any naturally occurring mixture of one or more hydrocarbons which normally exists in a gaseous state and can include one or more of hydrogen sulphide, nitrogen, helium, carbon dioxide and other gases.
Gas Access Law	has the meaning given to that term in section 3 of the Act.
Gas Day	means the 24 hour period beginning at 08:00 hours on a day and ending at 08:00 hours on the following day and “Daily” has a corresponding meaning. The date of a Gas Day is the date on which it commences.
Gas Delivery Period	means the period determined in accordance with clause 3.2 of this agreement.
Gas Month	means the period beginning at 08:00 hours on the first day of a month and ending at 08:00 hours on the first day of the following month.
Gas Producer	means the entity or entities identified as such on page 1 of this agreement.
Gas Transmission Capacity	means the capacity of the PIA Pipeline to transport Gas.
Gas Year	means the period beginning at 08:00 hours on 1 January and ending on 08:00 hours on the following 1 January.

Government Agency	means any government, governmental or semi-government or judicial entity, any body politic, any ministry, inspectorate, official, public or statutory person or other statutory or administrative entity, domestic or foreign, federal, state or local.
Higher Heating Value Incident	has the meaning given to that term in Regulation 3. means any, or any series of, acts, omissions, events or circumstances which amount to either or both of negligence under clause 19.1(a) or Default under clause 19.1(b).
Indirect Damage	means, in respect of a person— <ul style="list-style-type: none"> (a) any indirect loss or damage suffered by that person, however caused, including any— <ul style="list-style-type: none"> (i) consequential loss or damage; (ii) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or (iii) business interruption, whether or not the indirect loss or damage was foreseeable; and (b) any liability of that person to any other person, or any claim, demand, action or proceeding brought against that person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding, <p>but if the loss or damage is expressly listed in the definition of Direct Damage then it is Direct Damage and not Indirect Damage.</p>
Insolvency Event	Means, in respect of a person, any one or more of— <ul style="list-style-type: none"> (a) any execution or other process of any Court or authority being issued against or levied upon any material part of the person's property or assets being returned wholly or partly unsatisfied; or (b) an order being made or a resolution being passed for the winding up or dissolution without winding up of the person otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other Party has given consent; or (c) a Controller being appointed in respect of the whole or a material part of the person's property, undertaking or assets; or (d) the person being unable to pay all its debts, as and when they become due and payable, or otherwise being or stating that it is insolvent; or (e) the person entering into any arrangement, reconstruction or composition with or for the benefit of its creditors; or (f) an administrator of the person being appointed or the board of directors of the person passing a resolution to the effect of that specified in section 436A(1) of the Corporations Act; or (g) a liquidator or provisional liquidator of the person being appointed; or (h) the person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand for an amount in excess of \$1 million; or (i) an event having a substantially similar effect to an event described in any of the above paragraphs, which happens in connection with the person under the law of any jurisdiction.
Interest Rate	means the Bank Bill Rate plus an annual interest rate of 3 percent per annum.
Law	(a) means any statute, subsidiary legislation, ordinance, code, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order; and

	(b) includes—
	(i) the terms and conditions of any licence, permit, consent, certificate, authority, approval or assurance or bond or similar requirements issued under any of the things referred to in paragraph (a); and
	(ii) all applicable standards and obligations under the common law and Equity; but
	(c) excludes—
	(i) any provision of the Access Regime (except for provisions which apply by force of law to prevail over any inconsistent clause of this agreement); and
	(ii) any requirements of the Authority (as defined in section 22 of the Act) (except for requirements which apply by force of law to prevail over any inconsistent clause of this agreement).
Maintain	includes, where necessary, renew or replace.
Minister	means the Minister responsible for administration of the Act from time to time.
Month	means a calendar month.
Notice	is defined in clause 28.1.
Other O&M Costs	in respect of a Relevant Section means all the costs (other than costs in relation to Additional System Use Gas) of the relevant effect on the PIA Pipeline's operations and maintenance as a result of the PIA Gas flowing into the PIA Pipeline at the PIA Inlet Point, determined in accordance with the Regulations and includes any Additional Modelling Costs.
Operate	includes to Maintain, test or repair.
Part Haul	means a Gas transportation service on the DBNGP where the outlet point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the inlet point, but does not include Back Haul.
Participating Interest	means the percentages specified in Item 1 of Schedule 1, as varied from time to time by notice in writing from the Gas Producer under clause 22.8.
Party	means—
	(a) the DBP Parties; or
	(b) the Gas Producer,
	and " Parties " means all of them.
PIA Gas	means Gas conforming to the PIA Specifications and includes Worst-Case PIA Gas.
PIA Pipeline	means the gas transmission pipeline or part of the gas transmission pipeline—
	(a) covered by PL40, PL41, PL47 and PL69 issued under the <i>Petroleum Pipelines Act 1969</i> (WA); and
	(b) declared by the Minister to be a PIA pipeline under section 5 of the Act from time to time.
PIA Inlet Point	means the inlet point set out in Item 2 of Schedule 1.
PIA Quantity	means the quantity set out in Item 3 of Schedule 1, as varied under clause 14.
PIA Specifications	means the Gas specifications set out in Item 4 of Schedule 1.
Pipeline Services Agreement	is defined in section 3 of the Act.
Pipeline Trust	is defined in clause 25(b) of this agreement.
Production Licence	means—
	(a) a petroleum production licence issued pursuant to the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth) (as that term is defined in that Act); or

	(b) a petroleum production licence issued under the <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA) (as that term is defined in that Act); or
	(c) a licence issued under the <i>Petroleum (Submerged Lands) Act 1982</i> (WA) (as that term is defined in that Act).
Reference Specification	means the reference specification (as that term is defined in section 3 of the Act) for the DBNGP, set out in Schedule 2(1) of the Regulations.
Regulations	means regulations made under the Act.
Related Body Corporate	has the meaning given to that term in the Corporations Act.
Relevant Section	means a relevant section (as that expression is used in Regulation 17) of the PIA Pipeline for which a relevant effect has been determined under Regulation 17(3) and which is set out in Item 5 of Schedule 1.
Senior Officer	means a person having authority without recourse to the Party that designated him or her for further authority or instructions to settle the matter requiring resolution.
Standard Shipper Contract	means the “Standard Shipper Contract—Full Haul T1” (if the relevant Eligible Right is Full Haul) or the “Standard Shipper Contract—Part Haul P1” (if the relevant Eligible Right is Part Haul) in each case as published by the Pipeline Operator, and in each case in the form identified in Item 10 of Schedule 1.
Summary Notice	is defined in clause 7(a).
System Use Gas	is defined in Regulation 3.
Term	is defined in clause 3.1 of this agreement.
Transfer	(a) includes transfer, assign or to otherwise grant an interest or entitlement to all or part of; and (b) in the definition of “Transferred Eligible Right” means Transfer (as defined in paragraph (a) of this definition) in accordance with the Underlying Pipeline Services Agreement and, if applicable, Access Arrangement, but in each case with the Pipeline Services Agreement and the Access Arrangement being read with clause 12(b) of this agreement if applicable.
Transferred Eligible Right	means a right held by the Gas Producer as a result of a Transfer to the Gas Producer of (or of part of) an Eligible Right (the “ Underlying Eligible Right ”), as a result of which Transfer the Gas Producer either— (a) is the user in respect of the (or the part of the) Eligible Right; or (b) as a Bare Transferee has the right on its own behalf to Utilise the (or the part of the) Eligible Right.
Underlying Eligible Right	means the Eligible Right identified as such in the definition of Transferred Eligible Right.
Underlying Pipeline Services Agreement	means— (a) in relation to an Eligible Right—the Pipeline Services Agreement identified as such in the definition of Eligible Right; and (b) in relation to a Warehoused Right—the Pipeline Services Agreement which is the Underlying Pipeline Services Agreement (as defined in paragraph (a) of this definition) for the Eligible Right which is the Underlying Eligible Right for the Warehoused Right.
Utilise	in respect of an Eligible Right includes— (a) to nominate to deliver or receive gas; and (b) to deliver or receive gas; and (c) to otherwise make use of Gas Transmission Capacity, under the Eligible Right on one’s own behalf or on behalf of any person.

Warehoused Rights	for a Relevant Section for a Gas Day, means the total of any Transferred Eligible Rights to the extent that they have been notified to the Pipeline Operator under clause 7(a) in respect of the Relevant Section and the Gas Day.
Warehousing Notice	is defined in clause 7(a).
Wobbe Index	has the meaning given to that term in Regulation 3.
Worst-Case PIA Gas	means PIA Gas at the worst possible gas composition (as defined in Regulation 3) of the PIA Specification.

1.2 Interpretation

In this agreement, unless the contrary intention appears—

- (a) Headings (including headings in square brackets embedded in the beginning of paragraphs) and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) Notes and examples in curly brackets (ie. “{” and “}”) are included for the reader’s assistance for convenience only and do not affect the interpretation of this agreement.
- (c) The singular includes the plural and the plural includes the singular.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (e) The word “**under**” includes “by”, “in accordance with”, “pursuant to” and “by virtue of”.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document other than this agreement includes that party’s successors and permitted assignees.
- (k) Unless this agreement otherwise provides, a promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure.
- (n) A reference to a body (including an institute, association or authority), other than a Party to this agreement, whether statutory or not—
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Definitions in Act and Regulations apply

Unless the contrary intention appears, expressions defined in the Act or Regulations have a corresponding meaning when used in this agreement.

1.4 Interpretation of inclusive expressions

Specifying anything in this agreement after the words “**including**” or “**for example**” or similar expressions does not limit what else is included.

1.5 Agreement components

This agreement includes any schedule.

1.6 Order of precedence

The following order of precedence shall be applied to resolve any ambiguity or discrepancy in the documents that make up this agreement—

- (a) Schedule 1; prevails over
- (b) the other provisions of this agreement.

1.7 Quantification of rights

The PIA Quantity, Agreed Capacity Impact, Eligible Rights, Transfers of an Eligible Right, Warehousing Notices and Warehoused Rights are to be quantified in whole or partial terajoules per day.

1.8 Relevant Sections of the pipeline

This agreement applies in respect of each of the Relevant Sections as follows—

- (a) unless an amount of Agreed Capacity Impact, Additional System Use Gas or Other O&M Costs is expressed to apply in respect of only one or more identified Relevant Sections, then the amount of Agreed Capacity Impact, Additional System Use Gas or Other O&M Costs has been calculated to deal with the relevant effect on all Relevant Sections; and
- (b) unless this agreement expressly states otherwise an Agreed Capacity Impact in respect of a Relevant Section applies from—
 - (i) if the Relevant Section contains the PIA Inlet Point—the PIA Inlet Point; or
 - (ii) otherwise—the upstream boundary of the Relevant Section, to the most downstream point of the Relevant Section; and
- (c) unless this agreement expressly states otherwise an Agreed Capacity Impact in respect of more than one contiguous Relevant Section applies from—
 - (i) if the most upstream Relevant Section contains the PIA Inlet Point—the PIA Inlet Point; or
 - (ii) otherwise—the upstream boundary of the most upstream Relevant Section, to the most downstream point of the most downstream Relevant Section; and
- (d) Eligible Rights, Transferred Eligible Rights, Warehousing Notices and Warehoused Rights may apply in respect of one Relevant Section or in respect of two or more contiguous Relevant Sections, provided that the inlet point satisfies clause 9.1 (read with clause 9.3 if applicable) for the most upstream of the Relevant Sections and the outlet point satisfies clause 9.2 (read with clause 9.3 if applicable) for the most downstream of the Relevant Sections.

2. Parties

2.1 Agreement not to constitute partnership etc.

Nothing in this agreement creates between any combination of each, any or all of the Gas Producers and the DBP Parties, a partnership, joint venture or association whatsoever.

2.2 Several liability for Gas Producers

The obligations and liabilities of each Gas Producer under this agreement are several in proportion to each Gas Producer's Participating Interest, and neither joint nor joint and several.

2.3 Exercise of rights

Any right or entitlement of the Gas Producer under this agreement may be exercised either jointly, severally, or jointly and severally by each Gas Producer under this agreement.

2.4 Warranties as to status

- (a) The Gas Producer warrants that it is a "gas producer" as defined in section 3 of the Act.
- (b) Each DBP Party warrants that it is an "operator" (as defined in section 3 of the Act) of the PIA Pipeline.

3. Term and Gas Delivery Period

3.1 Term

{Note: This agreement is unusual in that under the Regulations it can come into existence without either Party signing it. However the Parties are free to add signing clauses and sign it if they wish.}

The "Term" of this agreement—

- (a) starts at the start of the Gas Day which starts on the earlier of—
 - (i) the date the Parties agree in writing (by signing this instrument or otherwise) to enter into this agreement; or
 - (ii) the date the Pipeline Operator gives the Gas Producer notice under Regulation 23(3) that the information provided by the Gas Producer under Regulation 23(3)(b) is complete, accurate and correct; or
 - (iii) the date the arbitrator determines under Regulation 23(5) that the information provided by the Gas Producer under Regulation 23(3)(b) is complete, accurate and correct,
 and
- (b) ends at the end of the Gas Day which starts on the earlier of—
 - (i) the date upon which the prohibition in section 6 of the Act on supplying gas which will flow into the PIA Pipeline at the PIA Inlet Point at a specification that does not comply with the Reference Specification ceases; or
 - (ii) a date nominated in writing by the Gas Producer giving at least 21 days' written notice; or
 - (iii) a date upon which the Parties agree in writing to terminate this agreement; or
 - (iv) the date on which the PIA Pipeline wholly ceases to be a PIA Pipeline for the purposes of the Act.

{Note: Clause 16 applies if part only of the PIA Pipeline ceases to be a PIA Pipeline.}

3.2 Gas Delivery Period

{Note: After the Gas Delivery Period has started, the Gas Producer must comply with (among other things) clause 6 before it can deliver gas on a Gas Day.}

- (a) The Gas Delivery Period starts at the start of the Gas Day which is the later of—
 - (i) the date which is 18 months (or such shorter period as determined by the Minister under section 6(7) of the Act) after the start of the Term; and
 - (ii) the first Gas Day for which the Gas Producer's Warehoused Rights for each Relevant Section equal or exceed the amount of the Agreed Capacity Impact for the Relevant Section.
- (b) The Gas Delivery Period ends at the end of the Term.
- (c) The Gas Producer must use reasonable endeavours to give the Pipeline Operator at least 60 days notice of the date on which it expects the Gas Delivery Period to Start, but a failure to do so does not affect clause 3.2(a).

3.3 Partial months and years

The provisions of this agreement apply as necessary with pro-rata or other appropriate amendments to any part of a period (including a Billing Period or Gas Year) which falls at the beginning or end of the Term or the Gas Delivery Period.

4. Minimum Requirements

4.1 For the purposes of section 7(1) of the Act—

- (a) the inlet point on the PIA pipeline into which the gas will flow (called the “**PIA Inlet Point**” in this agreement) is identified in Item 2 of Schedule 1; and
 - (b) the gas quality specification with which the gas must comply (called the “**PIA Specifications**” in this agreement) is set out in Item 4 of Schedule 1; and
 - (c) the maximum quantity of gas to be supplied (called the “**PIA Quantity**” in this agreement) is set out in Item 3 of Schedule 1; and
 - (d) the day on which it is proposed to commence supplying the gas is determined in clause 3.2; and
 - (e) the relevant effects on the capacity (called the “**Agreed Capacity Impact**” in this agreement), operations and maintenance of the PIA pipeline of the gas flowing into the pipeline—
 - (i) apply in respect of the Relevant Sections set out in Item 5 of Schedule 1; and
 - (ii) are set out in Items 6 and 7 of Schedule 1; and
 - (iii) are to be dealt with;
 - A. as to the relevant effect on capacity, by warehousing capacity in accordance with clauses 5 and 6; and
 - B. as to the relevant effect on operations and maintenance, by payment in accordance with clause 17 and dealing with System Use Gas in accordance with clause 17;
- and
- (f) the duration of the agreement is dealt with in clause 3.

4.2 For the purposes of Regulation 16—

- (a) the gas processing plant which will process the gas to be supplied is described in Item 9 of Schedule 1; and
- (b) any increase in the supply of System Use Gas that will be required as a result of the PIA Gas flowing into the PIA Pipeline is set out in Item 8 of Schedule 1, and is to be dealt with in accordance with clause 17.

5. The PIA quantity

The Gas Producer must not on any Gas Day supply PIA Gas which will flow into the PIA Pipeline at the PIA Inlet Point in a quantity which exceeds the PIA Quantity.

6. Gas Producer must have Warehoused Rights

- (a) The Gas Producer must not on any Gas Day supply PIA Gas which will flow into the PIA Pipeline at the PIA Inlet Point unless the total of Warehoused Rights for the Gas Day for each Relevant Section equals or exceeds the Agreed Capacity Impact for the Relevant Section.
- (b) If a right under a Pipeline Services Agreement ceases to be an Eligible Right in respect of a Relevant Section for a Gas Day, then the corresponding Warehoused Right ceases to exist for the Relevant Section for the Gas Day.
- (c) If the Gas Producer is in breach of any warranty under clause 8 in respect of any Warehoused Right in respect of a Relevant Section for a Gas Day, then the Warehoused Right ceases to exist for the Relevant Section for the Gas Day from a time determined as follows—
 - (i) for a breach of a warranty in clause 8(a)(i)—the Warehoused Right is extinguished immediately the breach occurs;
 - (ii) for a breach of a warranty in clause 8(a)(ii)—the Warehoused Right is extinguished from the time the Pipeline Operator validly becomes entitled under the Underlying Pipeline Services Agreement to curtail or interrupt the user's rights or to refuse to receive or deliver gas as a consequence of the breach referred to in clause 8(a)(ii).

7. Creating Warehoused Rights

- (a) For any Gas Day, the Gas Producer—
- (i) may give the Pipeline Operator one or more notices (each a “**Warehousing Notice**”) in respect of all (or part of) a Transferred Eligible Right, designating it (or the part) as a Warehoused Right in respect of a Relevant Section; and
 - (ii) must give the Pipeline Operator a notice (“**Summary Notice**”) setting out the aggregate of Warehoused Rights for the Gas Day, summed—
 - A. for each Gas Producer; and
 - B. across all Gas Producers.
- (b) A Warehousing Notice must—
- (i) identify the Underlying Pipeline Services Agreement; and
 - (ii) specify in TJ/d the amount of the Warehoused Right to be created by the notice; and
 - (iii) identify the inlet point or points (which must satisfy clause 9.1, read with clause 9.3 if applicable) and the outlet point or points (which must satisfy clause 9.2, read with clause 9.3 if applicable); and
 - (iv) confirm the representations and warranties in clause 8 regarding the Warehoused Right;
 - (v) if the Transferred Eligible Right derives from a Bare Transfer, notify the Pipeline Operator of—
 - A. the Bare Transfer and its likely duration; and
 - B. the identities of the Bare Transferee and the Bare Transferor; and
 - C. the amount of Eligible Right which is the subject of the Bare Transfer.
- (c) A Warehousing Notice and a Summary Notice—
- (i) may be given in respect of one or more Relevant Sections; and
 - (ii) may be given in respect of one or more Gas Days; and
 - (iii) may be given in respect of a specified period or periods or may stand until further notice; and
 - (iv) may apply in respect of part only of the Transferred Eligible Right; and
 - (v) may be modified by any subsequent notice under clause 7(a), but a notice may not be modified in respect of a Gas Day after 1400 hours on the immediately preceding Gas Day; and
 - (vi) may (if the Gas Producer so elects by Notice to the Pipeline Operator from time to time) be given by one Gas Producer on behalf of some or all Gas Producers.
- (d) A Transfer of an Eligible Right (including a Bare Transfer) may occur in respect of the whole or only part of the Underlying Eligible Right.
- (e) A Bare Transfer for the purposes of this agreement may only occur from a Bare Transferor who is a Gas Producer and to a Bare Transferee who is a Gas Producer.

8. Gas Producer’s warranties regarding Warehoused Rights

- (a) For each Gas Day, in respect of each Warehoused Right, the Gas Producer represents and warrants to Pipeline Operator—
- (i) **[no use]** that—
 - A. it will not Utilise the Transferred Eligible Right which is the subject of the Warehousing Notice; and
 - B. further, if the Transferred Eligible Right derives from a Bare Transfer, both the Bare Transferor and the Bare Transferee severally warrant that neither of them will Utilise either the Transferred Eligible Right or the Underlying Eligible Right;

and
 - (ii) **[no breach]** that—
 - A. unless clause 8(a)(ii)B applies—it will continue to make all due payments and will not commit any un-remedied breach under the Underlying Pipeline Services Agreement which would entitle the Pipeline Operator to curtail or interrupt the user’s rights or to refuse to receive or deliver gas under the Pipeline Services Agreement; or
 - B. if the Transferred Eligible Right derives from a Bare Transfer—both the Bare Transferor and the Bare Transferee severally warrant that—
 - (i) the Bare Transferor will continue to make all due payments and will not commit any un-remedied breach under either the Underlying Eligible Right or the Underlying Pipeline Services Agreement which would entitle the Pipeline Operator to curtail or interrupt the user’s rights or to refuse to receive or deliver gas under the Pipeline Services Agreement; and
 - (ii) the Bare Transferee will do nothing inconsistent with the warranty in clause Schedule 1a)i)(1)(a)(i).

- (b) A breach of a warranty in clause 8(a) is not a Default, and a DBP Party's sole remedy for a breach of any of the warranties in clause 8(a) is the extinguishment of the Warehoused Right under clause 6(c).
- (c) Clause 8(b) does not limit—
- (i) a DBP Party's rights (under a Pipeline Services Agreement or otherwise) to refuse to receive from any person any gas at an inlet point; or
 - (ii) any rights a DBP Party may have in respect of any other Default under this agreement (for example if the Gas Producer breaches clause 6(a) as a result of supplying gas despite the extinguishment of the Warehoused Right); or
 - (iii) if the Gas Producer has breached the Underlying Pipeline Services Agreement, any rights a DBP Party may have in respect of that breach.

9. Inlet points, outlet points and aggregation of rights

9.1 Requirements for inlet points

- (a) To be suitable for the creation of Warehoused Rights for a Relevant Section, the inlet point to which an Eligible Right relates must be located on the PIA Pipeline either—
- (i) at or adjacent to—
 - A. in the Relevant Section that contains the PIA Inlet Point—the PIA Inlet Point; or
 - B. in any other Relevant Section—the upstream boundary of the Relevant Section,
 or
 - (ii) upstream of the point in clause 9.1(a)(i); or
 - (iii) downstream of the point in clause 9.1(a)(i), but sufficiently close to the point in clause 9.1(a)(i) that the warehousing of rights at the inlet point is reasonably anticipated to achieve in operational terms materially the same effect (in terms of offsetting the Agreed Capacity Impact) as it would if the rights were warehoused at the point in clause 9.1(a)(i).
- (b) Without limiting the range of inlet points that may be selected, the Parties agree that the following inlet points satisfy the test in clause 9.1(a)(iii) for the named Relevant Section:

Relevant Section	Inlet points
DOMGAS Dampier plant inlet point (11-01) to the Macedon inlet point	11-01 Woodside 11-02 Harriet 11-03 PEP Pipeline
Macedon inlet point to Kwinana Junction (BP-KW)	Any inlet point in an upstream Relevant Section, Macedon inlet point, 13-01 (Tubidgi inlet point), 13-02 (Griffin inlet point)
Kwinana Junction (BP-KW) to Clifton Road, Bunbury (OS6-01)	Any inlet point in an upstream Relevant Section

9.2 Requirements for outlet points

- (a) To be suitable for the creation of Warehoused Rights for a Relevant Section, the outlet point to which an Eligible Right relates must be located on the PIA Pipeline either—
- (i) at or adjacent to the downstream boundary of the Relevant Section; or
 - (ii) downstream of the point in clause 9.2(a)(i); or
 - (iii) upstream of the downstream boundary of the Relevant Section, but sufficiently close to the downstream boundary that the warehousing of rights at the outlet point is reasonably anticipated to achieve in operational terms materially the same effect (in terms of offsetting the Agreed Capacity Impact) as it would if the rights were warehoused at the downstream boundary.
- (b) Without limiting the range of outlet points that may be selected, the Parties agree that the following outlet points satisfy the test in clause 9.2(a)(iii) for the named Relevant Section:

Relevant Section	Outlet points
DOMGAS Dampier plant inlet point (11-01) to the Macedon inlet point	Any outlet point upstream of the Macedon inlet point, including O21-01 GGT Interconnect
Macedon inlet point to Kwinana Junction (BP-KW)	Any outlet point downstream of Compressor Station 9
Kwinana Junction (BP-KW) to Clifton Road, Bunbury (OS6-01)	Any outlet point downstream of Compressor Station 10

9.3 Aggregation of rights

For the purposes of creating of a Warehoused Right, the Gas Producer may aggregate more than one Transferred Eligible Right into a chain, according to the following rules—

- (a) the Transferred Eligible Rights may be Part Haul or Full Haul (but to avoid doubt will be Full Haul to the extent that the outlet point is downstream of Compressor Station 9); and

- (b) the outlet point of one Transferred Eligible Right in the chain must be at or downstream of the inlet point for the next Transferred Eligible Right down the chain, so that there are no gaps in the chain; and
- (c) the inlet point of the most upstream Transferred Eligible Right in the chain must comply with clause 9.1; and
- (d) the outlet point of the most downstream Transferred Eligible Right in the chain must comply with clause 9.2; and
- (e) the Gas Producer must comply with the whole of this agreement including clause 8 in respect of the full distance of each Transferred Eligible Right without any allowance for any overlap between segments in the chain; and
- (f) despite clause 9.3(e), the amount of the Warehoused Right created by the chain of Transferred Eligible Rights under this clause 9.3 is limited to the amount of the smallest single Transferred Eligible Right segment, with all—
 - (i) overlap between the segments; and
 - (ii) surplus Transferred Eligible Rights,
 being disregarded, to the Pipeline Operator's benefit; and
- (g) to avoid doubt and without limiting the application of any other provision to the Transferred Eligible Rights referred to in this clause 9.3, clause 7(c)(iv) applies in respect of each Transferred Eligible Right in the chain.

{Example of the preceding rules: If the Warehousing Notice specifies the first segment in the chain as being 4 TJ/d Part Haul from Dampier to the Midwest Pipeline, and the next segment being 5 TJ/d Full Haul from Yarraloola to Kemerton, then the Gas Producer is credited with 4 TJ/d from Dampier to Kemerton. The Gas Producer does not get double Warehoused Rights for the overlapping segment between Yarraloola and the Mid-West Pipeline. However under clause 9.3(e) the Gas Producer must still comply with its full obligations including clause 8(a)(i) (no use) and clause 8(a)(ii) (no breach) in respect of the full length of both Transferred Eligible Rights for the full 4 TJ/d and 5 TJ/d respectively.

The preceding rules would also mean that the surplus 1 TJ/d from the 5 TJ/d contract would be lost. However, the preservation of clause 7(c)(iv) means that this situation would be unlikely to arise, because a prudent Gas Producer would only specify 4 TJ/d from the second contract in the Warehousing Notice, keeping the surplus 1 TJ/d for possible use under clause 13.

This example may be referred to in interpreting this agreement, despite clause 1.2(b).}

10. Pipeline Operator must not reject gas or refuse relocation

- (a) Subject to clauses 5 and 6, a DBP Party must not (under a Pipeline Services Agreement or otherwise) refuse to receive from any person, or otherwise reduce the flow of, any PIA Gas supplied by the Gas Producer which flows (or which would, but for the refusal or reduction, flow) into the PIA Pipeline at the PIA Inlet Point on the ground that the specification of the Gas which flows (or which would, but for the refusal or reduction, flow) into the PIA Pipeline at the PIA Inlet Point does not comply with the Reference Specification.
- (b) A DBP Party must not withhold its consent to—
 - (i) an inlet point (including one yet to be constructed) on the PIA Pipeline being specified in Schedule 1 as a PIA Inlet Point; or
 - (ii) any long term or short term relocation or other Transfer of capacity from any other inlet point to the PIA Inlet Point under a Pipeline Services Agreement; or
 - (iii) subject to clauses 5 and 6 and the relevant Gas being within the specification prescribed for the Pipeline Services Agreement under Regulation 30, any nomination under a Pipeline Services Agreement at the PIA Inlet Point,
 on the ground that the specification of the Gas to be delivered at the PIA Inlet Point does not comply with the Reference Specification.
- (c) This clause 10 is intended to confer benefits directly upon third parties for the purposes of section 11 of the *Property Law Act 1969* (WA), including—
 - (i) a person to whom the Gas Producer supplies PIA Gas which flows (or which would, but for a refusal or reduction referred to in clause 10(a), flow) into the PIA Pipeline at the PIA Inlet Point; and
 - (ii) a person (whether or not a person referred to in clause 10(c)(i)) delivering (or seeking or attempting to deliver) Gas into the PIA Pipeline at the PIA Inlet Point; and
 - (iii) a person to whom a person referred to in clause 10(c)(i) or 10(c)(ii) has agreed to supply Gas.

11. Savings

- (a) Nothing in this agreement prevents the Gas Producer from supplying Gas which will flow into the PIA Pipeline at the PIA Inlet Point or at another inlet point, if the Gas—
 - (i) is the subject of another pipeline impact agreement; or
 - (ii) complies with the Reference Specification.
- (b) The Gas Producer will not be liable to the DBP Parties under this agreement in respect of any other person's delivery of Gas into the PIA Pipeline at the PIA Inlet Point or at any other inlet point on the PIA Pipeline.

- (c) Nothing in this agreement is intended to or does—
- (i) limit the number or type of Warehoused Rights that the Gas Producer may have or the date upon which the Gas Producer may create a Warehoused Right; or
 - (ii) without limiting clause 6(a), require the Gas Producer to utilise a specific or existing Pipeline Services Agreement as an Underlying Eligible Right or restrict the Gas Producer from entering into other Pipeline Services Agreements or other contracts for other services (including transport) in respect of Gas on the PIA Pipeline and using or not using those other Pipeline Services Agreements as Underlying Eligible Rights; or
 - (iii) without limiting clause 6(a), restrict the Gas Producer from assigning any Underlying Eligible Right (in accordance with and to the extent permitted by the terms of the Underlying Pipeline Services Agreement) or creating a replacement Warehoused Right; or
- {Explanatory note: The Gas Producer remains free to do the things listed in clauses 11(c)(ii) and 11(c)(iii), but a consequence under clause 6(a) might be that it is not entitled to supply PIA Gas on a Gas Day.}*
- (iv) subject to clause 13, prevent the Gas Producer from exercising any part of its rights under a Pipeline Services Agreement which are not Warehoused Rights for a Relevant Section for a Gas Day; or
 - (v) without limiting clause 9, require any Pipeline Services Agreement referred to in this agreement to reserve capacity or provide for nominations at any particular inlet point or outlet point.
- {Explanatory note: The PSA can be in any form. However if the inlet points are not correctly located then the rights may not be suitable to become Warehoused Rights.}*
- (d) This agreement is concerned with enabling the Gas Producer to supply PIA Gas which will flow into the PIA Pipeline at the PIA Inlet Point without breaching section 6 of the Act. However nothing in this agreement gives the Gas Producer the right to—
- (i) deliver gas into the PIA Pipeline at the PIA Inlet Point or another inlet point; or
 - (ii) Utilise the Gas Transmission Capacity of the PIA Pipeline
- each (or both) of which may be the subject of other agreements between the Gas Producer or others and one or more DBP Parties.

12. Facilitating transfers of Eligible Rights

- (a) Nothing in this clause 12 limits a Gas Producer's rights to procure a Transfer of an Eligible Right in accordance with the Underlying Pipeline Services Agreement including using any dispute resolution mechanisms available in connection with the Pipeline Services Agreement.
- (b) The Gas Producer may at any time for the purposes of this agreement give a notice ("**Compulsion Notice**") to the Pipeline Operator in connection with a Transfer of an Eligible Right to the Gas Producer, in which case—
 - (i) the Transfer is a "**Compelled Transfer**"; and
 - (ii) a DBP Party must not withhold its consent to the Transfer on the basis that the Gas Producer is not or may not be Party to a Pipeline Services Agreement or an "Approved Prospective Shipper" as defined in the Standard Shipper Contract; and
 - (iii) for the purposes of clauses 25 and 27 of the Standard Shipper Contract or any Pipeline Services Agreement which contains clauses in similar terms, and for the purposes of the Access Arrangement, each DBP Party hereby—
 - A. consents to and is deemed to give all approvals required for the Transfer; and
 - B. subject to clause 13, waives any right to enforce any restriction under a Pipeline Services Agreement or the Access Arrangement regarding the Transfer, or impose any conditions on that Transfer, and is deemed to approve the Transfer (and to avoid doubt but subject to clause 13, this clause 12(b) applies even if the Pipeline Services Agreement contains grandfathered or customised clauses developed for one or more specific users or particular circumstances which the DBP Parties do not intend to make available to other users or in other circumstances).
- (c) Clause 12(b) is intended to confer benefits directly upon third parties for the purposes of section 11 of the *Property Law Act 1969* (WA), being the other parties to the proposed Transferred Pipeline Services Agreement.
- (d) The DBP Parties' consent is not required for a Bare Transfer, and the DBP Parties acknowledge that the information set out under clause 7(b)(v) will satisfy the requirements of rule 105(2)(b) of the *National Gas Rules 2009*.

13. Gas Producer's use of surplus rights

- (a) Clause 13(b) applies in respect of the Gas Producer's rights in respect of a Relevant Section for a Gas Day under a Transfer of Eligible Rights—
 - (i) to the extent that the rights are not Warehoused Rights for the Relevant Section for the Gas Day; and
 - (ii) to the extent that the Relevant Section has ceased to be a PIA Pipeline; and
 - (iii) after (and it survives) the termination or expiry of this agreement for any reason.

- (b) The Gas Producer may exercise any rights referred to in clause 13(a)—
- (i) on terms and conditions as agreed between the Gas Producer and the Pipeline Operator from time to time; and
 - (ii) pending or failing agreement—
 - A. in the case of a Compelled Transfer, on the terms and conditions set out in the Standard Shipper Contract and not on the terms and conditions set out in the Underlying Pipeline Services Agreement; and
 - B. in the case of a Transfer other than a Compelled Transfer, on the terms and conditions set out in the Underlying Pipeline Services Agreement.

14. Periods when Gas Producer has insufficient Warehoused Rights

{Note: The Parties may choose to negotiate an alternative proration or other mechanism in advance for the purposes of this clause.}

- (a) In this clause 14—
- (i) **“Reduced ACI”** means a reduced value for the Agreed Capacity Impact which has effect under this clause 14 during a Reduction Period; and
 - (ii) **“Reduced PIAQ”** means the reduced value for the PIA Quantity which has effect under this clause 14 during a Reduction Period, and which is calculated under clause 14(e); and
 - (iii) **“Reduction Period”** means the period during which a Reduced ACI and Reduced PIAQ have effect, starting on the date set out under clause 14(b)(ii) and ending on the date set out under clause 14(b)(iii); and
 - (iv) **“Reduction Notice”** means a notice under clause 14(b).
- (b) The Gas Producer may at any time (including before the Gas Delivery Period starts) give the Pipeline Operator a notice establishing a Reduction Period, which must set out—
- (i) the Reduced ACI which is to apply in the Reduction Period; and
 - (ii) subject to clause 14(d), a date on which the Reduction Notice is to take effect; and
 - (iii) subject to clause 14(d), a date on which the Reduction Period is to end, which may be any date up to the end of the Term.
- (c) Subject to clause 14(d), a subsequent Reduction Notice may substitute, amend or cancel a previous Reduction Notice.
- (d) Unless the Pipeline Operator and the Gas Producer agree otherwise, a Reduction Notice must not—
- (i) take effect earlier than 60 days from the date of the notice; or
 - (ii) result in a Reduction Period of less than 60 days duration, unless the Reduction Notice is wholly cancelling a previous Reduction Notice so that the Agreed Capacity Impact and PIA Quantity revert to the values set out in Schedule 1.
- (e) The Reduced PIAQ that applies during a Reduction Period is to be calculated as follows—

$$\text{Reduced PIAQ} = \text{PIA Quantity} \times \frac{\text{Reduced ACI}}{\text{Agreed Capacity Impact}} \times 0.95$$

where **“Reduced PIAQ”** and **“Reduced ACI”** have the meanings given in clause 14(a), and **“PIA Quantity”** and **“Agreed Capacity Impact”** have the values set out in Schedule 1.

- (f) During a Reduction Period, for all purposes under this agreement (except a subsequent calculation under clause 14(e))—
- (i) a reference to the PIA Quantity is to be read as a reference to the Reduced PIAQ; and
 - (ii) a reference to the Agreed Capacity Impact is to be read as a reference to the Reduced ACI.
- (g) A Party may at any time give the other Party a notice requesting that the Parties negotiate an alternative mechanism to adjust downwards the PIA Quantity, in substitution for the mechanism set out in clauses 14(b) to 14(e).
- (h) If the Parties have not agreed on a mechanism within 60 days (or such longer period as the Dispute resolver may permit under the Regulations) then either Party may refer the question for Dispute resolution under the Regulations, and any mechanism so determined is to apply as a term of this contract in substitution for the mechanism set out in clauses 14(b) to 14(e).
- (i) A Dispute resolver must not determine a mechanism which is inconsistent with clause 14(d), unless the mechanism also contains provisions to protect the DBP Parties against any cost and risk arising from the inconsistency.
- (j) If a Reduction Period commences or ends at such a time that the Pipeline Operator cannot reasonably accommodate the necessary adjustments in any invoices under clause 17, then an adjustment is to be made in the next invoice under clause 17.7.

15. Periods when the actual effect of PIA Gas on the pipeline's capacity is less than the Agreed Capacity Impact

{Note: The Parties may choose to negotiate a proration or other mechanism in advance for the purposes of this clause.}

- (a) A period is a **"Reduced Impact Period"** if it consists of 60 or more consecutive Gas Days during which the relevant effect on the capacity of the PIA Pipeline of the PIA Gas flowing into the PIA Pipeline is forecast to be less than 90% of the then-prevailing Agreed Capacity Impact (including as previously adjusted under this clause 15), due to either or both of—
 - (i) the composition of the Gas forecast to be supplied by the Gas Producer being forecast to be better than the worst possible gas composition of the PIA Specification; or
 - (ii) the quantity of the Gas forecast to be supplied by the Gas Producer being forecast to be less than the PIA Quantity.
- (b) The Gas Producer may at any time, but on no more than 2 occasions in any Gas Year, give the Pipeline Operator a notice requesting that the Parties negotiate a mechanism to adjust downwards the Agreed Capacity Impact for the duration of a Reduced Impact Period. The notice must provide reasonable details of the reason for and proposed duration of the Reduced Impact Period.
- (c) If the Parties have not agreed on a mechanism within 60 days (or such longer period as the Dispute resolver may permit under the Regulations) then either Party may refer the question for Dispute resolution under the Regulations, and any mechanism so determined is to apply as a term of this contract.

16. Part of the PIA Pipeline ceasing to be a PIA Pipeline

- (a) If at any time (**"Cessation Time"**) any part of the PIA Pipeline ceases to be part of the PIA Pipeline, then—
 - (i) from the Cessation Time this agreement ceases to have effect in respect of the part that has ceased to be a PIA Pipeline; and
 - (ii) subject to any variations agreed under clause 16(b), this agreement continues in effect in respect of the remaining part or parts of the PIA Pipeline.
- (b) The Gas Producer and the Pipeline Operator must in accordance with the Regulations negotiate in good faith to agree the revised Agreed Capacity Impact and the Additional System Use Gas and the time from which they will take effect, and any other modifications to this agreement.
- (c) If the Parties have not agreed under clause 16(b) within 60 days after the Cessation Time (or such longer period as the Dispute resolver may permit under the Regulations) then either Party may refer the question for Dispute resolution under the Regulations and the Act.

17. SUG, compensation, billing and payment**17.1 Obligation to provide Additional System Use Gas**

{Note: As an alternative to this clause 17.1, the Parties may if they wish agree that SUG will be dealt with by cash payment.}

- (a) During each Gas Year in the Gas Delivery Period, the Gas Producer must deliver to the Pipeline Operator a quantity of Gas (including PIA Gas) equal to the estimate under clause 17.1(b) of the amount of Additional System Use Gas likely to be required in that Gas Year, adjusted as required under clause 17.3 in respect of the previous Gas Year.
- (b) The estimate of the amount of Additional System Use Gas likely to be required—
 - (i) in the first Gas Year in the Gas Delivery Period will be the amount specified in Item 8 of Schedule 1; and
 - (ii) in each subsequent Gas Year is to be the amount notified under clause 17.2(b) for the Gas Year.

17.2 Annual Statement regarding SUG

Within 20 Business Days after the end of each Gas Year, the Pipeline Operator must send the Gas Producer a statement (**"Annual Statement"**) detailing—

- (a) the actual amount of Additional System Use Gas that was required in the previous Gas Year together with reasonable supporting materials showing how the amount was determined; and
- (b) a good faith forecast of Additional System Use likely to be required in the coming Gas Year, which (unless the Dispute resolver determines otherwise) must not be more than 120% of the amount notified under paragraph 17.2(a) for the previous Gas Year, together with details of the Pipeline Operator's assumptions and methodology in determining the forecast.

17.3 Reconciliation of SUG amounts

- (a) If the quantity of Gas delivered by the Gas Producer under clause 17.1(a) is greater than the amount of Additional System Use Gas specified in the Annual Statement under clause 17.2(a)—
 - (i) the Additional System Use Gas for the following Gas Year must be reduced by the amount of the difference; or

- (ii) if the Gas Year is the last Gas Year in the Gas Delivery Period, the Pipeline Operator must, within 30 Business Days of issuing the Annual Statement (or such longer period as the Parties may agree), deliver to the Gas Producer or at the Gas Producer's direction at an outlet point nominated by the Gas Producer (acting reasonably) a quantity of Gas equal to the difference.
- (b) If the quantity of Gas delivered by the Gas Producer under clause 17.1(a) is less than the amount of Additional System Use Gas specified in the Annual Statement under clause 17.2(a), the Gas Producer must—
 - (i) increase the quantities of Gas (including PIA Gas) it otherwise delivers to the Pipeline Operator in the following Gas Year by a quantity of Gas equal to the amount of the difference; or
 - (ii) within 30 Business Days after receipt of the Annual Statement (or such longer period as the Parties may agree), deliver to the Pipeline Operator a quantity of Gas (including PIA Gas) equal to the difference.

17.4 Delivery of SUG

Gas to be delivered in accordance with clause 17.1(a) and 17.3(a)(ii) and 17.3(b) may be delivered at any inlet point (in the case of clauses 17.1(a) or 17.3(b)) or outlet point (in the case of clause 17.3(a)(ii)) on the PIA Pipeline at any time during the specified period and in any quantities, provided that the Gas Producer must—

- (a) act reasonably and in accordance with good gas industry practice; and
- (b) have reasonable regard to the Pipeline Operator's operational requirements and contractual commitments.

17.5 Monthly invoices for Commodity Payment

{Note: As an alternative to this clause 17.5 and clause 17.6, the Parties may if they wish agree in advance on a different mechanism to compensate the DBP Parties for Other O&M Costs and insert it in this agreement.}

- (a) To compensate the DBP Parties for Other O&M Costs, the Gas Producer must pay the Pipeline Operator for each Gas Day an amount equal to the commodity tariff payable from time to time under the Full Haul Standard Shipper Contract multiplied by the number of gigajoules of Warehoused Rights for the Gas Day ("**Commodity Payment**").
- (b) The Pipeline Operator must, no later than 10 Business Days after the end of a Billing Period, give the Gas Producer a Tax Invoice showing the Commodity Payment for each Gas Day in the Billing Period and the total amount due for the Billing Period.
- (c) The Gas Producer must, within 20 Business Days after receipt of a Tax Invoice under clause 17.5(b), pay to the Pipeline Operator the amounts shown as payable on the Tax Invoice.

17.6 If a Party considers that the Commodity Payment is over- or under-compensating

- (a) The Parties may at any time agree a different mechanism to apply in place of the Commodity Payment to compensate the DBP Parties for Other O&M Costs.
- (b) If the Gas Producer considers that the Commodity Payment is or may be, or is likely in future to be, over-compensating the DBP Parties for Other O&M Costs, it may give a notice ("**Revision Notice**") to the Pipeline Operator.
- (c) If the Pipeline Operator considers that the Commodity Payment is or may be, or is likely in future to be, under-compensating the DBP Parties for Other O&M Costs, it may give a notice ("**Revision Notice**") to the Gas Producer.
- (d) Unless the Dispute resolver under the Regulations determines otherwise due to the extraordinary circumstances of the case, a Revision Notice under clause 17.6(b) must not be given within the 24 months immediately following a previous Revision Notice under clause 17.6(b), and a Revision Notice under clause 17.6(c) must not be given within the 24 months immediately following a previous Revision Notice under clause 17.6(c).
- (e) If within 6 months after a Revision Notice is given the Parties have not reached agreement on a different mechanism to apply in place of the Commodity Payment to compensate the DBP Parties for Other O&M Costs, then either Party may refer the matter as a Dispute to be determined under the Regulations.
- (f) An alternative mechanism determined by a Dispute resolver may take effect from the date of the Revision Notice but is not to include an adjustment for any over- or under-compensation which occurred before the date of the Revision Notice.

17.7 Invoicing and payment errors

If either Party reasonably considers that for any reason there has been an error in invoicing or payment, it is to notify the other Party and the Parties must endeavour to agree an adjusting payment or credit, which is to include interest at the Interest Rate, calculated on a daily basis from (in the case of under-invoicing or underpayment) the original due date for payment until the date of payment, or (in the case of over-invoicing or overpayment) the original date of payment until the date of repayment or the due date for payment of the invoice containing the credit.

17.8 Disputes

- (a) Whenever any sum or quantity in respect of an invoice under clause 17.5 or an Annual Statement is in dispute, the Party disputing the sum or quantity may notify the other Party

as to the sum or quantity in dispute, provide particulars as to the reason for the Dispute and, if it is the payer or provider, pay or provide the undisputed portion by its due date. A Party may not dispute any sum or quantity in an invoice under clause 17.5 or an Annual Statement more than 6 months after its due date.

- (b) The Dispute will be referred in the first instance to meetings between Senior Officers who must attempt to resolve the Dispute within 30 Business Days after the notice of Dispute.
- (c) Failing resolution of the Dispute under clause 17.8(b), the Gas Producer may appoint for monetary matters a third party chartered accountant (“**Accountant**”) and for gas quantity matters a third party expert (“**Expert**”) who—
 - (i) is independent of the Parties and each of their Related Body Corporations;
 - (ii) is satisfactory to the Pipeline Operator acting reasonably; and
 - (iii) must provide an undertaking as to confidentiality in a form and content reasonably satisfactory to the Pipeline Operator.
- (d) The Accountant or Expert may inspect all records pertaining to the preparation of the Disputed invoice or Annual Statement.
- (e) The Accountant or Expert must keep all details of the records inspected confidential and must report to the Gas Producer and the Pipeline Operator only as to whether or not the invoice or Annual Statement is correct, and if not, by what amount or quantity the Accountant or Expert considers it is not correct.
- (f) The Parties shall be deemed to have accepted the Accountant’s or Expert’s report unless either Party notifies the other Party to the contrary, within 20 Business Days of receiving the report. If either Party does not accept the Accountant’s or Expert’s report, then either Party may commence an action to resolve the Dispute through litigation or other court processes.
- (g) After settlement of the Dispute, any amount or quantity agreed by the Parties or otherwise determined to be payable or due to be provided will be paid or provided within 20 Business Days after such agreement or determination and for monetary amounts interest, calculated on a daily basis from the original due date for payment until the date of payment at the Interest Rate, will be paid on the resulting net payment.
- (h) The Disputed portion of the sum or quantity that remains unpaid or unprovided under clause 17.8(a) will not constitute a Default if there is a bona fide Dispute.

18. Records

- (a) The Gas Producer may at its own cost and risk inspect and make copies of records from all metering and other measuring equipment and receive all other information reasonably required by the Gas Producer, at reasonable intervals and after having given the Pipeline Operator reasonable prior notice, to the extent that they relate to the determination of the Agreed Capacity Impact, Additional System Use Gas and Other O&M Costs.
- (b) The Pipeline Operator may at its own cost and risk inspect and make copies of records from all metering and other measuring equipment and receive all other information reasonably required by the Pipeline Operator, at reasonable intervals and after having given the Gas Producer reasonable prior notice, to the extent that they relate to the determination of the PIA Specifications and PIA Quantities.
- (c) Information provided under clause 18(a) or 18(b) may be provided in a form which is aggregated or de-identified in accordance with the Regulations.

19. Liability

19.1 Liability limited to Direct Damage

Subject to the terms and conditions of this agreement, a Party who—

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

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

19.2 Liability for fraud and wilful Default

A Party who is fraudulent or wilfully Defaults in respect of its obligations to the other Party under this agreement is liable to the other Party for, and must indemnify the other Party against, any loss or damage caused by, consequential upon or arising out of that fraud or wilful Default, and the exclusion of Indirect Damage in clause 19.4(a) does not apply.

19.3 Gas Producer’s liability for exceeding PIA Quantity and PIA Specifications

- (a) If on a Gas Day the Gas Producer supplies gas in breach of either or both of—
 - (i) **[exceeding PIA Quantity]** clause 5 or section 6(1)(c) of the Act or both; or
 - (ii) **[breaching PIA Specification]** section 6(1)(b) of the Act,

then subject to clause 19.3(b) the Gas Producer will be liable for any loss or damage caused by, consequential upon or arising out of that breach or those breaches, and the exclusion of Indirect Damage in clause 19.4(a) does not apply.

- (b) Without limiting clause 19.10, the DBP Parties are not entitled to compensation in respect of any loss or damage referred to in clause 19.3(a) to the extent that the loss or damage is caused by, consequential upon or arises out of a DBP Party—
- (i) failing to act in accordance with the standard of a reasonable and prudent operator of a pipeline; or
 - (ii) without limiting clause 19.3(b)(i), failing to take reasonable, and reasonably timely, steps to exercise its powers (including under a Pipeline Services Agreement and section 6(3) of the Act) to reduce (including to zero) the flow of gas into the PIA Pipeline at the PIA Inlet Point.

19.4 No liability for Indirect Damage

- (a) Subject to clause 19.4(c), no Party is in any circumstances to be liable to the other Party for any Indirect Damage, however arising.
- (b) Subject to clause 19.4(c)—
- (i) each DBP Party hereby releases the Gas Producer from, and agrees to indemnify the Gas Producer against, all Indirect Damage arising under, or in respect of conduct under, this agreement suffered by a DBP Party; and
 - (ii) the Gas Producer hereby releases each DBP Party from, and agrees to indemnify each DBP Party against, all Indirect Damage arising under, or in respect of conduct under, this agreement suffered by the Gas Producer.
- (c) Where this agreement states that “the exclusion of Indirect Damage in clause 19.4(a) does not apply”, or words to the same effect, in relation to a matter, then—
- (i) the exclusion of Indirect Damage in clause 19.4(a) and the release and indemnity in clause 19.4(b) do not apply in relation to that matter; and
 - (ii) the Parties’ respective liability in relation to the matter must be determined by Law and, to avoid doubt, the definition of “Indirect Damage” in this agreement must be disregarded for the purposes of that determination; and
 - (iii) clause 19.5 applies.

19.5 Cap on liability for Indirect Damage

- (a) A Party’s liability for Direct Damage is not capped.
- (b) A Party’s aggregate liability to all persons in respect of Indirect Damage arising out of all Incidents in any Gas Year is not to exceed the following cap—

$$ID\ Cap = PIA\ Quantity \times Base\ T1\ Tariff \times Period$$

where—

“**ID Cap**” means the cap on liability for Indirect Damage for a Gas Year; and

“**Base T1 Tariff**” means the sum of the capacity reservation tariff and the commodity tariff payable from time to time under the Full Haul Standard Shipper Contract, expressed as dollars per GJ; and

“**Period**” means 12 months.

- (c) If a Party becomes liable under this agreement to compensate more than one person for Indirect Damage in a Gas Year as a result of one or more Incidents in the Gas Year, then—
- (i) the ID Cap applies once in respect of all such persons and all Incidents in aggregate; and
 - (ii) no such person is to be compensated until after the end of the Gas Year; and
 - (iii) a person is not entitled to be compensated for Indirect Damage unless it makes a claim within 6 months after the end of the Gas Year; and
 - (iv) commencing and concluding as soon as practicable after the 6 month period, all such persons’ entitlement to compensation for Indirect Damage is to be assessed as follows—
 - A. first, each person’s entitlement to compensation is to be quantified as though there was no ID Cap (“**Raw ID Amount**”);

{Note: If one or more claims is contested, this may involve a delay. The Parties or a Dispute resolver may choose to award any compensation available under this agreement in respect of Direct Damage in the interim.}
 - B. each person is entitled to share in the amount of the ID Cap on a pro-rata basis by reference to the total of its Raw ID Amounts for the Gas Year;
- and
- (v) the Party is not otherwise liable to any such person for any Indirect Damage arising from any Incident in the Gas Year, once the ID Cap for the Gas Year is exhausted.

19.6 No liability arising out of any approval by Pipeline Operator

Without limiting the generality of clause 19.4, a DBP Party is not, except as provided in clauses 19.1 and 19.2, in any circumstances to be liable to the Gas Producer for any Direct Damage or Indirect Damage arising out of any approval by the Pipeline Operator of any design, location or construction of, or proposed Operating or Maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with the DBNGP.

19.7 Saving of contractual payments

Nothing in this clause 19 limits the liability of a Party to make all payments due under this agreement.

19.8 Gas Producer responsible for its contractors' personnel and property

- (a) Subject to clause 19.1, the Gas Producer alone is liable for any—
- (i) injury to or death of any person employed by the Gas Producer or by any person (except the DBP Parties and any gas purchaser) contracting with the Gas Producer; and
 - (ii) loss of or damage to any property of the Gas Producer or of any person (except the DBP Parties and any gas purchaser) contracting with or employed by the Gas Producer, however caused, which occurs during the duration of this agreement, in or about, or incidental to activities in or about, any metering equipment site associated with any inlet point or outlet point, the DBNGP, or any other premises, facilities or places used for the storage, transportation or delivery of PIA Gas supplied by the Gas Producer or where the DBP Parties' property or directors, servants, consultants, independent contractors or agents and Gas Producer's property or directors, servants, consultants, independent contractors or agents are in proximity.
- (b) The Gas Producer must indemnify the DBP Parties and any person (except the Gas Producer) contracting with a DBP Party, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 19.8(a).

19.9 DBP Parties responsible for contractors' personnel and property

- (a) Subject to clause 19.1, the DBP Parties alone are liable for any—
- (i) injury to or death of any person employed by a DBP Party or by any person (except the Gas Producer or a shipper on the DBNGP) contracting with a DBP Party; and
 - (ii) loss of or damage to any property of a DBP Party or of any person (except the Gas Producer or a shipper on the DBNGP) contracting with or employed by a DBP Party, however caused, which occurs during the duration of this agreement, in or about, or incidental to activities in or about, any metering equipment site associated with any inlet or outlet point, the DBNGP, or any other premises, facilities or places used for the storage, transportation or delivery of Gas received from or delivered to the Gas Producer or where the DBP Parties' property or directors, servants, consultants, independent contractors or agents and Gas Producer's property or directors, servants, consultants, independent contractors or agents are in proximity.
- (b) The DBP Parties must indemnify the Gas Producer and any person (except the DBP Parties) contracting with the Gas Producer, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses arising from or in connection with any claim, demand, action or proceeding made or brought by any person in respect of or in relation to any injury, death, loss or damage referred to in clause 19.9(a).

19.10 Duty to mitigate

Any person who suffers, or might reasonably anticipate suffering, loss or damage in respect of any Incident must use reasonable endeavours to take all reasonable steps to avoid or mitigate the loss or damage, and a Party's liability for Direct Damage or Indirect Damage to a person may be reduced to the extent the person fails to do so.

19.11 Each limitation separate

Each limitation or exclusion created by this clause 19 and each protection given to the DBP Parties or the Gas Producer or to their respective directors, servants, consultants, independent contractors and agents by this clause 19 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this clause 19 is held inapplicable in any circumstances.

19.12 Pipeline Trustee's Limitation of Liability

- (a) The Pipeline Trustee enters into this agreement only in its capacity as trustee of the Pipeline Trust and in no other capacity. A liability arising under or in connection with this agreement can be enforced against the Pipeline Trustee only to the extent to which it can be satisfied out of property of the Pipeline Trust out of which the Pipeline Trustee is actually indemnified for the liability. Except as provided in clause 19.12(b), this limitation of the Pipeline Trustee's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Pipeline Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- (b) Clause 19.12(a) does not act to limit—
- (i) the Gas Producer's entitlements to seek orders against the Pipeline Trustee (in its capacity as trustee of the Pipeline Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Gas Producer under any Law; or
 - (ii) Pipeline Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

19.13 DBNGP Trustee's Limitation of Liability

- (a) The DBNGP Trustee enters into this agreement only in its capacity as trustee of the DBNGP Trust and in no other capacity. A liability arising under or in connection with this agreement can be enforced against the DBNGP Trustee only to the extent to which it can be satisfied out of property of the DBNGP Trust out of which the DBNGP Trustee is actually indemnified for the liability. Except as provided in clause 19.13(b), this limitation of the DBNGP Trustee's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the DBNGP Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- (b) Clause 19.13(a) does not act to limit—
 - (i) the Gas Producer's entitlements to seek orders against the DBNGP Trustee (in its capacity as trustee of the DBNGP Trust) for specific performance or injunctive relief, in addition to any other remedies available to the Gas Producer under any Law; or
 - (ii) DBNGP Trustee's liability arising as a result of its fraud, gross negligence or gross misconduct.

20. Disputes

Unless this agreement provides otherwise, all Disputes must be dealt with in accordance with the Dispute resolution procedures set out in Part 5 of the Regulations.

21. Default

21.1 Default

A Party is in "**Default**" and is a "**Defaulting Party**" if—

- (a) it defaults in the due and punctual payment, at the time and in the manner required for payment by this agreement, of any amount payable under this agreement; or
- (b) it breaches any warranty given under this agreement other than a warranty in clause 8(a); or
- (c) it defaults in the due and punctual performance or observance of any of its obligations under this agreement; or
- (d) an Insolvency Event occurs in respect of it.

21.2 Non-Defaulting Party

- (a) If the Defaulting Party is a DBP Party, then the Gas Producer is the "**non-Defaulting Party**".
- (b) If the Defaulting Party is the Gas Producer, then each DBP Party is a "**non-Defaulting Party**".

21.3 Remedies for Default

- (a) In the event of a Default, a non-Defaulting Party may notify the Defaulting Party of the Default and require the Defaulting Party to remedy the Default.
- (b) If the Default is an Insolvency Event, or a Default in the payment of any amount that has not been remedied by the end of 20 Business Days after the notice was given, then the non-Defaulting may do any one or more of the following—
 - (i) seek damages for breach of contract; or
 - (ii) if the non-Defaulting party is a DBP Party—the Pipeline Operator may cease receipt of PIA Gas at the PIA Inlet Point (but subject to clause 11(a) and any user's rights under an Underlying Pipeline Services Agreement); or
 - (iii) terminate this agreement by Notice to the Defaulting Party.
- (c) If the Default is a Default other than set out in clause 21.3(b), and—
 - (i) at the end of the 20 Business Days after the notice was given the Default has not been remedied or the Defaulting Party has not to the reasonable satisfaction of the non-Defaulting Party begun remedying the Default or has begun remedying but is not, in the reasonable opinion of the non-Defaulting Party, diligently proceeding to remedy the Default; or
 - (ii) the Default is a breach by a DBP Party of its obligations under clause 10(a),
 then the non-Defaulting Party may do any one or more of the following—
 - (iii) seek damages for breach of contract; or
 - (iv) seek an injunction or an order for specific performance (for which purpose the Parties agree that damages may not be an adequate remedy for a Party's Default); or
 - (v) if the Non-Defaulting Party is a DBP Party—the Pipeline Operator may cease receipt of PIA Gas from the Gas Producer at the PIA Inlet Point (but subject to clause 11(a) and any user's rights under an Underlying Pipeline Services Agreement); or
 - (vi) terminate this agreement by Notice to the Defaulting Party.

21.4 Effect of termination

Termination of this agreement under this clause 21 does not prejudice the rights or remedies accrued to either party at the date of termination or expressed to survive termination.

21.5 Urgent interlocutory relief

Subject to the Regulations, nothing in this agreement prevents a Party from seeking urgent interlocutory relief.

22. Assignment

22.1 Continuing Party

In this clause 22, if the Assigning Party is—

- (a) a DBP Party, then the “**Continuing Party**” is the Gas Producer; and
- (b) a Gas Producer, then the “**Continuing Party**” is the DBP Parties.

22.2 No assignment without consent

Subject to this clause 22 and clauses 24 and 26, a Party (“**Assigning Party**”) may not, without the prior written approval of the Continuing Party (which approval must not be unreasonably withheld), assign to any person its rights or obligations under this agreement.

22.3 Assignment to a Related Body Corporate

A Party (“**Assigning Party**”) may assign all or part of its rights and obligations under this agreement without obtaining the consent of the Continuing Party where—

- (a) the assignment is to a Related Body Corporate;
- (b) the Assigning Party will remain liable to the Continuing Party for the performance of all of its obligations (and the obligations of the Related Body Corporate to which its rights and obligation have been assigned) as if no such assignment had taken place; and
- (c) upon the assignee ceasing to be a Related Body Corporate of the Assigning Party, the assignee must immediately transfer all of its rights and interests under this agreement to the Assigning Party.

22.4 Assignment by DBP Parties

The Parties acknowledge that, in the case of a proposed whole or partial assignment by a DBP Party of all or part of its rights and obligations under this agreement, it will not be unreasonable for the Gas Producer to withhold its consent where the proposed assignee does not—

- (a) at the same time as the relevant assignment, acquire all (if the assignment was a whole one) or a corresponding proportion (if the assignment was a partial one) the Assigning Party’s rights in respect of the PIA Pipeline; and
- (b) have the technical and financial capability to—
 - (i) perform the Assigning Party’s obligations under this agreement; and
 - (ii) in the case of a proposed assignment by the Pipeline Operator, Operate the PIA Pipeline.

22.5 Assignment by Gas Producer

The Gas Producer may assign part of its rights and obligations under this agreement without obtaining the consent of the DBP Parties where—

- (a) the assignment is to another “gas producer” as defined in the Act;
- (b) the Assigning Party will remain liable to the DBP Parties for the performance of all of its obligations (and the obligations of the gas producer to which its rights and obligation have been assigned) as if no such assignment had taken place; and
- (c) the assignment is of a proportion of this agreement which equals or approximates the other gas producer’s anticipated proportionate contribution of gas to the PIA Gas to be supplied under this agreement after the assignment, and if from time to time there is subsequently a material divergence between those proportions then there must be a further assignment of rights and interests under this agreement to or by the Assigning Party in order to remedy the divergence so far as is practicable.

22.6 Lack of technical and financial capacity

The Parties acknowledge that, in the case of a proposed assignment by a Party of all or part of its rights and obligations under this agreement, it will not be unreasonable for the Continuing Party to withhold consent where the proposed assignee is not technically or financially capable of meeting the Assigning Party’s obligations under this agreement.

22.7 Deed of assumption

- (a) Other than under clause 22.3 or 22.5, an Assigning Party must not assign part or all of its rights and interests under this agreement without requiring the assignee to enter into a deed of assumption in a form reasonably acceptable to the Continuing Party.
- (b) Upon the entry into a deed of assumption under clause 22.7(a), the Assigning Party is released from all future liabilities and obligations under this agreement to the extent and from the time that the assignee agrees to perform them under the deed of assumption, but this release does not apply to an assignment to a Related Body Corporate under clause 22.3 or 22.5 unless the Continuing Party expressly agrees in writing that the release does so apply.

22.8 Change of Participating Interest

The Gas Producer may from time to time by notice to the DBP Parties change one or more Participating Interests, but—

- (a) this clause 22.8 may not be used to introduce a new Gas Producer who was not a party to this agreement at the start of the Term (for which purpose an Assignment under the rest of this clause 22 must be used); and
- (b) the Participating Interest of each Gas Producer under this agreement must equal its participating share in the Production Licences.

23. GST

- (a) Any reference in this agreement to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply ("**GST Exclusive Consideration**") except as provided under this clause.
- (c) Any amount referred to in this agreement (other than an amount referred to in clause 23(h)) which is relevant in determining a payment to be made by a Party to the other Party is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a Party ("**Supplier**") under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 23(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 23(d) or at such other time as the Parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 23(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If a Party is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 23(d).

24. Confidentiality

24.1 Confidential Information

- (a) Subject to clause 24.1(b)—
 - (i) the Parties are not required to keep the terms and conditions of this agreement confidential; and
 - (ii) the Parties acknowledge and agree that the terms and conditions of this agreement and all information specifically relating to or provided pursuant to or in accordance with this agreement may be made publicly available.
- (b) Subject to clause 24.2, each Party must keep confidential the information set out in Schedule 2 and all information specifically relating to or provided pursuant to or in accordance with the information set out in Schedule 2 ("**Confidential Information**").
- (c) A reference in this clause 24 to information being "**disclosed**" to or "**received**" by a Party, includes information being communicated to or created, ascertained, discovered or derived by it or on its behalf.

24.2 Exceptions to confidentiality and permitted disclosures

- (a) Either Party may disclose Confidential Information which—
 - (i) at the time when it is received by the Party, is publicly known; or
 - (ii) at the time when it is received by the Party, is already known to the Party (which the Party can prove by prior or contemporaneous written documentation) through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 24.1(b); or
 - (iii) after the time when it is received by the Party, comes into the public domain otherwise than as a result of any breach of the confidentiality undertaking owed pursuant to clause 24.1(b); or
 - (iv) the recipient has already acquired from a source other than the Party or any Related Body Corporate or representative of the Party where such source is entitled to disclose

- it and such disclosure is not subject to confidentiality restrictions under this agreement; or
- (v) it is necessary to disclose in relation to any discovery of documents, or any proceedings before a court, tribunal, ACCC, other Government Agency or stock exchange, and in such cases, the disclosing Party must promptly notify the other Party of that requirement; or
 - (vi) with the consent of the other Party and subject to any conditions of that consent; or
 - (vii) is required by Law, court order, any Government Agency or stock exchange rule to be disclosed, and in such cases, the disclosing Party must promptly notify, to the extent legally permitted, the other Party of that requirement; or
 - (viii) comprises the terms of a Standard Shipper Contract.
- (b) A Gas Producer or a DBP Party may disclose Confidential Information to—
- (i) its Related Bodies Corporate, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, prospective financiers and financial and technical advisers; and
 - (ii) a bona fide proposed or prospective transferee (and their employees, officers, agents, contractors, consultants, lawyers, bankers, financiers and financial and technical advisers, related entities, co-bidders or bid consortium members and actual or proposed joint venturers) of—
 - A. a 20% or more legal or equitable interest in a relevant part or the whole of its business; or
 - B. a 20% or more legal or equitable interest in any property to which the information relates; or
 - C. 20% or more of the shares in it; or
 - D. 20% or more (by value) of the shares or units (or both) in a company or trust (or both) which, directly or indirectly, controls (as that term is defined in the Corporations Act) it,
 to the extent those persons have a need to know the Confidential Information.

24.3 Use of Confidential Information

A Party who has received Confidential Information from another under this agreement must not use it, and a Party who has disclosed Confidential Information to a person must procure that that person does not use it, except for the purpose of exercising the Party's rights or performing the Party's obligations under this agreement, or for or in connection with providing finance to the Party, or as otherwise contemplated under this agreement, with the exception of those persons set out in clause 24.2(b)(ii), who must not use the Confidential Information received from another under this agreement except for and in relation to assessing the value of, and preparing a bid for, the relevant interest under clause 24.2(b)(ii) that is proposed to be acquired.

24.4 Remedies

The Parties acknowledge that damages are not an adequate remedy for any breach of the obligations of this clause 24 and either Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available under any Law.

24.5 Survival

This clause 24 survives termination (for whatever reason) of this agreement.

25. Pipeline Trustee's acknowledgments and undertakings

- (a) In this clause 25, "**dispose**" means, in relation to the PIA Pipeline, to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the PIA Pipeline (or any interest therein) and includes a transaction which results in a person other than the Pipeline Trustee—
 - (i) acquiring any equitable interest in the PIA Pipeline, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the PIA Pipeline; or
 - (ii) otherwise acquiring legal or equitable rights against the PIA Pipeline which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the PIA Pipeline itself.
- (b) The Pipeline Trustee, in its capacity as trustee of the DBNGP WA Pipeline Trust ("**Pipeline Trust**"), undertakes to the Gas Producer that the Pipeline Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Pipeline Operator under—
 - (i) this agreement; and
 - (ii) any other contract with the Gas Producer entered into by, or undertaking given in favour of the Gas Producer by, the Pipeline Operator which requires the use or application of any asset owned by the Pipeline Trust, including the PIA Pipeline, in order to be able to perform the contract or comply with the undertaking,
 except to the extent that such obligations are observed, performed or discharged by the Pipeline Operator.

- (c) The Pipeline Trustee, in its capacity as trustee of the Pipeline Trust, undertakes to the Gas Producer that if for any reason the DBNGP Operating Agreement is terminated, the Pipeline Trustee will assume and will duly and punctually observe, perform and discharge all obligations relating to the PIA Pipeline (whether imposed on the Pipeline Operator or any other person) that would have been able, required or fallen to be observed, performed or discharged by the Pipeline Operator had the DBNGP Operating Agreement not been terminated.
- (d) The Gas Producer acknowledges and agrees that—
- (i) the Pipeline Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clauses 25(b) and 25(c) (**Relevant Agreements**) to the same extent that the Pipeline Operator would have had to comply with those obligations under the Relevant Agreements had the Pipeline Operator remained bound by them; and
 - (ii) any limitation on liability, exclusion of liability, excuse from performance (for example, force majeure), qualification on performance or protection contained in a Relevant Agreement and expressed to be for the benefit of the Pipeline Operator will also apply to the same extent for the benefit of the Pipeline Trustee in respect of its obligations under clauses 25(b) and 25(c); and
 - (iii) nothing in clauses 25(b) and 25(c) gives the Gas Producer any greater right or remedy against the Pipeline Trustee arising from a failure to perform an obligation under a Relevant Agreement by the Pipeline Trustee than the right or remedy that the Gas Producer would have been entitled to against the Pipeline Operator for that failure had the Pipeline Operator remained bound by that Relevant Agreement.
- (e) The Pipeline Trustee represents and warrants that it is the legal owner of the PIA Pipeline and owns the PIA Pipeline in its capacity as trustee of the DBNGP Pipeline Trust.
- (f) The Pipeline Trustee must not dispose of the whole or any part of its right, title or interest in the PIA Pipeline without requiring the disponent to enter into a deed of assumption with the Gas Producer to the reasonable satisfaction of the Gas Producer pursuant to which it—
- (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this agreement in respect of the Gas Producer (and the Gas Producer agrees that the Pipeline Trustee is released to the extent that the Pipeline Trustee's obligations are assumed); and
 - (ii) acknowledges that its obligations under such assumption of obligations extend to the Pipeline Operator's obligations under the Relevant Agreements,
- consistent with this clause 25.
- (g) Subject to clause 25(h), if the disponent is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the disponent, execute the deed of assumption in terms of clause 25(f).
- (h) If the disponent is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 25(g) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the disponent. Nothing in clause 25(g) or this clause 25(h) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

26. DBNGP Trustee's acknowledgments and undertakings

- (a) The DBNGP Trustee in its capacity as trustee of the DBNGP Trust (**DBNGP Trust**) undertakes to the Gas Producer that the DBNGP Trustee assumes and must duly and punctually observe, perform and discharge all of the obligations of the Pipeline Operator under—
- (i) this agreement; and
 - (ii) any other contract with the Gas Producer entered into by, or undertaking given in favour of the Gas Producer by, the Pipeline Operator which requires the use or application of any asset owned by the DBNGP Trust in order to be able to perform the contract or comply with the undertaking,
- except to the extent that such obligations are observed, performed or discharged by the Pipeline Operator.
- (b) The Gas Producer acknowledges and agrees that—
- (i) the DBNGP Trustee's obligation is to comply with obligations under the contracts and undertakings referred to in clause 26(a) ("**Relevant Agreements**") to the same extent that the Pipeline Operator would have had to comply with those obligations under the Relevant Agreements; and
 - (ii) any limitation on liability, exclusion of liability, excuse from performance, qualification on performance or protection contained in a Relevant Agreement for the benefit of the Pipeline Operator will also apply to the same extent for the benefit of the DBNGP Trustee in respect of its obligations under clause 26(a); and
 - (iii) nothing in clause 26(a) gives the Gas Producer any greater right or remedy against the DBNGP Trustee arising from a failure to perform an obligation under a Relevant Agreement by the DBNGP Trustee than the right or remedy that the Gas Producer would have been entitled to against the Pipeline Operator for that failure.

- (c) The DBNGP Trustee must not dispose of the whole or any part of its right, title or interest in the Pipeline Trust without requiring the disponent to enter into a deed of assumption with the Gas Producer to the reasonable satisfaction of the Gas Producer pursuant to which it—
- (i) assumes all, or the relevant portion, of the DBNGP Trustee's obligations under this agreement in respect of the Gas Producer (and the Gas Producer agrees that the DBNGP Trustee will be released to the extent that the DBNGP Trustee's obligations are assumed); and
 - (ii) acknowledges that its obligations under such assumption of obligations extend to the Pipeline Operator's obligations under the Relevant Agreements, consistent with this clause 26.
- (d) Subject to clause 26(e), if the disponent is a subsidiary of or controlled by another company or another entity, its ultimate holding company (or if it is not a company, its ultimate controlling entity) must, in addition to the disponent, execute the deed of assumption in terms of clause 26(c).
- (e) In this clause 26, "**dispose**" means to sell, transfer, assign, grant an option over, create an encumbrance over, declare oneself a trustee of or part with the benefit or otherwise dispose of the Pipeline Trust (or any interest therein) and includes a transaction which results in a person other than the DBNGP Trustee—
- (i) acquiring any equitable interest in the Pipeline Trust, including an equitable interest arising pursuant to a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other security in respect of the Pipeline Trust; or
 - (ii) otherwise acquiring legal or equitable rights against the Pipeline Trust which have the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in the Pipeline Trust itself.
- (f) If the disponent is a special purpose project vehicle or otherwise part of a project financed structure, the reference in clause 26(d) to an ultimate holding company or entity will be construed to be the company, or entity, (if any) within the relevant project structure most appropriate for providing support of the disponent. Nothing in clause 26(d) or this clause 26(e) requires a company or entity to enter into a deed of assumption which might create recourse beyond the project structure.

27. Costs

- (a) Each Party must pay its own costs and expenses in respect of the negotiation, preparation and execution of this agreement.
- (b) The Gas Producer must pay any stamp duty payable in respect of this agreement.

28. Notices

28.1 Form of Notice

A notice or other communication to a Party under this agreement (**Notice**) must be—

- (a) in writing and in English and signed by or on behalf of the sending Party; and
- (b) addressed to that Party in accordance with the details nominated below (or any alternative details nominated to the sending Party by Notice).

	Gas Producer
Address	as set out in Item 11 of Schedule 1
Attention	as set out in Item 11 of Schedule 1
Phone	as set out in Item 11 of Schedule 1
Fax	as set out in Item 11 of Schedule 1
	Pipeline Operator
Address	Level 6 12-14 The Esplanade Perth WA 6000
Attention	General Manager, Commercial
Phone	(08) 9223 4300
Fax	(08) 9223 4301
	Pipeline Trustee
Address	Level 6 12-14 The Esplanade Perth WA 6000
Attention	General Manager, Commercial
Phone	(08) 9223 4300
Fax	(08) 9223 4301
	DBNGP Trustee
Address	Level 6 12-14 The Esplanade Perth WA 6000
Attention	General Manager, Commercial
Phone	(08) 9223 4300
Fax	(08) 9223 4301

28.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
 (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day ("**business hours period**"), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	At the time indicated by the sending Party's transmission equipment as the time that the fax was sent in its entirety. However, if the recipient Party informs the sending Party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time between 9am and 5pm on a Business Day is to be included.

28.3 Adoption of electronic communication protocols

A Notice must not be given by email or other electronic means of communication (other than fax as permitted in clause 28.2) until such time as the Parties agree protocols for the use of electronic communications.

28.4 Notices from and to the DBP Parties

- (a) A Notice given by the Pipeline Operator in respect of this agreement is deemed to have been given by each DBP Party, and will bind each other DBP Party to the same extent as it binds the Pipeline Operator.
 (b) A Notice given to the Pipeline Operator in respect of this agreement is deemed to have been given to each DBP Party and will bind each other DBP Party to the same extent as it binds the Pipeline Operator.

29. Gazettal of revisions to this agreement

- (a) Subject to the Regulations, if a revised version of the *Standard Form Agreement—Warehousing Method—DBNGP* ("**Revised Form**") is Gazetted after the date of this agreement, then except to the extent that the Minister expressly states otherwise in the notice Gazetting the Revised Form, the Revised Form is to be disregarded for the purposes of this agreement.
 (b) Clause 29(a) does not prevent the Parties from agreeing to amend this agreement to incorporate some or all of the Revised Form.

30. General

30.1 Governing Law and jurisdiction

- (a) This agreement is governed by the Law in force in Western Australia.
 (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

30.2 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the Law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
 (b) Clause 30.2(a) does not apply where enforcement of the provision of this agreement in accordance with clause 30.2(a) would materially affect the nature or effect of the Parties' obligations under this agreement.

30.3 Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver or an election. A single or partial exercise of any right, power or remedy does not constitute an election nor does it preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

30.4 Variation

A variation of any term of this agreement must be in writing and signed by the Parties.

30.5 Further action to be taken at each Party's own expense

Each Party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

30.6 Entire agreement

Subject to the Act and Regulations, this agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

30.7 No reliance

Subject to the Act and Regulations, no Party has relied on any statement by any other Party not expressly included in this agreement.

30.8 Relationship of the Parties

Nothing in this agreement imposes any fiduciary duties on a Party in relation to any other Party.

Having effect as an agreement

This agreement has effect under section 8(4) of the Act without the need for the Parties to sign it.

{Note: Signing clauses may be added if the Parties wish to sign.}

Schedule 1

1.	Participating Interests	[to be inserted]
2.	PIA Inlet Point(s)	[to be inserted]
3.	PIA Quantity	[to be inserted]
4.	PIA Specifications	[to be inserted]
5.	Relevant Section	[to be inserted]
6.	Agreed Capacity Impact <i>{This Item will have been completely, accurately and correctly filled in if it completely, accurately and correctly reproduces the relevant effects referred to in recital H.}</i>	[to be inserted]
7.	Relevant effect on operations and maintenance <i>{This Item will have been completely, accurately and correctly filled in if it completely, accurately and correctly reproduces the relevant effects referred to in recital H.}</i>	[to be inserted]
8.	Estimate of Additional System Use Gas for the first Gas Year	[to be inserted]
9.	Gas processing plant	[to be inserted]
10.	Identification of version of Standard Shipper Contracts <i>{This Item will have been completely, accurately and correctly filled in if it completely, accurately and correctly identifies the versions of the "Standard Shipper Contract—Full Haul T1" and the "Standard Shipper Contract—Part Haul P1" for the purposes of the definition of "Standard Shipper Contract" in this agreement, for example by identifying a letter from the Gas Producer to the Pipeline Operator which attached copies of the versions.}</i>	[to be inserted]
11.	Contact details for Gas Producer	[to be inserted]

Schedule 2**Confidential Information—**

1. The identity of the user under an Underlying Pipeline Services Agreement.
2. The quantity of Gas Transmission Capacity to which the Gas Producer has a right of access under a Warehoused Right and the proportion of that quantity of Gas Transmission Capacity that the Gas Producer has allocated as a Warehoused Right.
3. The terms and conditions of any underlying Pipeline Services Agreement or Transfer agreement, to the extent they are confidential.
4. The terms of a Bare Transfer, but not the fact that a Bare Transfer exists and complies with this agreement.
5. Records provided and copies made under clause 18.