

Date: 30 November 1998

**Victorian Third Party Access Code  
for Natural Gas Pipeline Systems:  
Access Arrangement by Transmission  
Pipelines Australia Pty Ltd and  
Transmission Pipelines Australia (Assets)  
Pty Ltd for the Western Transmission  
System**

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**ACCESS ARRANGEMENT BY TRANSMISSION PIPELINES  
AUSTRALIA PTY LTD AND TRANSMISSION PIPELINES  
AUSTRALIA (ASSETS) PTY LTD FOR THE WESTERN  
TRANSMISSION SYSTEM**

## **1. Introduction**

### **1.1 Purpose of this document**

This *Access Arrangement* (“Access Arrangement”) was submitted on 3 November 1997 by Energy Projects Division of the Department of Treasury and Finance, Government of Victoria (“EPD”), on behalf of Transmission Pipelines Australia Pty Ltd ACN 079 089 268 (“TPA”) and Transmission Pipelines Australia (Assets) Pty Ltd ACN 079 136 413 (“TPA Assets”) (together “TPA” or the “Service Provider”), to the Australian Competition and Consumer Commission (the “Regulator”) in accordance with section 2.2 of the Victorian Third Party Access Code for Natural Gas Pipelines (the “Victorian Access Code”).

The Regulator delivered a draft decision on this Access Arrangement on 28 May 1998 and a Final Decision 1 (in accordance with section 2.16(b) of the Victorian Access Code) on 6 October 1998 and an amended Access Arrangement was submitted by EPD on behalf of the Service Provider on 30 November 1998 and was approved by the Regulator in Final Decision 2 (in accordance with section 2.19 of the Victorian Access Code) on 16 December 1998.

This Access Arrangement describes the terms and conditions on which TPA will grant access to the Western Transmission System to third parties.

The wording of each section of the Victorian Access Code is reproduced in italics and then followed by a statement explaining where the particular section is satisfied in this Access Arrangement.

### **1.2 Composition of Access Arrangement**

This Access Arrangement comprises this document together with the description of *Western Transmission System* and maps contained in Appendix 1 and the pro-forma Western Transmission System Agreement contained in Appendix 2.

In addition, *Access Arrangement Information* (“Access Arrangement Information”) is submitted by the Service Provider in accordance with section 2.2 of the Victorian Access Code.

### **1.3 Contract Carriage**

As at the date of this Access Arrangement, the *Western Transmission System* is a *Contract Carriage Pipeline*.

### **1.4 Effective Date**

This Access Arrangement will come into effect on the date on which the Regulator’s decision to approve this Access Arrangement takes effect.

## **2. Interpretation**

2.1 In this Access Arrangement, where a word or phrase is italicised it has:

- (a) the definition given to that word or phrase in the Victorian Access Code; or

(b) the definition given to that word or phrase below,  
unless the context otherwise requires.

“**Change in taxes event**” means a change in the way or rate at which a *relevant tax* is calculated, or the removal or imposition of a *relevant tax* to the extent that the change, removal or imposition is directly attributable to TPA supplying the *Tariffed Transmission Service* and results in:

- (a) TPA being required to pay an amount that TPA would not have been required to pay; or
- (b) a change in the amount which TPA is required to pay from that which it would have been required to pay,

by way of tax, under the law that applied at the date of this Access Arrangement as a result of a new statute or amendment of any statute on the interpretation of an existing statute resulting from the decision of a court, tribunal, arbitrator or authority which is binding on TPA and includes (for the avoidance of doubt) the introduction of Goods and Services Tax (GST) or any like such tax within Australia;

“**Contracted MDQ**” means the *MDQ* set out in paragraph 3 of Schedule 1;

“**CPI**” means for a *regulatory year*:

- (a) where the All Groups Consumer Price Index for the eight State capitals for the September quarter before the start of that year and the September quarter before the September quarter previously referred to are published, is:
  - (1) the All Groups Consumer Price Index for the eight State capitals published by the Australian Bureau of Statistics for the September quarter before the start of that year;
 divided by:
  - (2) the All Groups Consumer Price Index for the eight State capitals published by the Australian Bureau of Statistics for the September quarter before the September quarter referred to in paragraph (a)(1);
- (b) where the All Groups Consumer Price Index for the eight State capitals for either of the September quarters referred to in paragraph (a) has not been published, CPI is calculated using an index officially substituted for the All Groups Consumer Price Index for the eight State capitals, which reflects changes in the cost of living in the eight State capitals; and
- (c) where the All Groups Consumer Price Index has not been published for the eight State capitals for either of the September quarters referred to in paragraph (a) and no index has been officially substituted for the All Groups Consumer Price Index for the eight State capitals, CPI is calculated using an index that the Regulator decides reflects changes in the cost of living in the eight State capitals;

“**Economic Feasibility Test**” means, subject to section 8.16(a) of the Victorian Access Code, that the *Anticipated Incremental Revenue* generated by the *New Facility* exceeds the *New Facilities Investment*;

“**expansion**” means the process of upgrading the capacity or service potential of a *transmission pipeline* by:

- (a) replacing or enhancing existing plant or equipment; or
- (b) adding new plant or equipment.

“**extension**” means extending a *pipeline* to enlarge the area to which *gas* may be or is supplied, including (for the avoidance of doubt) extensions which connect together pre-existing *pipeline* systems;

“**gas**” has the same meaning as in the Gas Industry Act 1994;

“**GJ**” means gigajoule, equal to one thousand million Joules (1,000,000,000J);

“**GTC**” means the Gas Transmission Corporation established under the Gas Industry Act 1994;

“**initial access arrangement period**” means the period from the date the Regulator’s decision approving this Access Arrangement takes effect to 31 December 2002;

“**initial transmission tariff**” means the *tariff* components set out in schedule 1, paragraph 2;

“**J**” means Joule, a unit of energy as defined in AS1000-1979 “The International System of Units (SI) and its Application”;

“**MDQ**” means maximum daily quantity of *gas* (in *GJ*);

“**MDQ tariff component**” means a *tariff component* in  $\$/GJ$  applied to *contracted MDQ*;

“**negative pass-through amount**” means in relation to the occurrence of a *change in taxes event*, an amount that TPA is required to pay a customer or a factor by which an amount that a customer is required to pay is reduced;

“**pass-through amount**” means a *positive pass-through amount* or a *negative pass-through amount*;

“**pipeline**” has the same meaning as in the Gas Industry Act 1994;

“**positive pass-through amount**” means in relation to the occurrence of a *change in taxes event*, an amount that a customer is required to pay to TPA or a factor by which an amount that a customer is required to pay TPA is reduced;

“**regulatory year**” means a period ending on 31 December each year during the *initial access arrangement period*;

“**relevant tax**” means any tax but excluding any:

- (a) income tax (or State equivalent income tax), fringe benefits tax or capital gains tax;
- (b) payroll tax;
- (c) any membership, contribution or charge payable to regulatory bodies in the *gas* industry;
- (d) land tax or any other tax on the ownership or occupancy of premises;
- (e) customs and import duty;

- (f) municipal rates, taxes and other charges imposed by local authorities;
- (g) stamp duty, financial institutions duty, bank accounts debits tax or similar taxes or duties;
- (h) penalties and interest for late payment relating to any tax; or
- (i) any tax that replaces any of the taxes referred to in (a) to (h),

except that:

- (j) the exclusions of taxes specified in paragraphs (a) to (i) inclusive shall not operate in the event that one or more of those taxes is replaced as part of the introduction of Goods and Services Taxes (GST) within Australia,

and in this definition, “tax” includes any rate, duty, charge or other like or analogous impost;

“**subsequent access arrangement period**” means the period of 5 calendar years from 1 January 2003;

“**System-Wide Benefits Test**” means, subject to section 8.16(a) of the Victorian Access Code, that the Regulator is satisfied that a *New Facility* has system wide benefits which justify the approval of a higher *Reference Tariff* for all *Users*;

“**tariff**” means the combination of *tariff components* applying to a *Tariffed Transmission Service* supplied to a *User*;

“**tariff component**” means an individual price element comprising part of a *tariff*;

“**Tariffed transmission service**” means:

- (a) allowing injection of *gas* into *transmission injection points*;
- (b) conveyance of *gas* from *transmission injection points* to *transmission supply points*; and
- (c) allowing withdrawal of *gas* at *transmission supply points*;

except to the extent that:

- (d) before the start of the *initial access arrangement period*, GTC or TPA and the *User* have agreed in writing that specific pricing applies to that service;
- (e) after the start of the *initial access arrangement period*, TPA and the *User* agree in writing or as otherwise approved by the Regulator that the service is not to be a *Tariffed Transmission Service*;

“**transmission injection point**” means a point at which *gas* is injected into the *Western Transmission System*;

“**transmission pipeline**” has the same meaning as in the Gas Industry Act 1994;

“**transmission supply point**” means a supply point on the *Western Transmission System* as defined in schedule 1;

“**transmission tariff**” means *tariffs* for *Tariffed Transmission Services*;

“**transmission volume tariff component**” means a *tariff component* in \$/GJ for GJs of gas delivered.

“**Western Transmission System**” means the *transmission pipeline* in existence at 9 December 1997 and as more particularly described in the order made under section 5(4) of the Gas Industry Act 1994 and published in the Victorian Gazette page 3455 on 11 December 1997 excluding any significant *extension* in respect of which a notice under clause 5.8 of this Access Arrangement has been given.

- 2.2 For the purposes of this Access Arrangement, the interpretation rules contained in clause 10.2 of the Victorian Gas Industry Tariff Order 1998 (as amended from time to time) made under section 48A of the Gas Industry Act 1994, shall mutatis mutandis apply.

### 3. Contact Details

The contact officer for further details on this Access Arrangement is:

General Counsel and Regulatory Manager  
Transmission Pipelines Australia  
180 Greens Road  
DANDENONG VIC 3175  
Telephone: (03) 9797 5222  
Facsimile: (03) 9797 5189

### 4. Prior contractual rights

Notwithstanding anything in the contrary in this Access Arrangement, no provision in this Access Arrangement deprives any person of a contractual right which was in existence prior to 3 November 1997 (being the date on which this Access Arrangement was first submitted to the Regulator) other than an *exclusivity right* which arose on or after 30 March 1995.

### 5. Elements set out in Section 3 of the Victorian Access Code

This section, in compliance with section 2.5 of the Victorian Access Code, includes the elements set out in sections 3.1 to 3.22 of the Victorian Access Code which are applicable to the Service Provider.

#### 5.1 Access Arrangement

**Section 3.1** *An Access Arrangement submitted by a Service Provider to the Relevant Regulator must be in writing and may specify Relevant Regulatory Instruments or a class of Relevant Regulatory Instruments with which the Service Provider will comply. Except where the Relevant Regulatory Instrument or the Access Arrangement expressly provides otherwise, an amendment to, or a supplementation or replacement of, a Relevant Regulatory Instrument specified in an Access Arrangement by a Service Provider under section 3.1 is not a change to the Access Arrangement for the purposes of section 2.49.*

**Section 3.2** *Without limiting the effect of section 3.1, a Service Provider must have sufficient rights in respect of the Covered Pipeline the subject of its Access*

*Arrangement to enable the Service Provider to make available its Services in accordance with its Access Arrangement.*

5.1.1. The Service Provider will comply with the Victorian Access Code.

5.1.2 The Service Provider has sufficient rights in respect of the *Western Transmission System* (including under the Pipelines Act 1967 (Vic), Gas Industry Act 1994 (Vic) and (in relation to Transmission Pipelines Australia Pty Ltd) the lease between it and Transmission Pipelines Australia (Assets) Pty Ltd, to enable it to make available its *Services* in accordance with this Access Arrangement.

## 5.2 Services Policy

**Section 3.3** *An access arrangement must include a policy on the Service or Services to be offered (a Services Policy).*

**Section 3.4** *The Services Policy must comply with the following principles:*

- (a) *The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:*
  - (i) *one or more Services that are likely to be sought by a significant part of the market; and*
  - (ii) *any Service or Services which, in the Regulator's opinion, should be included in the Services Policy.*
- (b) *To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in the Service.*
- (c) *To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.*

5.2.1 Transmission Pipelines Australia (Assets) Pty Ltd as owner of the *Western Transmission System* will lease the *Western Transmission System* under a short term operating lease to Transmission Pipelines Australia Pty Ltd, thereby enabling TPA to offer the *Services*, being services provided from TPA's *transmission pipelines*, described in this Access Arrangement.

5.2.2 TPA will make *tariffed transmission services* (the "*Reference Services*") available to *Users* or *Prospective Users* of the *Western Transmission System* at the *Reference Tariffs*, on the terms and conditions, and in accordance with the *Reference Tariff Policy* described in clauses 5.3 and 5.4 below.

5.2.3 The *Services* are likely to be sought by a significant part of the market.

### 5.3 Reference Tariffs and Reference Tariff Policy

#### Reference Tariffs

**Section 3.5** *An Access Arrangement must include a Reference Tariff for:*

- (a) *at least one Service that is likely to be sought by a significant part of the market; and*
- (b) *each Service that is likely to be sought by a significant part of the market and for which the Regulator considers a Reference Tariff should be included.*

**Section 3.6** *Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.23 and 3.40, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Regulator's opinion, comply with the Reference Tariff Principles described in section 8.*

5.3.1 The initial *Reference Tariffs* are the *tariffs* for *tariffed transmission services* as set out in schedule 1.

The *Reference Tariff Policy* is set out below.

#### Reference Tariff Policy

**Section 3.7** *An Access Arrangement must also include a policy describing the principles that are to be used to determine a Reference Tariff (a **Reference Tariff Policy**). A Reference Tariff Policy must, in the Regulator's opinion, comply with the Reference Tariff Principles described in section 8.*

#### 5.3.2 CPI-X Price Path

The CPI - X price path approach is set out in the procedures in schedule 2 and the formula in schedule 3. A CPI-X approach is consistent with section 8.3 of the Victorian Access Code.

#### 5.3.3 New Facilities Investment

TPA may at its discretion undertake *New Facilities Investment* that does not satisfy the requirements of section 8.16 of the Victorian Access Code. The *Extensions/ Expansions Policy* in clause 5.8.2 below explains how *New Facilities Investment* in relation to a *New Facility* which is to be treated as part of the *Covered Pipeline* will affect *Reference Tariffs*.

Clause 5.3.4 below sets out the principles of a *Speculative Investment Fund* which TPA may operate in relation to *New Facilities Investment* which does not satisfy the requirements of section 8.16 of the Victorian Access Code.

#### 5.3.4 *Speculative Investment Fund*

(Refer also clause 5.8.2 below).

The amount of the *Speculative Investment Fund* at any time is equal to:

- (a) the difference between the *New Facilities Investment* and the amount which satisfies section 8.16 of the Victorian Access Code, less any amount the Service Provider notifies the Regulator (at the time the expenditure is incurred) that it has elected to recover through a *Surcharge* under section 8.25 of the Victorian Access Code; plus
- (b) an annual increase in that amount calculated on a compounded basis at a risk adjusted *Rate of Return* approved by the Regulator; less
- (c) any part of the *Speculative Investment Fund* previously added to the *Capital Base* due to the type and volume of services provided using the increase in *Capacity* attributable to the *New Facility* change such that any part of the *Speculative Investment Fund* would then satisfy the requirements of section 8.16 of the Victorian Access Code.

#### 5.3.5 *Capital redundancy*

As set out in the *Fixed Principle* in clause (3) of schedule 4 the Regulator may review, and if necessary, adjust the *Capital Base* (at the start of the *subsequent access arrangement period*) to take account of wholly or partially redundant assets.

#### 5.3.6 *Fixed principles*

Section 8.47 of the Victorian Access Code provides for a *Reference Tariff Policy* to provide for certain *Fixed Principles*. A *Fixed Principle* is an element of the *Reference Tariff Policy* which cannot be changed when the *Service Provider* submits reviews to an access arrangement, without the agreement of the *Service Provider*. The *Fixed Principles* applying to this Access Arrangement are set out in schedule 4.

The *Fixed Principles* in schedule 4 cannot be changed at the 1 January 2003 review of *Reference Tariffs* and are to apply for the duration of the *subsequent access arrangement period*, which is 5 years.

#### 5.3.7 *Incentive mechanism*

An incentive mechanism that permits TPA to retain a share of any returns from the sale of *Reference Services* during the *initial access arrangement period* that exceed the level of returns expected at the beginning of the *initial access arrangement period* is set out in:

- (a) schedules 2 and 3 which provide that the “price path” for the *Reference Tariffs*, which is determined at the beginning of the *initial access arrangement period* based on forecasts of all relevant variables, is not adjusted to account for subsequent events until the commencement of the *subsequent access arrangement period*;
- (b) clause (4) of schedule 4 which provides for a sharing of the benefits of efficiency gains between TPA and users if, in the *initial access arrangement*

period, TPA has achieved efficiencies greater than the values implied by the value of X in the *CPI - X* formula; and

- (c) clause (6) of schedule 4 which provides that the benefits of efficiency gains may be shared both in the *subsequent access arrangement period* and in *access arrangement periods* after the *subsequent access arrangement period*.

#### 5.3.8 Tax pass-through

The *Reference Tariffs* may be adjusted in accordance with Schedule 5, if a *change in taxes event* occurs.

### 5.4 Terms and Conditions

**Section 3.8** *An access arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.*

**Section 3.9** *To the extent permitted by the law of a jurisdiction outside Victoria, the terms and conditions of the Access Arrangement of a Service Provider who provides Services by means of a Covered Pipeline or system of Covered Pipelines which are situated both in Victoria and in another jurisdiction:*

- (a) *must not differentiate between that part of the Covered Pipeline or Covered Pipelines situated in Victoria and that part of the Covered Pipeline or Covered Pipelines situated outside Victoria merely because they are situated in different jurisdictions; and*
- (b) *must comply with the provisions of the Code.*

5.4.1 Details of the terms and conditions on which TPA will supply the *Tariffed Transmission Services* are contained in:

- (a) schedule 1 which sets out the initial *Reference Tariffs* and schedule 4, which outlines the *tariff control* formula applicable to the *Reference Tariffs*.
- (b) the pro-forma Western Transmission System Agreement contained in Appendix 2.

5.4.2 No part of the *Western Transmission System* is situated outside of Victoria.

### 5.5 Capacity Management Policy

**Section 3.10** *An Access Arrangement must include a statement (a **Capacity Management Policy**) that the Covered Pipeline is either:*

- (a) *a Contract Carriage Pipeline; or*
- (b) *a Market Carriage Pipeline.*

The *Western Transmission System* is a *Contract Carriage Pipeline*, provided however that the *Western Transmission System* shall become a *Market Carriage Pipeline* in the event that the *extension* to the Principal Transmission System, commonly known as the South West Pipeline, is constructed whereby the Principal Transmission System

and the *Western Transmission System* are joined in which case an application for revision of this Access Agreement will be submitted by TPA in accordance with section 2 of the Victorian Access Code.

## 5.6 Trading Policy

**Section 3.11** *The Access Arrangement for a Covered Pipeline which is described in the Access Arrangement as a Contract Carriage Pipeline must include a policy that explains the rights of a User to trade its right to obtain a Service to another person (a **Trading Policy**).*

**Section 3.12** *The Trading Policy must comply with the following principles:*

- (a) *A User must be permitted to transfer or assign all or part of its Contracted Capacity without the consent of the Service Provider concerned if:*
- (i) *the User's obligations under the contract with the Service Provider remain in full force and effect after the transfer or assignment; and*
  - (ii) *the terms of the contract with the Service Provider are not altered as a result of the transfer or assignment (a **Bare Transfer**).*

*In these circumstances, the Trading Policy may require that the transferee notify the Service Provider prior to utilising the portion of the Contracted Capacity subject to the Bare Transfer and of the nature of the Contracted Capacity subject to the Bare Transfer, but the Trading Policy must not require any other details regarding the transaction to be provided to the Service Provider.*

- (b) *Where commercially and technically reasonable, a User must be permitted to transfer or assign all or part of its Contracted Capacity other than by way of a Bare Transfer with the prior written consent of the Service Provider. The Service Provider may withhold its consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable or commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.*
- (c) *Where commercially and technically reasonable, a User must be permitted to change the Delivery Point or Receipt Point from that specified in any contract for the relevant Service with the prior written consent of the Service Provider. The Service Provider may withhold its consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable on commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.*

**Section 3.13** *Examples of things that would be reasonable for the purposes of section 3.12(b) and (c) are:*

- (a) *the Service Provider refusing to agree to a User's request to change its Delivery Point where a reduction in the amount of the Service provided to the original Delivery Point will not result in a corresponding increase in the Service Provider's ability to provide that Service to the alternative Delivery Point; and*
- (b) *the Service Provider specifying that, as a condition of its agreement to a change in the Delivery Point or Receipt Point, the Service Provider must receive the same amount of revenue it would have received before the change.*

5.6.1 A *User* may transfer or assign all or part of any *Capacity* in the *Western Transmission System* which it has reserved pursuant to a contract between it and TPA ("*Contracted Capacity*"):

- (a) without TPA's consent in the circumstances set out in clause 5.6.2 and subject to the notice requirements in clause 5.6.3; and
- (b) with TPA's consent in the circumstances set out in clause 5.6.4 and subject to the conditions set out in clause 5.6.5.

5.6.2 A *User* may transfer or assign all or part of its *Contracted Capacity* without TPA's consent provided that following the transfer or assignment:

- (a) the *User's* obligations under its contract with TPA remain in full force and effect;
- (b) TPA is not in any way placed in a contractual or legal relationship with the assignee or transferee;
- (c) TPA will continue to deal exclusively with the *User* in respect of contractual matters; and
- (d) the terms of the contract with TPA (including any *tariffs* payable) are not altered as a result of the transfer or assignment.

In these circumstances the transfer or assignment will be described as a "*Bare Transfer*".

5.6.3 Prior to utilising any portion of the *Contracted Capacity* subject to a *Bare Transfer* under clause 5.6.2, the transferee or assignee must notify TPA of the *Bare Transfer* and inform TPA of the nature of the *Contracted Capacity*.

5.6.4 A *User* may with TPA's prior written consent transfer or assign all or part of its *Contracted Capacity* on terms other than those set out in clauses 5.6.2 and 5.6.3 where commercially and technically reasonable.

TPA will not unreasonably withhold its consent if the transferee or assignee is in TPA's reasonable opinion reputable or solvent.

- 5.6.5 A transfer or assignment by a *User* pursuant to clause 5.6.4 is conditional upon and is not binding until TPA has been furnished with an executed copy of a deed of novation in a form acceptable to TPA, under which:
- (a) the transferee and TPA are deemed to enter into a new contract on the same terms as contained in the *User's* existing contract with TPA (subject to any changes agreed to by TPA pursuant to clause 5.6.6) but having rights and obligations corresponding to the rights which are assigned by the *User*; and
  - (b) the *User* is relieved of its liability to perform the obligations attaching to the rights which are assigned by the *User*, but without prejudice to all obligations and liabilities of the *User* which have by then accrued and remain unsatisfied in respect of those assigned rights.
- 5.6.6 TPA will not unreasonably withhold its consent to any changes requested to the existing contract which are:
- (a) commercially and technically feasible;
  - (b) do not interfere with TPA's ability to satisfy its obligations to other *Users*; and
  - (c) do not adversely affect the operational control of the system by VENCORP.
- 5.6.7 TPA will deal with any request by a transferee to change a *Delivery Point* or *Receipt Point* defined in an existing contract between TPA and the *User* under the *Queuing Policy* set out in clause 5.7 below. The change may be subject to the *Extensions/Expansions Policy* in clause 5.8 below.
- 5.6.8 Nothing in this *Trading Policy* prevents a *User* from pledging, mortgaging, encumbering or assigning by way of security its rights under any contract for a *Service* with TPA provided that the chargee or mortgagee must acknowledge in writing to TPA that upon it realising its charge or mortgage, it will be bound by the terms of the contract.

## 5.7 Queuing Policy

**Section 3.14** *An Access Arrangement must include a policy for determining the priority that that a Prospective User has, as against any other Prospective User, to obtain access to a Service provided by means of a Covered Pipeline and the Developable Capacity of a Covered Pipeline (and to seek dispute resolution under section 6) (a Queuing Policy).*

**Section 3.15** *The Queuing Policy must:*

- (a) *set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;*
- (b) *accommodate, to the extent reasonably possible, the legitimate interests of the Service Provider and of Users and Prospective Users; and*
- (c) *generate, to the extent reasonably possible, economically efficient outcomes.*

**Section 3.16** *The Regulator may require the Queuing Policy to deal with any other matter the Regulator thinks fit, taking into account the matters listed in section 2.24.*

**Section 3.17** *Notwithstanding anything else contained in this Code, the Service Provider must comply with a Queuing Policy specified in the Service Provider's Access Arrangement.*

### 5.7.1 Purpose

- (a) This *Queuing Policy* sets out the process by which TPA will:
  - (1) administer requests by a *Prospective User* seeking access (the "Applicant"); and
  - (2) determine the priority that a *Prospective User* has, as against any other *Prospective User*,
 to the *Services* offered in this Access Arrangement and the *Developable Capacity* of the *Pipeline*.
- (b) TPA will maintain a list of Applicants in accordance with the provisions of this *Queuing Policy*. This list will constitute the queue ("Queue"). Applications will be dealt with on a first-come first-served basis.

### 5.7.2 Applicability

- (a) This *Queuing Policy* is applicable to requests for new contracts, requests for *extensions* to existing contracts, and to all increases from one year to the next in the receipt and delivery entitlements under existing contracts.
- (b) This *Queuing Policy* is only applicable to those requests which seek commencement of a *Service* at some time within the same calendar year or the next calendar year after the date of receipt of the request.

### 5.7.3 Application Procedure

- (a) An Applicant will obtain access to the Queue by delivering to TPA a completed Request for Service Form with sufficient information to enable TPA to evaluate the request, including payment of the prescribed fee. A request which is completed satisfactorily will be designated as a "Complying Request".
- (b) TPA will notify the Applicant in writing within ten days of receipt of the Request for Service Form stating either TPA's acceptance of the request as a Complying Request, and the date of receipt of the request, or TPA's rejection of the request, setting out the deficiencies, and inviting a re-submission.
- (c) TPA will recognise the date on which a Complying Request is received from the Applicant, and use this date to set the Applicant's initial place in the Queue.
- (d) TPA reserves the right to determine the date when a Complying Request is received and whether the information contained in it is sufficient to accept the request as a Complying Request.

- (e) If an Applicant wishes to amend a service request, the original Request for Service Form will be discarded and removed from the Queue. A new Request for Service Form must be submitted for the amended service and if it is designated as a Complying Request it will be placed at the end of the Queue.

#### 5.7.4 Evaluation Policy

- (a) TPA will evaluate each Complying Request strictly on a first-come first-served basis, according to the order of the Complying Request in the Queue.
- (b) Each evaluation will be based on the information presented in the Complying Request, making use of the nominated capacity reservations made by the Applicant in each year of the desired term of the *Service*.
- (c) The evaluation will determine whether *New Facilities* are required to satisfy the Complying Request, and if so, it will determine the nature, extent and an estimate of the *New Facilities Investment*. Subject to the Applicant entering into an agreement with TPA ("*New Facilities Agreement*"), TPA will subsequently make a final assessment of the *New Facilities Investment* and of applicable charges in accordance with the *Extensions/Expansions Policy* in clause 5.8 below.
- (d) In performing the evaluation, TPA will recognise, for each future year, the following capacity reservations on the *Pipeline*:
  - (1) additions to capacity reservations in each future year arising from step-ups in existing contracts;
  - (2) additions to capacity reservations in each future year arising from new contracts including all service contracts executed up to the date of the evaluation;
  - (3) additions to capacity reservations in each future year arising from capacity reservations temporarily accepted, but not yet contracted, from Applicants higher in the Queue, as discussed in clauses 5.7.5 and 5.7.6; and
  - (4) reductions in capacity reservations arising from the expiry of existing contracts.

#### 5.7.5 Response to Applicant

- (a) An Applicant's Complying Request will be responded to within thirty days of receipt of the Complying Request.
- (b) The response to an Applicant's Complying Request will depend on whether the evaluation of the Complying Request indicates that the requested service can be offered with or without the construction of *New Facilities*.
- (c) If *New Facilities* are not required:
  - (1) TPA will inform the Applicant of the *tariff* applicable over the term of the requested service, based on bona fide forecasts of the *Reference Tariff* for the *Service* including any charge (where applicable) in addition to the *Reference Tariffs*;

- (2) the Applicant will be offered a service contract; and
  - (3) the capacity reservations in the Complying Request will be temporarily accepted for use in subsequent service evaluations from the date of receipt of the Complying Request.
- (d) If *New Facilities* are required:
- (1) the Applicant will be advised that *New Facilities* will be required, indicating in general terms the scope of the additions or modifications to facilities required;
  - (2) the Applicant will be advised of the current and future availability of *Capacity* between the *Receipt* and *Delivery Points* indicated in the Complying Request, based on the current *Capacity* of the *Western Transmission System* and the capacity reservations as defined in 5.7.4(d).
  - (3) the Applicant will be advised of the likelihood of any charge applying in addition to the *Reference Tariffs* and an estimate of the amount of the charge;
  - (4) the Applicant will be offered a *New Facilities* Agreement, and advised of an indicative cost and timing for TPA to obtain a final estimate of the charge to be borne by the Applicant pursuant to the terms of that agreement; and
  - (5) the capacity reservations in the Complying Request will be temporarily accepted for use in subsequent service evaluations from the date of receipt of the Complying Request.

#### 5.7.6 Response from Applicant

In response to an offer of a service contract or a *New Facilities* Agreement, the following procedure applies:

- (a) The Applicant will have thirty days in which to accept the offer in writing, and such acceptance must comply with the contract terms as offered (unless agreement has already been reached on any special amendments). Such a response will be designated as a “Complying Acceptance”.
- (b) If a Complying Acceptance is not received within that thirty days, the offer shall be deemed to be rejected and the Applicant’s Complying Request shall be removed from the Queue, and capacity reservations temporarily accepted pursuant to clause 5.7.4(d)(3) will be removed for the purposes of service evaluations.
- (c) Subsequent to a Complying Acceptance, TPA will execute the contract or the *New Facilities* Agreement within a further 7 days. The Applicant’s Complying Request will remain in the Queue.
- (d) The capacity reservations which were temporarily accepted pending execution of a service contract will become firm capacity reservations upon execution of the contract.

- (e) The capacity reservations which were temporarily accepted pending execution of an *New Facilities* Agreement will remain as such until a service contract is executed.

#### 5.7.7 Dispute Procedure

If the parties fail to agree and the Applicant wishes to dispute the terms of an offer, pursuant to the dispute resolution procedures of the Victorian Access Code, then the Applicant's place in the Queue is affected as follows:

- (a) where a service contract is offered without a *New Facilities* Agreement, the Applicant will retain its position in the Queue provided a contract is executed within the thirty day acceptance period which binds the parties to the results of the dispute resolution procedure; or
- (b) where a *New Facilities* Agreement is offered, the Applicant will retain its position in the Queue for the prescribed period of the dispute resolution procedure, provided it notifies the Regulator of a dispute within ten days of receipt of an offer.

#### 5.7.8 Amended Offers

If an Applicant higher in the Queue is removed from the Queue, then the basis for calculating any charge in addition to the *Reference Tariffs* applying to other applicants may be amended and revised offers made to those other Applicants, according to the following.

- (a) If an Applicant is removed from the Queue, as a result of rejecting an offer of a service contract, or withdrawing from a *New Facilities* Agreement, then the capacity reservations which have been temporarily accepted from that Applicant will be removed for the purposes of re-evaluations and all subsequent service evaluations.
- (b) When an Applicant is removed from the Queue, Applicants with a lower place in the Queue, and who are subject to charge in addition to the *Reference Tariffs*, will be re-evaluated for the purposes of determining a revised charge.
- (c) This re-evaluation will be done in the Queue order.
- (d) Applicants subject to a re-evaluation may be offered an amended charge as determined by the results of the re-evaluation.
- (e) Amended offers will be made within 90 days of an Applicant rejecting a contract or withdrawing from a *New Facilities* Agreement.

#### 5.7.9 Applicant Obligations

TPA will not make any commitments to capital expenditure on a proposed project until a *New Facilities* Agreement has been executed. The *New Facilities* Agreement will provide that in the event that the Applicant terminates that executed contract, the Applicant will be obligated to reimburse TPA for all expenditure incurred on the facilities under construction to meet the obligations under that contract, or if the service has commenced, to reimburse TPA with the depreciated asset value of that facility.

**5.8. Extensions/Expansions Policy**

**Section 3.18** *An Access Arrangement must include a policy (an **Extensions/Expansions Policy**) which sets out:*

- (a) *the method to be applied to determine whether any extension to, or expansion of the capacity of, the Covered Pipeline:*
  - (i) *should be treated as part of the Covered Pipeline for all purposes under the Code; or*
  - (ii) *should not be treated as part of the Covered Pipeline for any purpose under the Code;*

*(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);*

- (b) *specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs;*

*(for example, the Extensions/Expansions Policy could provide:*

- (i) *Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or*
- (ii) *specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);*
- (c) *if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.*

*The Relevant Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.*

**5.8.1 Coverage**

- (a) Subject to clause 5.8.1(c), an *extension* or *expansion* to the *Western Transmission System* is covered by this Access Arrangement.
- (b) Prior to an *extension* or *expansion* coming into service, TPA will give notice to the Regulator specifying:
  - (1) the location of the *extension* or *expansion*;
  - (2) its cost;
  - (3) its length;
  - (4) any other matter TPA considers relevant.

- (c) Subject to clause 5.8.1(d), a significant *extension* will not be covered by this Access Arrangement if TPA gives written notice to the Regulator (which notice may be given together with the notice under clause 5.8.1(b)) before the *extension* comes into service that the *extension* will not form part of this Access Arrangement.
- (d) Clause 5.8.1(c) does not apply where:
  - (1) a party successfully seeks coverage of the *extension* under section 1 of the Victorian Access Code; or
  - (2) the *extension* was assumed and included in the calculation of the *Reference Tariffs*.
- (e) For the purposes of clause 5.8.1(c), a significant *extension* is an *extension* where:
  - (1) the cost of the *New Facility* which comprises the *extension* is greater than \$5 million; or
  - (2) the *extension* exceeds 10 kilometres in length.

#### 5.8.2 Effect of Extension/Expansion on Reference Tariffs

- (a) Where the *New Facilities Investment* passes the *Economic Feasibility Test*, the *New Facility* is included in the *Capital Base* and is charged the *Reference Tariffs*.
- (b) Where the *New Facilities Investment* does not pass the *Economic Feasibility Test*, the standard procedure is that:
  - (1) a proportion of the *New Facility* corresponding to the proportion of the *New Facilities Investment* that passes the *Economic Feasibility Test* is included in the *Capital Base* and is charged the *Reference Tariffs*; and
  - (2) the proportion of the *New Facilities Investment* that does not pass the *Economic Feasibility Test* may, at TPA's election, be:
    - (A) recovered by a *Surcharge* approved by the Regulator under section 8.25 of the Victorian Access Code and levied on *Users of Incremental Capacity*;
    - (B) recovered by a *Capital Contribution* a *User* agrees to pay TPA, which may be assumed to be a *Surcharge*;
    - (C) included in a *Speculative Investment Fund* under clause 5.3.3 of the *Reference Tariff Policy*; or
    - (D) recovered by a combination of these options.
- (c) *New Facilities Investment* that does not pass the *Economic Feasibility Test* may be recovered outside the standard procedure in clause 5.8.2(b) where:
  - (1) TPA and/or *Users* satisfy the Regulator that the *New Facilities Investment* passes the *System-Wide Benefits Test*, in which case the Regulator may approve higher *Reference Tariffs* for all *Users* and the *New Facility* may be included in the *Capital Base*; or

- (2) the *New Facility* is able to be included in the *Capital Base* on grounds that it is necessary to maintain the safety, integrity or contracted capacity of the *Reference Services*.

### 5.8.3 Submissions to vary an Access Arrangement

For the avoidance of doubt:

- (a) if, pursuant to the *Extensions/Expansions Policy* set out in the clauses above, an *extension* or *expansion* becomes covered by this Access Arrangement, that coverage should not be deemed to be a change to this Access Arrangement;
- (b) if, pursuant to this clause or to the *Extensions/Expansions Policy* set out in the clauses above, a *Surcharge* is to be applied, the application of that *Surcharge* shall not be deemed to be a change to this Access Arrangement;
- (c) notwithstanding clause 5.8.3(b) above, solely for the purposes of public consultation, a notice given under section 8.25 of the Victorian Access Code, shall be treated with as if it were the submission of a revision under section 2.28 of that Code;
- (d) where any submission to vary an Access Arrangement has the consequence that *Reference Tariffs* will be changed, section 2 of the Victorian Access Code shall apply.

## 5.9 Review of the Access Arrangement

**Section 3.19** *An Access Arrangement must include:*

- (a) *a date upon which the Service Provider must submit revisions to the Access Arrangement (a **Revisions Submission Date**); and*
- (b) *a date upon which the next revisions to the Access Arrangement are intended to commence (a **Revisions Commencement Date**).*

*In approving the Revisions Submissions Date and Revisions Commencement Date, the Regulator must have regard to the objectives in section 8.1, and may:*

- (a) *determine an earlier Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;*
- (b) *define specific major events that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.*

**Section 3.20** *An Access Arrangement Period accepted by the Relevant Regulator may be of any length. However, except in the case of an initial Access Arrangement which has a review date before 1 January 2003, if the Access Arrangement Period is more than five years, the Regulator must not approve the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:*

- (a) *requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events*

*occur, for example:*

- (i) if a Service Provider's profits derived from a Covered Pipeline exceed a certain amount or if the value of Services reserved in contracts with Users are outside a specified range;*
- (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or*
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users whether in the form of lower charges or some other form.*

*Where a mechanism is included in an Access Arrangement pursuant to this section 3.20(a), the Relevant Regulator must investigate no less frequently than once every five years whether a review event identified in the mechanism has occurred.*

**Section 3.21** *Nothing in section 3. 21 shall be taken to imply that the Relevant Regulator may not approve an Access Arrangement Period longer than 5 years if the Relevant Regulator considers this appropriate, having regard to the objectives of section 8.1.*

**Section 3.22** *An Access Arrangement submitted under section 2.3 may include a date at which time the Access Arrangement will expire. If an Access Arrangement submitted under section 2.3 expires, the Covered Pipeline the subject of the Access Arrangement, shall cease to be Covered. The Service Provider must notify the Office of the Regulator-General if a Pipeline ceases to be covered under this section and the Office of the Regulator-General must update the Public Register accordingly.*

5.9.1 The Revisions Submission Date will be 31 March 2002.

5.9.2 The Revisions Commencement Date will be 1 January 2003.

**Schedule 1**

**1. Billing**

*Tariffs* are billed monthly, with the monthly charge representing the sum of the amounts calculated by multiplying each *tariff component* in paragraph 1 by its relevant quantity in accordance with paragraph 2.

**2. Tariff Components of the Initial Transmission Tariff**

- (a) the *MDQ tariff component* is \$3.940/GJ;
- (b) the *transmission volume tariff component* is \$0.312/GJ; and
- (c) the operations pass through price is \$0.0282/GJ.

**3. Quantities**

- (a) for the *MDQ tariff component*, the *contracted MDQ* at each *transmission supply point* for the relevant *regulatory year* is set out in the following table.

<i>transmission supply point</i>	<i>Regulatory years</i>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
	<i>Contracted MDQ</i>				
Cobden	1,675	1,728	1,781	1,835	1,889
Hamilton	1,600	1,653	1,687	1,703	1,728
Koroit	1,522	1,924	2,297	2,317	2,336
Portland	2,672	2,695	2,734	2,766	2,797
Warrnambool	5,403	6,219	6,927	7,032	7,137

- (b) for the *transmission volume tariff component* and the operations pass through price, the relevant quantity is the actual *GJs* of gas withdrawn at each *transmission supply point* during the month.

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## Schedule 2

- (a) For a *regulatory year* after the *regulatory year* ending 31 December 1999 or at least 30 business days before the start of that *regulatory year*:
  - (1) TPA must give the Regulator a statement:
    - (A) setting out the proposed *tariff components* for that *regulatory year*;
    - (B) demonstrating compliance of the proposed *tariffs* and *tariff components* with the formula in schedule 3; and
    - (C) setting out the proposed changes (if any) in the billing parameters contained in schedule 1, or to any other matters in that schedule;
- (b) To seek the Regulator's approval to alter a *tariff component*, TPA must give the Regulator a statement:
  - (1) setting out its proposed change in the *tariff component*; and
  - (2) demonstrating compliance with the formula in schedule 3.
- (c) The Regulator must not approve a statement given by TPA if the statement does not comply with the formula in schedule 3.
- (d) The Regulator must approve a statement given by TPA if the statement complies with the formula in schedule 3.
- (e) If the Regulator does not notify TPA of the Regulator's decision regarding a statement given by TPA under clause (b) within 20 business days after the day on which the Regulator received the statement the Regulator is taken to approve the statement with effect from the 21st business day after the Regulator receives the statement.
- (f) If, under clause (c), the Regulator must not approve a statement given by TPA the Regulator may allow TPA to replace the statement within such time as specified by the Regulator.
- (g) Where a statement has been replaced under clause (f), the replacement statement will be taken to be a statement provided at least 30 business days before the start of the *regulatory year* and the replaced statement will be taken not to have been submitted by TPA.
- (h) The *tariffs* in the statement given by TPA approved or taken to be approved by the Regulator must apply from the latest of:
  - (1) the date on which the Regulator approves or is taken to approve the alteration; and
  - (2) the start of the *regulatory year* in which the *tariffs* are to apply.
- (i) If TPA does not provide a statement to the Regulator required under clause (a), in relation to a *regulatory year* or such a statement is provided but not approved by the Regulator, the Regulator may re-set the relevant *tariffs* for TPA for the *regulatory year* in a manner in which the Regulator could have approved of the *tariffs* if included in a statement given by TPA under clause (a).

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### Schedule 3

#### ***CPI-X* price path approach formula**

The *CPI-X* price path approach formula in terms of the *Reference Tariff Policy* is:

$$P_t = P_{t-1} * (CPI_t - X)$$

where:

$P_t$  is the maximum price for a *tariff component* of a *Reference Tariff* for calendar year “t”;

$P_{t-1}$  is determined as follows:

- (1) if calendar year “t” is the calendar year ending 31 December 2000, then  $P_{t-1}$  is the relevant *tariff component* of the *initial transmission tariff* as set out in paragraph 2 of schedule 1; and
- (2) if calendar year “t” is after the calendar year ending 31 December 2000, then  $P_{t-1}$  is the figure used for  $P_t$  for the *tariff component* for calendar year “t-1”;

$CPI_t$  is the *CPI* for calendar year “t”; and

$X$  is 0.027

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## Schedule 4

The following are the *Fixed Principles* applying to this Access Arrangement:

- (1) utilise incentive-based regulation adopting a *CPI-X* approach and not rate of return regulation;
- (2) set the X factor in the *CPI-X* formula so that only one X factor applies without revision for the entire *subsequent access arrangement period*;
- (3) use the *Capital Base* for TPA at the start of the *initial access arrangement period*, adjusted to take account of inflation since 1 January 1998, depreciation, wholly or partially redundant assets and additions and disposals in the ordinary course of business since 1 January 1998, other than a disposal of:
  - (A) all of the assets and liabilities of TPA;
  - (B) assets interdependent with a transaction pursuant to which all of the issued shares in or the assets and business of TPA cease to be held by or on behalf of the State of Victoria or a statutory authority; or
  - (C) assets pursuant to which the assets of TPA are sold and leased back to TPA;
- (4) ensure a fair sharing between TPA and users of the benefits achieved through efficiency gains if, in the *initial access arrangement period*, TPA has achieved efficiencies greater than the values implied by the value of XT, which is the X factor that applies to TPA under the *CPI-X* formula in the *initial access arrangement period*, as set by schedule 3, and, in ensuring a fair sharing of the benefits, may have regard to the following matters without limitation:
  - (A) the need to offer TPA a continuous incentive to improve efficiencies both in operational matters and in capital investment; and
  - (B) the desirability of rewarding TPA for efficiency gains, especially where those gains arise from management initiatives to increase the efficiency of the relevant business;
- (5) have regard to:
  - (A) the cost of making, producing or supplying the goods or services which TPA makes, produces or supplies;
  - (B) any relevant interstate or international benchmarks for prices, costs and returns on assets in private sector industries comparable to those in which TPA operates; and
  - (C) the level of executive remuneration in TPA by reference to any relevant interstate and international private sector benchmarks for that remuneration;
- (6) in ensuring a fair sharing of the benefits of efficiency gains under clause (4), choose to share the benefits referred to in that clause in the *subsequent access arrangement period*, both in the *subsequent access arrangement period* and in *access arrangement periods* after the *subsequent access arrangement period*.

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## Schedule 5

- (a) If a *change in taxes event* occurs, TPA may give a statement to the Regulator within 3 months of the *change in taxes event* occurring specifying:
  - (1) details of the *change in taxes event* concerned;
  - (2) the date the *change in taxes event* took or takes effect;
  - (3) the estimated financial effect of the *change in taxes event* on the TPA;
  - (4) the *pass-through amount* TPA proposes in relation to the *change in taxes event*; and
  - (5) the basis on which the *pass-through amount* is to apply.
- (b) If the Regulator receives a statement under clause (a), the Regulator must decide whether the *change in taxes event* specified in the statement occurred or is continuing, and if the Regulator decides that the *change in taxes event* occurred or is continuing, the Regulator must decide:
  - (1) the pass through amount; and
  - (2) the basis on which the pass through amount is to apply,and notify TPA in writing of the Regulator's decision.
- (c) If the Regulator does not give a notice to TPA under clause (b) within 20 business days of receiving a statement from TPA under clause (a), on the 21st business day after receiving the statement from TPA under clause (a), the Regulator is taken to have notified TPA of its decision under clause (b) that the pass through amount and the basis on which the pass through amount is to apply are as specified in the statement given by TPA under clause (a).
- (d) If a *change in taxes event* occurs and TPA is likely to be affected by the *change in taxes event* and does not give the Regulator a statement under clause (a) concerning the *change in taxes event*, the Regulator may decide on a *pass-through amount* and the basis on which the *pass-through amount* is to apply.
- (e) Where under clause (d) the Regulator decides on a negative pass through amount, the Regulator:
  - (1) may decide to require TPA to pass through the *negative pass-through amount* decided by the Regulator on the basis decided by the Regulator; and
  - (2) where the Regulator decides to require TPA to pass through the *negative pass-through amount*, must notify TPA in writing, of the negative pass through amount, the basis on which the negative pass through amount is to apply and the reasons for the Regulator's decision.
- (f) In deciding the pass through amount and the basis on which the pass through amount is to apply under clause (b), (d) or (e), the Regulator must ensure that the financial effect on TPA associated with the *change in taxes event* concerned is economically neutral taking into account:
  - (1) the relative amounts of *Tariffed Transmission Services*;

- (2) the time cost of money for the period over which the pass through amount is to apply;
  - (3) the manner in which and period over which the *pass-through amount* is to apply;
  - (4) the financial effect to TPA associated with the provision of *Tariffed Transmission Services* directly attributable to the *change in taxes event* concerned, and the time at which the financial effect arises;
  - (5) the amount of any change in another tax which, in the Regulator's opinion, was introduced as complementary to the *change in taxes event* concerned;
  - (6) the effect of any other previous *change in taxes event* since the later of the date of:
    - (i) this Access Arrangement; and
    - (ii) the last decision made under clause (b) or (e);
  - (7) any pass through amount applied under this schedule 5 relating to a previous *change in taxes event* which resulted in TPA recovering an amount either more or less than the financial effect on TPA of that previous *change in taxes event*; and
  - (8) any other factors the Regulator considers relevant.
- (g) TPA:
- (1) may, after
    - (A) receipt of a notice from the Regulator or a deemed receipt of a notice under clause (b) as to a *positive pass-through amount*; and
    - (B) notifying users:
      - (i) the *positive pass-through amount* which the Regulator has approved or is deemed to have approved; and
      - (ii) the basis on and date from which TPA will apply the positive pass through amount,

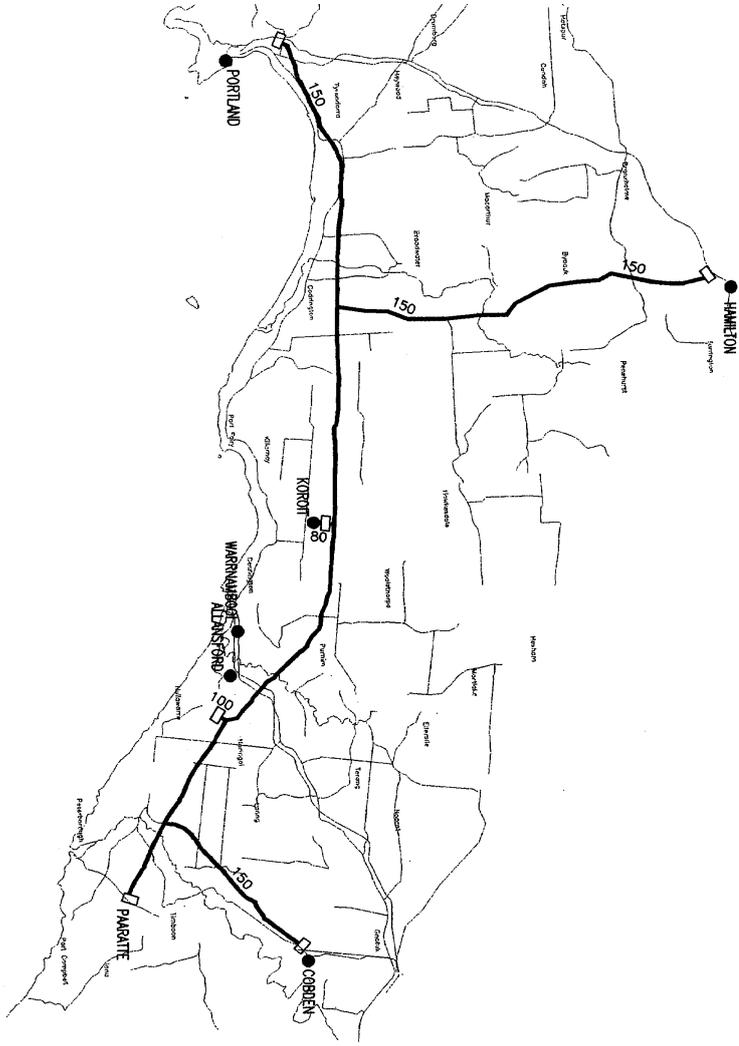
apply the *positive pass-through amount* specified in the notice on the basis indicated in the notice; and
  - (2) must, after receipt of a notice or deemed receipt of a notice from the Regulator, under clause (b), or after receipt of a notice under clause (e) as to a *negative pass-through amount* apply the *negative pass-through amount* on the basis decided by the Regulator.
- (h) The *pass-through amount* must be:
- (1) shown separately on each invoice; or
  - (2) otherwise identified in a manner approved by the Regulator.
- (i) TPA can only seek to reclaim *positive pass-through amounts* in respect of services provided from the time that TPA:
- (1) notified under clause (g)(1)(B); and
  - (2) started showing or identifying the positive pass through amount as required under clause (h).

- (j) A *pass-through amount* applied by TPA in accordance with this schedule 5 is not:
- (1) taken into account in deciding TPA's revenues, *tariffs* or *tariff components* used in the schedule 3 in deciding whether TPA's *tariffs* or *tariff components* comply with the formula in schedule 3; and
  - (2) subject to the procedures in schedule 2.

**Appendix 1**  
**Description of Western Transmission System**

<b>Pipeline Licence</b>	<b>Location/Route</b>	<b>Length km</b>	<b>Pipe Diameter mm</b>
	<b>Western System</b>		
Vic:145	Paaratte to Allansford	33.3	150
Vic:155	Allansford to Portland	100.4	150
Vic:168	Curdievale to Cobden	27.7	150
Vic:171	Codrington to Hamilton	54.6	150

TPA Access Arrangement  
Western Transmission System



	<b>Victoria Transmission System</b> <small>OPERATED BY VICTORIAN ENERGY SERVICES</small>	
	<b>VICTORIAN TRANSMISSION PRELINES</b> <small>COAST PRICING ZONE</small>	<small>PROJECT NUMBER</small> <small>DATE</small>
<small>SCALE</small> <small>1:1000</small>	<small>PROJECT NUMBER</small> <small>14-350-9</small>	<small>DATE</small> <small>14-350-9</small>

**Appendix 2**

**Western Transmission System Agreement**

Refer to separate document.

## Western Transmission System Agreement

**TRANSMISSION PIPELINES AUSTRALIA PTY LTD**  
ACN 079 089 268

**TRANSMISSION PIPELINES AUSTRALIA (ASSETS) PTY  
LIMITED**  
ACN 079 136 413

and

**SHIPPER**  
ACN [       ]

FREEHILL  
HOLLINGDALE  
& PAGE

101 Collins Street Melbourne Victoria 3000 Australia  
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CORRESPONDENT OFFICE IN JAKARTA

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## This Western Transmission System Agreement

is made on 1998 between the following parties:

1. **[Shipper]**  
ACN [ACN number]  
of [address]
2. **Transmission Pipelines Australia Pty Limited**  
ACN 079 089 269  
of 180 Greens Road, Dandenong, Victoria 3175
3. **Transmission Pipelines Australia (Assets) Pty Limited**  
ACN 079 136 413  
of 180 Greens Road, Dandenong, Victoria 3175

Comment [opt6]:

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Comment [opt15]:

### Background:

Whereas:

- A. TPA Assets is the owner of the system of gas transmission pipelines which constitute the Western Transmission System.
- B. To enable TPA to offer services by means of the Western Transmission System, TPA Assets has agreed to grant to TPA, as at 11 December 1997, an operating lease for the Western Transmission System.
- C. Shipper requires gas to be transported through the Western Transmission System.
- D. TPA has agreed to transport that gas under this Agreement.
- E. Shipper has agreed to the terms and conditions for the transportation of the gas under this Agreement.

## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**ACCC** means the Australian Competition and Consumer Commission established under the *Trade Practices Act 1974* (Cth).

**Access Arrangement** means the Western Transmission System Access Arrangement.

**Access Code** means (subject to sections 24A and 24B of the Gas Pipelines Act (Victoria) Act 1998) the Victorian Third Party Access Code for Natural Gas Pipeline Systems.

**Accumulated Imbalance** means the total of Shipper's Daily Imbalances from time to time.

**Act** means the *Gas Industry Act 1994* (Vic) as amended from time to time and includes, on it coming into force in Victoria, the Gas Pipelines Access Law.

**Alternative Supplier** means a gas retailer, a gas producer or another supplier of gas to a major customer, other than Shipper.



**Dispute Resolution Procedure** means the dispute resolution procedure set out in clause 20.

**Financial Breach** means failure by a party (excluding a Material Breach) to pay any amount under this Agreement to another party when due (including any amount payable as compensation or indemnification for any loss or damage suffered by another party which amount has been agreed by the parties or, if disputed, has been determined in accordance with this Agreement).

**Force Majeure Event** means any of the following events:

- (a) the Governor in Council or the Minister proclaims or declares there to be an emergency under Part 6A of the Gas Industry Act 1994, or any like or analogous event;
- (b) the Office of Gas Safety issues a direction under section 149 of the Gas Industry Act 1994, or any like or analogous event; or
- (c) an event that is:
  - (1) neither anticipated nor controllable by the parties; and
  - (2) restricted to acts of nature, government interventions and acts of war; or
- (d) any like or analogous event.

**Gas Transmission System** has the same meaning as in the Act.

**GJ** stands for “Gigajoule” and is equal to one thousand million Joules (1,000,000,000J).

**Good Operating Practice** has the meaning given in clause 11.2.

**Heating Value** means the heating value for the Western Transmission System determined in accordance with the Regulations until repealed and thereafter as prescribed by Order in Council.

**Insolvency Event** means the happening of any of these events in relation to any party:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate whilst solvent on terms approved by the other parties, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolves itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other parties, or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the Corporations Law, a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is or makes a statement from which it may be reasonably deduced by the other parties that the body corporate is, the subject of an event described in section 459C(2) or section 585 of the Corporations Law;

*Third Party Access Code - Western Transmission Systems*

- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator or controller (as defined in the Corporations Law) is appointed to a body corporate;
- (i) a controller (as defined in the Corporations Law) is appointed in respect of any part of the property of the body corporate;
- (j) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Interrupt** means to prevent or restrict Shipper from utilising Capacity in excess of Contracted Capacity.

**J** stands for “Joule” and means a unit of energy as defined in AS 1000 - 1979 “The International System of Units (SI) and its Application”.

**kPa** stands for **kilopascal** and is equal to one thousand pascals as defined in Australian Standard AS1000-1979 "The International System of Units (SI) and its Application" and, unless otherwise specified, refers to a gauge pressure in excess of the atmospheric pressure.

**Major Customer** means any of Shipper’s non-franchise customers as at the Commencement Date.

**Market Carriage** is as defined in the Access Code.

**Market Participant** is as defined in the MSO Rules.

**Material Breach** means a breach (excluding a Financial Breach) by a party having, or reasonably expected to have, a material adverse effect on any other party’s ability to:

- (a) obtain and enjoy its primary rights and benefits under this Agreement; or
- (b) comply with any regulatory, legislative, licence or permit obligation.

**Maximum Receipt Pressure** means a maximum gas injection pressure at the Receipt Point of 9890 kPa.

**MDQ** stands for “Maximum Daily Quantity”.

**MDQDP** stands for “Maximum Daily Quantity Delivery Point” and means the MDQ at a Delivery Point as specified below:

[ ]

**MDQRP** stands for “Maximum Daily Quantity Receipt Point” and means the MDQ at the Receipt Point as specified below:

- (a) [ ]
- (b) [ ]
- (c) [ ]
- (d) [ ]
- (e) [ ]

**Measuring Equipment** means gas meters, instruments, computer hardware and software, associated circuitry and any other equipment necessary to establish the qualities (or any of them) or Quantity of gas.

**MHQDP** stands for “Maximum Hourly Quantity Delivery Point” and means the MHQ at a Delivery Point as specified below:

- (a) [ ]
- (b) [ ]
- (c) [ ]
- (d) [ ]
- (e) [ ]

**Minimum Receipt Pressure** means a minimum gas receipt pressure at the Receipt Point of 4927 kPa absolute.

**Minimum Delivery Pressure** means the minimum gas delivery pressure specified below at the following Delivery Points:

- (a) 3,500 kPa at Cobden;
- (b) 2,800 kPa at Hamilton;
- (c) 3,200 kPa at Koroit;
- (d) 2,800 kPa at Portland; and
- (e) 3,600 kPa at Allensford.

**Minister** means the Minister responsible for the time being for administering the Act.

**MSO Rules** means the Market and System Operations Rules made under section 48N of the Act.

**Pipelines Act** means the *Pipelines Act 1967 (Vic)* and, in relation to a pipeline connected to the Western Transmission System, includes the equivalent legislation in any State or offshore area adjoining Victoria.

**Quantity** means, in relation to gas, the energy content of that gas expressed in GJs calculated by multiplying its volume in cubic meters at a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kPa by its Heating Value.

**Receipt Point** means the upstream flange face of the first actuated slam shut valve immediately upstream from the measuring station.

**Records** means such records, data and other information as may otherwise be reasonably necessary to enable a party to comply promptly and fully with its obligations under this Agreement.

**Reduction MDQ** means the amount by which a Major Customer’s Contract MDQ has been reduced as described in clause 4.4(a).

**Reference Tariff** means, in relation to any part of the Services the tariff which corresponds to that part of the Services as specified in the Access Arrangement as approved by the Relevant Regulator, being the tariff for the part of the Services calculated by applying the Western Transmission System Access Arrangement.

**Regulations** means the Gas and Fuel Corporation (Supply) Regulations 1988 (Vic).

**Regulatory Instrument** means any code, rules or sub-code regulating the gas industry in Victoria, or elsewhere if applicable, whether made under:

- (a) the Act; or

(b) other applicable legislation having jurisdiction over the relevant party.

**Related Body Corporate** means an entity which is related to another entity within the meaning of section 50 of the Corporations Law.

**Relevant Delivery Point** means the Delivery Point from which gas is withdrawn by Shipper to supply a Major Customer.

**Relevant Regulator** has the same meaning as in the Access Code.

**Representative**, in relation to a party, means any employee, agent, trustee, permitted assignee, liquidator, administrator, Related Body Corporate, third party contractor or any representative of that party.

**Safety Case** is as referred to in Part 3 Division 2 of the Gas Safety Act 1997 (Vic).

**Service** means:

- (a) a service to be provided by TPA under clause 3.1; or
- (b) any other service in respect of the Western Transmission System which TPA may agree to provide to Shipper under this Agreement.

**Service Charge** means a charge for a Service in accordance with the Western Transmission System Access Arrangement.

**Service Envelope Agreement** means the Agreement between TPA, TPA Assets and VENCORP entered into pursuant to clause 5.3.1 of the MSO Rules.

**Specifications** means the gas quality specifications prescribed by the Regulations.

**stcum/hr** means standard cubic metres per hour.

**Tariffed Transmission Service** has the same meaning as in the Western Transmission System Access Arrangement.

**TPA** means Transmission Pipelines Australia Pty Limited (ACN 079 089 268).

**TPA Assets** means Transmission Pipelines Australia (Assets) Pty Limited (ACN 079 136 413).

**VENCORP** means Victorian Energy Networks Corporation, established under the Gas Industry Act 1994.

**Western Transmission System** is as described in the Western Transmission System Access Arrangement.

**Western Transmission System Access Arrangement** means the arrangement for access for third parties to the Western Transmission System as amended from time to time lodged by TPA and TPA Assets with the ACCC for approval under section 2.2 of the Access Code.

## **1.2 Interpretation**

In this Agreement, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise:

- (a) words in the singular include the plural and the other way around;
- (b) words of one gender include any gender;
- (c) if a word or phrase is defined, another grammatical form of that word or phrase has a corresponding meaning;

*Third Party Access Code - Western Transmission Systems*

- (d) an expression indicating a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a governmental agency;
- (e) a reference to a party to this Agreement includes that party's executors, administrators, successors and permitted assigns;
- (f) a promise or agreement by 2 or more persons binds them jointly and individually;
- (g) a promise or agreement in favour of 2 or more persons is for the benefit of them jointly and individually;
- (h) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit or schedule;
- (i) a reference to a thing (including, but not limited to, a right) includes any part of that thing;
- (j) a reference to a right includes a remedy, power, authority, discretion or benefit;
- (k) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (l) a reference to an agreement other than this Agreement includes an undertaking, agreement, deed or legally enforceable arrangement or understanding, whether or not in writing;
- (m) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (n) examples are descriptive only and not exhaustive;
- (o) a provision of this Agreement must not be construed against a party solely because the party was responsible for preparing this Agreement or that provision;
- (p) a reference to a body, other than a party to this Agreement (including, but not limited to, an association, authority, corporation, body corporate or institution), whether statutory or not:
  - (1) which ceases to exist;
  - (2) is reconstituted, renamed or replaced; or
  - (3) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which serves substantially the same purposes or has the same powers or functions;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (s) in cases where a party is required or undertakes to use its best efforts in the performance of an obligation, the provision is to be interpreted as requiring that party to use its best endeavours in relation to the performance of that obligation, but not as requiring that party to take any action unrelated or additional to its obligations under this Agreement.

Comment [opt16]: Page: 1

Comment [opt17]: Page: 7

### **1.3 Inconsistency between Agreement and incorporated document**

If any provision in a schedule to this Agreement is inconsistent with any provision of this Agreement, the provision of this Agreement must prevail.

## **2. Term**

Subject to the other provisions of this Agreement, this Agreement:

- (a) commences at 9.00 am on the Commencement Date; and
- (b) expires at 9.00 am 10 years from the Commencement Date.

## **3. Provision of Services**

### **3.1 Services**

Subject to sub-clause (b):

- (a) TPA must:
  - (1) receive on a Day a Quantity of gas at the Receipt Point up to (but not exceeding) Shipper's MDQRP;
  - (2) deliver to Shipper on a Day a Quantity of gas at each Delivery Point up to (but not exceeding) Shipper's MDQDP at that Delivery Point; and
  - (3) maintain the Western Transmission System so that it is capable of receiving and delivering to Shipper the Quantity of gas which Shipper may require receipt and delivery of under clause 4; and
- (b) TPA is not obliged to:
  - (1) deliver to Shipper in excess of the Quantity determined under this clause;
  - (2) deliver to Shipper the Quantity of gas determined under this clause if TPA has received off-Specification gas at the Receipt Point, but it must use its best efforts to do so, subject to clause 10 and sub-clause (3)(iii);
  - (3) receive gas from Shipper at the Receipt Point if:
    - (i) receipt of that gas would exceed Shipper's MDQRP at the Receipt Point;
    - (ii) TPA is entitled to Curtail or Interrupt any Capacity under this Agreement;
    - (iii) TPA considers as a reasonable and prudent person that it would be unsafe or would jeopardise the integrity of the Western Transmission System to do so;
    - (iv) the gas is off-Specification gas;
    - (v) the gas is supplied at less than the Minimum Receipt Pressure; or
    - (vi) Shipper is otherwise in default under this Agreement and has not rectified the default within 7 days of being notified by TPA of such default.

### **3.2 Sub-contract**

Shipper acknowledges that TPA may sub-contract the performance of all or some of the Services to VENCORP.

### **3.3 TPA Assets' agreement**

TPA Assets agrees to allow the Western Transmission System to be utilised as contemplated by this Agreement.

## **4. Rights and obligations of Shipper**

### **4.1 Shipper's entitlement to take gas**

Subject to the other provisions of this Agreement, on each Day, Shipper may:

- (a) supply on a Day a Quantity of gas at the Receipt Point up to (but not exceeding) Shipper's MDQRP; and
- (b) take up to the aggregate Quantity of gas that TPA has received from Shipper at the Receipt Point on that Day.

### **4.2 Qualification to Shipper's entitlement to take gas**

On each day, Shipper may not take any gas:

- (a) if at any time, the delivery of the gas would cause the pressure at a Delivery Point to fall below its Minimum Delivery Pressure;
- (b) if Shipper has supplied gas at the Receipt Point at a pressure less than the Minimum Receipt Pressure for the Receipt Point, unless otherwise agreed by the parties; or
- (c) unless Shipper has supplied gas at the Receipt Point at a flow rate which is sufficient to ensure the maintenance of the Minimum Receipt Pressure but does not allow the Maximum Receipt Pressure to be exceeded.

### **4.3 Daily load variation profile**

On each Day, Shipper must use its best efforts to supply gas at the Receipt Point at an approximately uniform flow rate throughout the Day, provided that Shipper is not required to take any action outside any constraints in its existing supply arrangements with Basin Oil NL in respect of the Western Transmission System.

### **4.4 Reduction in Contractual Capacity and MDQ and MHQ**

- (a) If during the term of this Agreement:
  - (1) the Contract MDQ/Contract MHQ of any Major Customer of Shipper is reduced below the level of that Major Customer's Contract MDQ/Contract MHQ at the date of this Agreement; and
  - (2) the Major Customer has entered into a gas supply contract for the supply of all or some of the Reduction MDQ with an Alternative Supplier; and
  - (3) the gas to be supplied by the Alternative Supplier under the gas supply contract will be injected into and withdrawn from the Western Transmission System either by the Major Customer or the Alternative Supplier pursuant to an agreement with TPA;

then Shipper may elect by written notice to TPA to reduce the level of its Contracted Capacity by reducing the MDQ and MHQ applicable to the Receipt Point applicable to the relevant Major Customer and the MDQ and MHQ applicable to the Relevant Delivery Point applicable to the relevant Major Customer by up to the Reduction MDQ. The MHQ applicable to the Receipt Point and Relevant Delivery Point will be reduced correspondingly.

- (b) If Shipper gives TPA a notice under this clause, the level of Contracted Capacity and the MDQ and MHQ of the Receipt Point and the Relevant Delivery Point will be reduced accordingly.

## **5. Forecasts and nomination of receipts and deliveries**

### **5.1 Shipper to provide forecasts**

Shipper must provide to TPA not less than (30 Days before the start of each Contract Year and such other times as are agreed, written notice to TPA of its reasonable reservations and growth projections for the next 5 Contract Years. Such reservations and growth projections:

- (a) are indicative only and not binding on any party; but
- (b) must be made and given in good faith based on relevant accurate historical information.

### **5.2 Nomination procedure**

(a) If TPA reasonably considers that, after the date of this Agreement, it becomes necessary for the efficient operation of the Western Transmission System to require Shipper to comply with the nomination procedure set out in the following provisions of this clause:

- (1) TPA may provide Shipper with written notice that it so wishes; and
- (2) the following provisions of this clause apply thereafter.

(b) The parties acknowledge that for the purposes of clause 5.2(a), the following are examples of circumstances which will allow TPA reasonably to require Shipper to comply with the nomination procedure:

- (1) interconnection of the Western Transmission System with another pipeline;
- (2) installation of compression in relation to the Western Transmission System; or
- (3) the existence of other shippers on the Western Transmission System.

(c) Shipper must use its best efforts to comply with the nomination procedure.

### **5.3 Monthly nominations**

In respect of any Contract Month, Shipper must not less than 1 Day before the commencement of that Contract Month, give to TPA a nomination of the Quantity of gas for that Contract Month to be:

- (a) supplied by Shipper to TPA at the Receipt Point on a daily basis for that Contract Month; and
- (b) delivered by TPA to Shipper at each Delivery Point on a daily basis for that Contract Month.

### **5.4 Variation of nominations by Shipper**

Shipper may vary its nomination under clause 5.3 in respect of any Day not less than 19 hours before the start of that Day (ie. not later than 2.00 pm on the Day preceding the Day to which the variation is to apply).

### **5.5 Renominations by Shipper**

- (a) Shipper may renominate its nominations under clause 5.3 (as varied under clause 5.4) in respect of a Day at any time between 2.00 pm on the preceding Day and the conclusion of the Day.
- (b) Subject to clauses 3 and 4, TPA must use its best efforts to accommodate any renominations under sub-clause (a).

- (c) If TPA is unable despite using its best efforts under sub-clause (b) to accommodate any renominations under sub-clause (a), a renomination is deemed not to have been made by Shipper under sub-clause (a).

#### **5.6 Correction of daily imbalances**

Unless TPA otherwise agrees, Shipper must on a daily basis use its best efforts to:

- (a) eliminate any Accumulated Imbalance and to remain in balance for that Day; and
- (b) ensure that the Quantity of gas supplied at the Receipt Point is commensurate with the Quantity of gas nominated under clause 5.3, varied under clause 5.4 or renominated under clause 5.5 in relation to the Receipt Point.

### **6. Trading policy**

#### **6.1 Trade**

Shipper may transfer or assign all or part of its rights to a Service, including its Contracted Capacity:

- (a) without TPA's consent in the circumstances set out in clause 6.2; and
- (b) with TPA's consent in the circumstances set out in clause 6.3 and subject to the conditions set out in clause 6.4.

#### **6.2 Bare Assignment**

Shipper may assign all or part of its rights to a Service, including its Contracted Capacity without TPA's consent, provided that after the transfer or assignment:

- (a) Shipper's obligations under this Agreement remain in full force and effect;
- (b) TPA is not in any way placed in a contractual or legal relationship with the assignee or transferee;
- (c) TPA will continue to deal exclusively with Shipper in respect of contractual matters; and
- (d) the terms of this Agreement (including any Service Charges payable) are not altered as a result of the transfer or assignment.

In these circumstances, the transfer or assignment will be described as a Bare Assignment.

#### **6.3 Other transfers**

- (a) Shipper may with TPA's prior written consent, transfer or assign all or part of its rights to a Service, including its Contracted Capacity on terms other than those set out in clause 6.2 where commercially and technically reasonable.
- (b) TPA must not unreasonably withhold its consent if the transferee or assignee is, in TPA's reasonable opinion, reputable and creditworthy.

#### **6.4 Deeds of novation**

A transfer or assignment by Shipper pursuant to clause 6.3 is conditional upon and is not binding until TPA has been furnished with an executed copy of a deed in a form acceptable to TPA, under which:

- (a) the transferee and TPA are deemed to enter into a new contract on the same terms as contained in this Agreement but having rights and obligations corresponding to the rights which are assigned by Shipper; and

- (b) Shipper is relieved of its liability to perform the obligations attaching to the rights which are assigned by Shipper, but without prejudice to all obligations and liabilities of Shipper which have by then accrued and remain unsatisfied in respect of those assigned rights.

#### **6.5 Change of points**

- (a) Where commercially and technically reasonable, Shipper must be permitted to change a Delivery Point or Receipt Point from that specified in this Agreement for a Service with TPA's prior written consent.
- (b) TPA may:
  - (1) withhold its consent referred to in sub-clause (a) only on reasonable commercial or technical grounds; and
  - (2) make its consent subject to conditions only if they are reasonable on commercial or technical grounds.

#### **6.6 Security rights**

Nothing in this Agreement prevents Shipper from pledging, mortgaging, encumbering or assigning by way of security its rights under this Agreement for a Service, provided that the chargee or mortgagee must acknowledge in writing to TPA that upon it realising its charge or mortgage, it will be bound by the terms of this Agreement.

### **7. Rights to Curtail and Interrupt**

#### **7.1 Curtailment**

Subject to the following provisions of this clause 7, TPA may Curtail Shipper as provided in clauses 8 and 9.

#### **7.2 Interruption**

Despite any provision in this Agreement, TPA may Interrupt Shipper at any time and must use its best efforts to provide Shipper where practicable with prior (and otherwise prompt subsequent) notice, but TPA's right to Interrupt Shipper is not conditional on the giving of such notice.

#### **7.3 Priority**

Except in the circumstances set out in clause 9, TPA must Interrupt Shipper before Curtailing Shipper.

#### **7.4 TPA to advise**

Subject to the other provisions of this Agreement, as soon as TPA becomes aware of any possible or actual Curtailment, TPA must advise Shipper of:

- (a) the nature of the Curtailment;
- (b) the likely effects, extent and severity of the Curtailment;
- (c) the expected time of resumption of the Services; and
- (d) whether any assistance is required from Shipper, in which case, Shipper must use its best efforts to render such assistance.

#### **7.5 TPA not liable**

TPA is not liable for any injury, loss or damage arising from any action it takes as a reasonable and prudent person under clauses 7, 8 or 9 in, or arising out of or connected with, any Curtailment or Interruption.

## **7.6 Shipper's liability**

Shipper is liable for, and indemnifies TPA (and their directors, employees, agents and contractors) against, any loss, costs, charges and expenses suffered or incurred by TPA (or any of their directors, employees, agents or contractors) arising directly or indirectly from:

- (a) Shipper utilising Capacity in excess of Contracted Capacity; or
- (b) any failure or unreasonable delay by Shipper to comply with any advice given to Shipper by TPA under clause 7.4.

## **8. Curtailment during maintenance**

### **8.1 TPA's rights**

Notwithstanding TPA's obligations to provide Services, TPA may Curtail Shipper in order to effect any repairs, testing, maintenance, replacement or upgrading or any other work which will require interruptions to the receipt or delivery of gas to or from the Western Transmission System, provided that:

- (a) any such work is reasonably required;
- (b) TPA notifies Shipper in writing of its intention to Curtail at least 5 Business Days before the Curtailment; and
- (c) TPA makes reasonable efforts to minimise the period in which Shipper is Curtailed.

### **8.2 Shipper's obligations**

Shipper must use reasonable efforts to ensure that it complies with any reasonable requirement set out in TPA's notice referred to in clause 8.1.

## **9. Non-maintenance Curtailment**

### **9.1 Emergency action**

Each party agrees to act cooperatively and in good faith in taking emergency action and in the interests of safety to enable mutual compliance with:

- (a) the Act;
- (b) the Gas Safety Act 1997;
- (c) all Regulatory Instruments; and
- (d) each party's Safety Case.

### **9.2 Safety Case**

Each party undertakes to use reasonable endeavours to do all things necessary to comply with its Safety Case.

### **9.3 TPA's Rights**

Despite any provision of this Agreement, in an emergency or during a Force Majeure Event, TPA may without notice to any other person, do all things which it considers necessary to remedy the emergency, Force Majeure Event including without limitation:

- (a) entering onto any land or premises;
- (b) stopping, disconnecting or reducing any gas flow;
- (c) Curtailing any Contracted Capacity;

- (d) refusing to deliver any gas; or
- (e) refusing to receive any gas.

#### **9.4 Notification of emergency or Force Majeure**

TPA must as soon as practicable after determining that an emergency or Force Majeure Event exists, advise Shipper of the emergency or Force Majeure Event if Shipper is affected by it or by TPA's actions in dealing with it but a failure to give such advice does not limit TPA's powers under clause 9.3.

#### **9.5 Removal of equipment etc**

TPA must within a reasonable time after the emergency or Force Majeure Event has been dealt with, remove itself and any person, machinery, equipment or thing under its control which it has used to respond to the emergency or Force Majeure Event from any land or premises into which it entered under clause 9.3(a).

#### **9.6 TPA not liable**

Despite any provision of this Agreement, TPA is not liable for any injury, loss, or damage arising from any action each takes as a reasonable and prudent person under this clause in, or arising out of or connected with, dealing with an emergency or Force Majeure Event.

### **10. Gas quality**

#### **10.1 Gas at Receipt Point to conform to Specification**

Subject to the other provisions of this clause 10, all gas supplied by Shipper at the Receipt Point must conform to the Specification.

#### **10.2 Specification of gas delivered**

Subject to the other provisions of this clause 10, all gas delivered by TPA to a Delivery Point must conform with the Specification.

#### **10.3 Off-Specification gas**

TPA is not obliged to receive any gas at the Receipt Point which does not conform with the Specification and notwithstanding receipt of such gas pursuant to clause 10.4, TPA:

- (a) may immediately terminate receipt of such gas as soon as it becomes aware of it; and
- (b) incurs no liability whatsoever to Shipper for any loss or damage or financial or other consequences arising from its refusal to accept off-Specification gas.

#### **10.4 TPA to notify**

- (a) If TPA reasonably expects that gas received by TPA at the Receipt Point will fail at any time to conform with the Specification, TPA:
  - (1) must promptly notify Shipper in writing of such failure as soon as it reasonably expects such failure; and
  - (2) subject to clause 10.7, may at its option:
    - (i) continue to receive such gas; or
    - (ii) immediately terminate the receipt of such gas (in which case TPA must advise Shipper of that action as soon as possible after the termination) and direct Shipper to suspend the supply of such gas into the Western Transmission System.

- (b) If TPA becomes aware that gas received by TPA at the Receipt Point fails at any time to conform with the Specification, TPA:
  - (1) must promptly notify Shipper in writing of such failure as soon as it becomes aware of it; and
  - (2) subject to clause 10.7, may at its option:
    - (A) continue to receive such gas; or
    - (B) immediately terminate the receipt of such gas (in which case TPA must advise Shipper of that action as soon as possible after the termination) and direct Shipper to suspend the supply of such gas into the Western Transmission System.

### **10.5 Shipper to notify**

- (a) If Shipper:
  - (1) reasonably expects that gas supplied by Shipper at the Receipt Point will fail at any time to conform with the Specification and still wishes to have the gas transported by TPA, Shipper must promptly notify TPA in writing of such failure as soon as it reasonably expects such failure; or
  - (2) becomes aware that gas supplied by Shipper at the Receipt Point fails at any time to conform with the Specification and still wishes to have the gas transported by TPA, Shipper must promptly notify TPA in writing of such failure as soon as it becomes aware of it,

giving particulars of the extent by which the gas will differ from the Specification and (if known by Shipper at the time of the notice) the expected duration of the supply of off-Specification gas so as to give TPA a reasonable period of time before the proposed failure takes place to decide whether to elect to receive such proposed off-Specification gas into the Western Transmission System

- (b) TPA must notify Shipper whether TPA will, in its sole discretion, receive such off-Specification gas within a reasonable time after receipt of Shipper's notice under clause 10.5(a) so as to enable Shipper to prevent the supply of the off-Specification gas.
- (c) If TPA elects to receive off-Specification gas:
  - (1) the parties will agree the terms on which TPA will receive such off-Specification gas; and
  - (2) TPA may deliver to Shipper and any other user at any Delivery Point gas having different specifications from the specifications of the off-Specification gas supplied by Shipper to TPA at the Receipt Point.

### **10.6 Procedures in respect of off-Specification gas**

- (a) TPA and Shipper may agree on specific procedures setting out the action required by each party in the event of off-Specification gas being supplied by Shipper at the Receipt Point.
- (b) TPA must as soon as practicable after becoming aware that off-Specification gas is in or is likely to be supplied into the Western Transmission System by any user, advise Shipper if TPA is of the view that Shipper is likely to be affected by such off-Specification gas or by TPA's actions in dealing with such off-Specification gas. In any event, TPA must promptly notify Shipper in writing if it reasonably expects that gas delivered or to be delivered to Shipper at any Delivery Point fails or will fail to conform with the

Specification. However, a failure to give such advice or notice does not limit TPA's power to deal with such off-Specification gas. Such advice may require Shipper to use its best efforts to assist TPA in dealing with such off-Specification gas, including without limitation, taking of such off-Specification gas by Shipper in circumstances where this does not have a material adverse effect on Shipper.

### **10.7 Shipper responsible for off-Specification gas**

If Shipper supplies off-Specification gas at the Receipt Point, Shipper continues to be liable for all charges as if gas in accordance with the Specification had been made available for transmission in the Western Transmission System. Unless TPA notifies Shipper under clause 10.5(b) that it will accept off-Specification gas, Shipper is also liable for any loss or damage or financial or other consequences incurred by TPA, arising from the receipt or delivery of off-Specification gas supplied by Shipper, and TPA at Shipper's expense may take any necessary action to resolve any problems arising therefrom. Shipper will hold harmless and indemnify TPA, any person contracting with TPA who is affected by Shipper's supply of off-Specification gas at the Receipt Point (except Shipper) and their respective officers, employees and agents from and against all liabilities and expenses for, under or in connection with any claim, demand, action, proceeding, notice or order whatsoever made or brought by any person in relation to the receipt or delivery by TPA of off-Specification gas supplied by Shipper.

### **10.8 Odourisation**

TPA may:

- (a) odourise any gas in the Western Transmission System before its delivery, including gas which has already been odourised by Shipper; and
- (b) include the cost of odourisation in its operations and maintenance costs for the purposes of determining the TPA Service Charges.

## **11. Performance levels**

### **11.1 Undertaking as to performance**

The standard of performance required of TPA under this Agreement (including without limitation clause 3.1) is that commensurate with Good Operating Practice.

### **11.2 Good Operating Practice**

Good Operating Practice means:

- (a) the exercise of that degree of skill, diligence and foresight consistent with the safe operation and prudent practices that reasonably would be accepted by a significant proportion of the providers of pipeline services in Australia equivalent to the Services provided under this Agreement; and
- (b) compliance with any minimum standards applicable under:
  - (1) this Agreement; and
  - (2) applicable Regulatory Instruments and Australian Standards.

## **12. Insurances**

### **12.1 Maintenance of policies by Shipper**

Shipper must procure and maintain at its own expense, the following insurances with reputable insurers:

- (a) workers compensation insurance in accordance with statutory requirements;
- (b) public and product liability insurance for an amount of not less than \$[ ] providing indemnity against risk of damage, death or injury to property or personnel of TPA and third parties.

### **12.2 Maintenance of policies by TPA**

TPA must procure and maintain at its own expense, the following insurances with reputable insurers:

- (a) workers compensation insurance in accordance with statutory requirements; and
- (b) public and product liability insurance for an amount of not less than \$[ ] providing indemnity against risk of damage, death or injury to property or personnel of Shipper and third parties.

### **12.3 Evidence of insurance**

Either Shipper or TPA must, if and when requested by the other party, provide that other party with evidence of the policies of insurance the party is required to effect, specifying the type of coverage and the expiration date of each policy referred to in this clause.

## **13. Payment of Service Charges**

### **13.1 Payment by Shipper**

Shipper must pay TPA the Service Charge calculated in accordance with the following provisions of this clause.

### **13.2 Applicable Service Charges**

Notwithstanding any other provision of this Agreement but subject to clause 13.3, the Service Charges payable by Shipper as from the Commencement Date in respect of the Services or any part thereof will be determined as follows:

- (a) where there is an applicable Reference Tariff, the applicable Reference Tariff; and
- (b) where there is no applicable Reference Tariff, the applicable charges set out in this Agreement.

### **13.3 Manner of billing and payment of Service Charges**

The manner of billing and payment of the Service Charge is set out in Schedule 1.

### **13.4 Charging information**

Shipper must provide to TPA, at TPA's request, any reasonable information required by TPA to charge and invoice Shipper under this Agreement.

## **14. Compliance**

### **14.1 Applicable laws**

Each party must comply with all applicable laws in the exercise of its rights and the performance of its obligations under this Agreement.

### **14.2 Regulatory Instruments**

Each party:

- (a) acknowledges that the other parties have obligations under the Act, the Pipelines Act and the Regulatory Instruments; and

- (b) agrees to co-operate with and assist the other parties to the extent reasonably necessary to enable the other parties to comply with any obligation imposed on the other parties under the Act, the Pipelines Act and the Regulatory Instruments.

## **15. Measurement**

### **15.1 Receipt Point Measuring Equipment**

The parties acknowledge that the qualities and Quantity of gas received at the Receipt Point under this Agreement will be as measured by the Measuring Equipment at the Receipt Point which is supplied, installed, operated and maintained under a Measurement Services Deed between the parties dated on or about the date of this Agreement.

### **15.2 Delivery Point Measuring Equipment**

The parties acknowledge that the qualities and Quantity of gas delivered at each Delivery Point under this Agreement will be as measured by the Measuring Equipment at each Delivery Point which is supplied, installed, operated and maintained under the Connection Agreement between TPA, TPA Assets and Shipper dated on or about the date of this Agreement.

### **15.3 Inspection of Measuring Equipment**

- (a) Shipper may at all reasonable times, by giving reasonable prior notice to TPA:
  - (1) inspect the Measuring Equipment and records at the Receipt Point or any Delivery Point; and
  - (2) arrange for calibration (to the extent which TPA is capable) at any Delivery Point of any Measuring Equipment Shipper reasonably believes to be inaccurate. The cost of such calibration will be borne by:
    - (A) Shipper if the Measuring Equipment is found to be accurate within the billing correction limits set out in the procedure referred to in clause 15.4; and
    - (B) TPA if it is found to be outside any of those billing correction limits.
- (b) If arising from such calibration the Measuring Equipment is found to be in error in excess of the billing correction limit specified in the procedures referred to in clause 15.4 such that the total measurement error for the Delivery Point exceeds the prescribed value, then TPA must:
  - (1) adjust the total Quantity of gas measured at that Delivery Point; and
  - (2) issue a correction to Shipper's invoice,for the period when the Measuring Equipment was in error.

### **15.4 Measuring Equipment calibration procedures**

TPA will publish and keep up to date a calibration manual setting out the calibration and accuracy verification procedures, re-calibration limits, billing correction limits, and procedures for correction of the reading of any Measuring Equipment found during any test to be inaccurate or inoperative. Such procedures will:

- (a) be in accordance with generally accepted industry practice for the appropriate type of equipment; and
- (b) conform to applicable Australian and internationally recognised industry standards and codes.

### **15.5 Billing**

Quantities of gas delivered to Shipper at each Delivery Point for billing purposes under this Agreement is determined:

- (a) by the Measuring Equipment at each Delivery Point; or
- (b) by TPA on a reasonable basis if such equipment fails to adequately determine such Quantities.

### **15.6 Extra Measuring Equipment**

- (a) Subject to sub-clause (b), the quality of gas delivered to each Delivery Point is deemed to be the same as that determined by the Measuring Equipment at the Receipt Point.
- (b) If gas is received into the Western Transmission System at a receipt point other than the Receipt Point such that extra Measuring Equipment is required to determine the quality of gas delivered at the Delivery Points, TPA must consult with Shipper and the other person from whom that gas is to be received in an endeavour to agree a fair and equitable basis for the payment of charges associated with that extra Measuring Equipment, before such gas is received into the Western Transmission System.

## **16. Limitation of liability and indemnity**

### **16.1 Shipper's liability**

- (a) Subject to section 32 of the Act, Shipper is liable for, and indemnifies TPA and TPA Assets (and their directors, employees, agents and contractors) against, any loss, costs, charges and expenses suffered or incurred by TPA or TPA Assets or their directors, employees, agents and contractors arising directly from:
  - (1) the negligence of Shipper or its contractors and their employees, officers or servants in performing its obligations under this Agreement; and
  - (2) any breach by Shipper of an obligation of Shipper under this Agreement.
- (b) For the avoidance of doubt, the liability of Shipper and the indemnity under clause 16.1(a) does not extend to any indirect or consequential loss, costs, charges or expenses suffered or incurred by TPA or TPA Assets.
- (c) To the extent permitted by law, each of TPA and TPA Assets releases Shipper from all liabilities whether arising under this Agreement or otherwise, except to the extent this clause imposes a liability on Shipper.

### **16.2 TPA's liability**

- (a) Subject to section 33 of the Act, TPA is liable for, and indemnifies Shipper (and its directors, employees, agents and contractors) against, any loss, costs, charges and expenses suffered or incurred by Shipper (or its directors, employees, agents and contractors) arising directly from:
  - (1) the negligence of TPA or its contractors and their employees, officers or servants in performing its obligations under this Agreement; and
  - (2) any wilful breach by TPA of an obligation of TPA under this Agreement.
- (b) For the avoidance of doubt the liability of TPA and the indemnity under clause 16.2(a) does not extend to any indirect or consequential loss costs, charges or expenses suffered or incurred by Shipper.

*Third Party Access Code - Western Transmission Systems*

- (c) To the extent permitted by law, Shipper releases TPA from all liabilities whether arising under this Agreement or otherwise, except to the extent this clause imposes a liability on TPA.

**16.3 Separate obligations and expenses**

- (a) Any indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- (b) (b) Costs, fees and expenses of a party covered by indemnification from another party include reasonable legal expenses, fees and charges incurred by the indemnified party.

**16.4 Settlement of claims**

A party must not agree to settle any claim by a third party for which the party claims indemnity under this Agreement without first obtaining the consent of the other parties.

**16.5 Specific performance**

Nothing in this clause limits the right of the parties to enforce the Agreement by seeking an order for specific performance in any Court of competent jurisdiction.

**16.6 Survival**

This clause:

- (a) survives the termination of this Agreement; and
- (b) is not severable from this Agreement.

**17. Records**

**17.1 Type of records**

Each party must maintain Records.

**17.2 Form**

Records may be maintained in writing or electronically.

**17.3 Retention**

Records must be maintained by a party:

- (a) so long as required by law, or any Regulatory Instrument or longer if required by this Agreement; and
- (b) in any event:
  - (1) for a minimum of 7 years; or
  - (2) as otherwise agreed between the parties.

**17.4 Notice of disposal**

- (a) A party must give the other parties not less than 21 days prior notice of its intention to dispose of any:
  - (1) original Records; or
  - (2) copy of Records where the party does not have or intend to retain the original or a copy.

- (b) Another party may:
  - (1) collect such Records within that period; and
  - (2) use those Records in its business.

## **18. Force Majeure**

### **18.1 General position**

Non-performance (other than the obligation to pay money) of any obligation or condition required by this Agreement to be performed due to a Force Majeure Event by any party:

- (a) will be excused during the time and to the extent that performance is prevented, wholly or in part, by a Force Majeure Event; and
- (b) will not to that extent give rise to any liability to the other parties for any losses or damages arising out of, or in any way connected with such non-performance.

### **18.2 Payment or notification**

The parties will not be relieved by a Force Majeure Event from liability to pay monies due in relation to Services already rendered or to give any notice which may be required to be given pursuant to this Agreement.

### **18.3 Notification to other parties**

Except as set out in this Agreement, if a party seeks relief from performance of an obligation or condition under this Agreement due to a Force Majeure Event, the party must:

- (a) as soon as reasonably practicable but in any event within 2 Business Days of becoming aware of the Force Majeure Event, give notice to the other parties of the occurrence of the event or circumstance claimed to be a Force Majeure Event, including:
  - (1) full particulars relating to the event or circumstance and the cause of such failure to perform; and
  - (2) an estimate of the period of time required to remedy such failure to perform;
- (b) render the other parties reasonable opportunity and assistance to examine and investigate the event or circumstance and the matters which caused the event or circumstance and failure to perform;
- (c) exercise reasonable efforts to mitigate or remove the effects of the event or circumstance but excluding any measures which are not economically feasible for the parties; and
- (d) give notice immediately to the other parties upon termination of the Force Majeure Event or circumstance.

### **18.4 Industrial disturbance**

Nothing in this Agreement requires a party to adjust or settle any strike, lockout or other industrial disturbance against the will of that party.

### **18.5 Right to terminate**

If, despite reasonable efforts on the part of the party affected by a Force Majeure Event to mitigate or remove the effects of the Force Majeure Event or circumstance, the situation in clause 18.1 continues substantially unabated for a period of 90 days from the date of the notice under clause 18.3(a):

- (a) the parties must meet to seek to find a resolution of the difficulty; and

- (b) if, after a further period of 30 days, they are unable to agree upon a resolution, then any party may terminate this Agreement upon 30 days' notice without prejudice to any antecedent rights of the parties which survive termination of this Agreement in other respects.

### **18.6 Qualification**

No Force Majeure Event affecting the performance of any obligation or condition under this Agreement by a party operates to prevent a cause of action arising from and alter the expiration of the period of time within which by the exercise of reasonable diligence and the employment of all reasonable means, that party could have remedied the situation preventing its performance.

## **19. Remedies**

### **19.1 Material Breach**

If a party commits a Material Breach, then another party may give the party in default written notice specifying the Material Breach and the Service (if any) relevant to the Material Breach. If the party in default does not cure the Material Breach specified in the notice within 14 days of the other party giving notice, then the other party may by further notice to the party in default:

- (a) in relation to a Material Breach in the provision of a Service, other than a Tariffed Transmission Service, terminate this Agreement in relation to that Service; or
- (b) otherwise invoke the Dispute Resolution Procedure.

### **19.2 Financial Breach**

If a party commits a Financial Breach, then another party may give the party in default written notice specifying the Financial Breach and the Service (if any) relevant to the Financial Breach. If the party in default does not cure the Financial Breach specified in the notice within 30 days of the other party giving notice, then the other party may by further notice to the party in default:

- (a) in relation to a Material Breach in the provision of a Service, other than a Tariffed Transmission Service, terminate this Agreement in relation to that Service; or
- (b) otherwise invoke the Dispute Resolution Procedure.

### **19.3 Cure**

A Material Breach or Financial Breach (as the case may be) is taken to have been cured where:

- (a) in the case of a Material Breach that is capable of remedy, the Material Breach has been remedied;
- (b) in the case of a Material Breach that is incapable of remedy (for example, because the time for performance has passed), then the Material Breach is taken to have been cured when the party in default:
  - (1) has paid compensation to the other party for any loss suffered by the other party as a result of the Material Breach (including all costs of enforcement); and
  - (2) has taken all reasonable steps to prevent the Material Breach being repeated; and
- (c) in the case of a Financial Breach, when the party in default has paid to the other party the total amount (including interest and all costs of recovery and enforcement) the subject of the Financial Breach.

## 20. Dispute Resolution Procedure

- (a) If any dispute arises between the parties touching or concerning the interpretation or application of this Agreement then that dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure, and the chief executive officers of TPA and Shipper must:
- (1) appoint a Dispute Resolution Panel as soon as practicable after the dispute is brought to the attention of either of them; and
  - (2) refer that matter to the Dispute Resolution Panel as soon as practicable after that Dispute Resolution Panel is appointed,
- (b) A matter referred for resolution under clause 20(a)(2) must be arbitrated in accordance with this clause 20 and the Commercial Arbitration Act 1984 (Victoria).
- (c) A Dispute Resolution Panel appointed under clause 20(a)(1) is to comprise:
- (1) a person who is:
    - (A) independent of Shipper and TPA;
    - (B) legally qualified;
    - (C) has an understanding of the gas industry;
    - (D) has a detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation; and
    - (E) has the capacity to determine the most appropriate dispute resolution in the particular circumstances of the dispute; and/or
  - (2) two persons:
    - (A) one of whom is appointed by Shipper and one of whom is appointed by TPA;
    - (B) who have an understanding of the gas industry; and
    - (C) who have technical qualifications appropriate to resolve the dispute including but not limited to a technical understanding of matters relevant to operation of gas transmission pipelines.
- (d) A person who has previously served on a Dispute Resolution Panel is not precluded from being appointed to another Dispute Resolution Panel established in accordance with clause 20(a).
- (e) If the chief executive officers of TPA and Shipper are unable to reach agreement as to the composition of the Dispute Resolution Panel to be appointed in accordance with clause 20(a), they must ask the chairman of the Victorian Bar Council to appoint the Dispute Resolution Panel in accordance with clause 20(a) and must pay the reasonable costs of the Adviser in relation to the making of those appointments.
- (f) When a matter is referred to a Dispute Resolution Panel under clause 20(a)(2), the person appointed to the Dispute Resolution Panel under clause 20(c)(1) must select the form of, and procedures to apply to, the dispute resolution process which is, in the opinion of that person, reasonable, and which:
- (1) is simple, quick and inexpensive;
  - (2) observes the rules of natural justice; and

- (3) encourages resolution of disputes without formal legal representation or reliance on legal procedures.
- (g) For the purposes of any award of the Dispute Resolution Panel, the parties may agree that as part of the award, the Dispute Resolution Panel may settle the terms and conditions of any amendments required to be made to this Agreement or any agreement or deed replacing this Agreement.

## **21. Termination**

### **21.1 Termination of Agreement**

- (a) TPA may terminate this Agreement at any time by notice if an Insolvency Event occurs in relation to Shipper.
- (b) Shipper may terminate this Agreement at any time by notice if an Insolvency Event occurs in relation to TPA.

### **21.2 After termination**

Termination of this Agreement for any reason does not affect:

- (a) any rights of a party against the other parties which:
  - (1) arose prior to the time at which the termination occurred; or
  - (2) otherwise relates to or may arise at any future time from any breach or non-observance of obligations under this Agreement occurring prior to termination; and
- (b) the rights and obligations of the parties under this clause or in respect of any monies outstanding under this Agreement.

## **22. Confidentiality**

### **22.1 Confidential Information**

Except as otherwise provided in this Agreement:

- (a) each party must treat Confidential Information as confidential and must take all reasonable precautions to ensure that its employees maintain such confidentiality;
- (b) a party:
  - (1) must not disclose Confidential Information to any person except as permitted by this Agreement;
  - (2) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this Agreement; and
  - (3) must not permit unauthorised persons to have access to Confidential Information; and
- (c) each party must use all reasonable endeavours:
  - (1) to prevent unauthorised access to Confidential Information which is in the possession or control of that party; and
  - (2) to ensure that any person to whom it discloses Confidential Information observes the provisions of this clause in relation to that information.

## **22.2 Exceptions**

This clause does not prevent:

- (a) the disclosure, use or reproduction of information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the party who wishes to disclose, use or reproduce the information or any person to whom the party (as the case may be) has disclosed the information;
- (b) the disclosure of information by a party or by persons to whom the party (as the case may be) has disclosed that information to:
  - (1) an employee or officer of the party or a related body corporate of the party; or
  - (2) a legal or other professional adviser, auditor or other consultant of the party (as the case may be),

which requires the information for the purposes of this Agreement, or for the purpose of advising the party in relation to this Agreement;

- (c) the disclosure, use or reproduction of information with the consent of the person or persons who provided the relevant information under this Agreement;
- (d) the disclosure, use or reproduction of information to the extent required by law or by a lawful requirement of:
  - (1) any government authority having jurisdiction over a party or its related bodies corporate; or
  - (2) any stock exchange having jurisdiction over a party or its related bodies corporate;
- (e) the disclosure, use or reproduction of information if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism relating to this Agreement, or for the purpose of advising a person in relation thereto;
- (f) the disclosure, use or reproduction of information which is trivial in nature;
- (g) the disclosure of information which is required to protect the safety of personnel or equipment;
- (h) the disclosure, use or reproduction of information by or on behalf of a party to the extent reasonably required in connection with the party's financing arrangements (as the case may be), investment in a party or a disposal of a party's assets;
- (i) the disclosure of information to a regulatory authority having jurisdiction over a party, pursuant to this Agreement or otherwise;
- (j) the disclosure, use or reproduction of information of an historical nature in connection with the preparation and giving of reports under this Agreement; or
- (k) the disclosure, use or reproduction of information as an unidentifiable component of an aggregate sum.

## **22.3 Conditions**

In the case of a disclosure under clause 22.2(b), 22.2(e) or 22.2(h) prior to making the disclosure the party who wishes to make the disclosure must inform the proposed recipient of the information that it is Confidential Information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of this

clause 22.3 and does not use the information for any purpose other than that permitted under clause 22.1.

#### 22.4 Indemnity

Each party indemnifies the other against any claim, action, damage, loss, liability, expense or outgoing which the party pays, suffers, incurs or is liable for in respect of any breach by the other party or any officer, agent or employee of that party of this clause 22.

#### 22.5 Survival

Notwithstanding any other provision of this Agreement, a person must continue to comply with this clause 22 for three years after it has ceased to be a party.

### 23. Notices

#### 23.1 How notices may be given

A notice, request, demand, consent or approval (each a notice) under this Agreement:

- (a) must be in writing;
- (b) may be signed for the party giving it by the party's authorised officer, attorney or solicitor;
- (c) may be delivered personally to the person to whom it is addressed, or left at or sent by prepaid post to the person's address, or faxed to the person's fax number, given below:

- (1) if to TPA or TPA Assets:

Address: 180 Greens Road, Dandenong, Victoria

Fax: (03) 9797 5295

Attention: Chief Executive, TPA

- (2) if to Shipper:

Address: [ ]

Fax: [ ]

Attention: [ ]

#### 23.2 When notice taken as given

A notice is taken as given by the sender and received by the intended recipient:

- (a) if posted, 3 days after posting; and
- (b) if faxed, on completion of the transmission as evidenced by receipt by the delivering party of a delivery report confirming the fax has been transmitted,

but if delivery or receipt is on a day which is not a Business Day of a party or is after 5.00pm at the place of delivery or receipt, it is taken as given at 9.00am on the next Business Day.

#### 23.3 Change of address or fax number

A party may change its address or fax number for notices by giving notice to the other parties.

### 24. Assignment

#### 24.1 Assignment generally

- (a) This clause is subject to clause 6.

Comment [opt18]:

Comment [opt19]:

Comment [opt20]:

Comment [opt21]: Page: 1

Comment [opt22]:

- (b) A party may not assign its rights under this Agreement unless it has the other parties' written consent and the other parties must not unreasonably withhold their consent.

#### **24.2 Assignment by State entity**

Nothing in this clause prevents a party assigning the whole of its rights under this Agreement where:

- (a) immediately prior to the assignment, that party is ultimately controlled by the State of Victoria ("State"), a State instrumentality or a statutory authority; and
- (b) the assignment is to an assignee selected by the State; and
- (c) the proposed assignee assumes all the obligations of the party under this Agreement, and

following any such assignment by that party, the other parties must execute and deliver to the assigning party an Agreement under which the other parties release the assigning party in respect of the obligations assumed by the assignee of this Agreement.

#### **24.3 Assignment not a restriction on securities**

Nothing in this Agreement prevents a party from pledging, mortgaging, encumbering or assigning by way of security its rights under this Agreement, provided that the chargee or mortgagee must first acknowledge in writing to the other parties that upon it realising its charge or mortgage, it will be bound by this Agreement.

### **25. MSO Rules**

#### **25.1 Application of MSO Rules**

The parties acknowledge that it is contemplated that if:

- (a) the Western Transmission System is connected to the Gas Transmission System owned by TPA Assets and operated by VENCORP; and
- (b) it would be appropriate for the MSO Rules to apply to the Western Transmission System, the Western Transmission System would be reclassified as a Market Carriage pipeline and the Access Arrangement amended accordingly.

#### **25.2 Approved Connection Deed**

The parties acknowledge further that:

- (a) under the Approved Connection Deed, the Western Transmission System will become part of the Gas Transmission System once the Western Transmission System is connected to the Gas Transmission System; and
- (b) the Western Transmission System will be connected to the Gas Transmission System for the purposes of section 5 of the Act upon completion of construction of the South West Pipeline connecting the Gas Transmission System at Lara with the Western Transmission System at Paaratte.

#### **25.3 Revisions to Access Arrangements**

The parties are aware that under the Access Code, the ACCC (in its capacity as the Relevant Regulator for transmission pipelines) must not approve revisions to an Access Arrangement if a provision of the Access Arrangement, as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted.

#### **25.4 Reclassification as a Market Carriage pipeline**

The parties acknowledge that if the Western Transmission System is reclassified as a Market Carriage pipeline, it will not be appropriate for this Agreement to continue, due to the incompatible nature of Market Carriage and firm contractual transmission rights.

#### **25.5 Termination of this Agreement**

Accordingly, the parties agree that upon the connection of the Western Transmission System to the Gas Transmission System, this Agreement will terminate subject to the happening of each of the following:

- (a) approval by the ACCC under the Access Code of revised Access Arrangements submitted by TPA, TPA (Assets) (if appropriate) and VENCORP which have the effect of reclassifying the Western Transmission System as a Market Carriage pipeline and pursuant to which the Reference Tariff and the other terms and conditions of access to the Western Transmission System are no less favourable to Shipper than the terms and conditions contained in this Agreement;
- (b) Shipper being registered as a Market Participant under the MSO Rules and being allocated an authorised MDQ or transmission rights or any other rights which are equivalent to those enjoyed by Shipper under this Agreement;
- (c) Shipper entering into a gas transportation agreement with VENCORP providing for among other things the payment of transmission charges to TPA equivalent to the charges payable by Shipper to TPA under this Agreement; and
- (d) termination of the sub-contract referred to in clause 3.2 and amendment of the Service Envelope Agreement to include the Western Transmission System within TPA's service envelope under that Agreement.

#### **26. No partnership or fiduciary relationship**

The parties agree and confirm that:

- (a) neither the terms of this Agreement nor any rights or obligations of any party is to be construed as creating a partnership, association, trust or other fiduciary relationship between the parties;
- (b) Shipper is not the agent of either TPA and TPA Assets, and Shipper does not have any authority to receive notices or serve process on behalf of TPA or TPA Assets;
- (c) neither TPA Assets nor TPA is an agent of Shipper, and nor does TPA Assets or TPA have any authority to receive notices or serve process on behalf of Shipper;
- (d) Shipper will not incur any liabilities on behalf of TPA or TPA Assets, pledge the credit of TPA or TPA Assets or make any contract binding upon TPA or TPA Assets except where it is specifically authorised to do so pursuant to this Agreement; and
- (e) neither TPA Assets nor TPA will incur any liabilities on behalf of Shipper, pledge the credit of Shipper nor make any contract binding upon Shipper except where either of them is specifically authorised to do so pursuant to this Agreement.

## 27. General

### 27.1 Approvals and consents

Subject to the express provisions of this Agreement, whenever in this Agreement the Agreement, approval or consent of a party is required, the Agreement, approval or consent may be withheld at the party's sole discretion, delayed or given subject to any condition.

### 27.2 Costs and expenses

Each party must pay its own legal costs and expenses for the negotiation, preparation, completion and stamping of this Agreement.

### 27.3 Governing law and jurisdiction

- (a) This Agreement is governed by the law of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and courts hearing appeals from them.
- (c) A party must not object to the jurisdiction of a court merely because the forum is inconvenient.

Comment [opt23]: Page: 1

Comment [opt24]: Page: 1

Comment [opt25]: Page: 1

### 27.4 Waiver

- (a) A party waives a right under this Agreement only if it does so in writing.
- (b) A party does not waive a right simply because it:
  - (1) fails to exercise the right;
  - (2) delays exercising the right; or
  - (3) only exercises part of the right.
- (c) A waiver of one breach of a term of this Agreement does not operate as a waiver of another breach of the same term or any other term.

### 27.5 Further action

Each party must promptly sign any document and do anything else that is necessary or reasonably requested by the other party to give full effect to this Agreement.

Comment [opt26]: Page: 1

### 27.6 Whole agreement

This Agreement:

- (a) replaces all previous agreements, representations, warranties or understandings between the parties concerning the subject matter of this Agreement; and
- (b) contains the whole agreement between the parties.

### 27.7 Variation of Agreement

A variation of this Agreement must be:

- (a) in writing; and
- (b) executed by all parties or by persons authorised to sign for them.

### 27.8 Unenforceable provision

If a provision in this Agreement is wholly or partly invalid or unenforceable in any jurisdiction, that provision or part must, to that extent and in that jurisdiction, be treated as deleted from this

Agreement. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.

**27.9 Counterparts**

This Agreement:

- (a) may be executed in a number of counterparts; and
- (b) comprises all the counterparts, taken together.

**27.10 Survival of provisions**

A provision of this Agreement that has not been met on, or can have effect after, completion of the transaction contemplated by this Agreement, or termination of this Agreement, continues to apply after completion or termination.

**27.11 Prohibition and effectiveness**

Any provision of, the application of any provision of, or the exercise of any right, power, authority, discretion or remedy (“power”) under or in respect of this Agreement which is prohibited in any jurisdiction:

- (a) is, in that jurisdiction, ineffective only to the extent of that prohibition; and
- (b) does not affect the effectiveness of that provision or power in any other jurisdiction or of the remaining provisions or powers in that or any other jurisdiction.

**27.12 Severability**

- (a) Each provision of this Agreement will be read down to the extent necessary to ensure that this Agreement is effective to the greatest possible extent.
- (b) If, notwithstanding sub-clause (a), a provision of this Agreement is still ineffective:
  - (1) if the provision would be effective if a word or words were deleted, that word or those words will be deleted; and
  - (2) in any other case, the whole provision will be deleted,and the remaining provisions will be construed and applied so as to be effective to the greatest possible extent.

**The common seal of  
Transmission Pipelines Australia Pty Limited**

is affixed to this  
document:

Comment [opt27]:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

The common seal of  
**Transmission Pipelines  
Australia (Assets) Pty Limited**

is affixed to this  
document:

Comment [opt28]:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

The common seal of  
**[Shipper]**  
is hereunto affixed  
by the authority of its  
directors in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Comment [opt29]:

Comment [opt30]:

## Schedule 1 - Billing and payment

1. On or before the eighteenth Business Day of each month, TPA will invoice Shipper for the charges payable by Shipper in respect of the Services provided in the preceding month ("**Relevant Month**"), together with any amounts in respect of any month before the Relevant Month and any adjustments in respect of such a month.
2. Invoices rendered under clause 1 of this Schedule shall state the Service Charges in respect of each Service payable by Shipper for that Relevant Month.
3. A failure by TPA to invoice Shipper in accordance with clause 1 of this Schedule does not prejudice the rights of TPA to recover payment for charges.
4. If Shipper receives an invoice from TPA issued on or before the 18th Business Day of the month, Shipper will pay to TPA the aggregate amount stated in TPA's invoice not later than the last Business Day of the month in which the invoice is received. Payment will be made in such manner as may be agreed from time to time.
5. If Shipper receives an invoice from TPA issued after the 18th Business Day of the month, Shipper will pay to TPA the aggregate amount stated in TPA's invoice not later than 10 Business Days after having received the invoice. Payment will be made in such a manner as may be agreed from time to time.
6. If Shipper disputes an invoice or part of an invoice, Shipper may, at any time within 10 Business Days of receiving the invoice, notify TPA that it disputes the invoice, identifying the disputed amount and giving reasons why it disputes the invoice. Shipper must pay the undisputed amount when it is due in accordance with clause 3 of this Schedule. The parties agree to meet in good faith and to use all reasonable endeavours to resolve the dispute. Upon resolution of the dispute, Shipper must promptly pay any amounts which it has been determined that it is liable to pay. In default of resolution the Dispute Resolution Procedure shall apply.
7. If at any time a party claims that Shipper has been overcharged or undercharged, then the parties will agree to meet in good faith to determine the amount of the overcharging or undercharging (as the case may be). The party liable to pay the agreed amount must pay that amount within 30 days of that amount being determined. In default of agreement the Dispute Resolution Procedure shall apply.
8. If a party does not pay an amount payable under this Agreement when due, then the defaulting party agrees to pay interest on the defaulted amount at a rate equal to the aggregate of two percent and the National Australia Bank Limited's overdraft rate applicable at that time. Interest shall accrue on the daily balance of the defaulted amount and shall be payable on demand.
9. If the parties have agreed under clause 7 of this Schedule that a party has been overcharged, the party who has received the benefit of the amount being overcharged agrees to pay interest on the overcharged amount from the time it was paid by the other party until the time it was returned to that party under clause 7 of this Schedule, at a rate equal to the aggregate of two percent and the National Australia Bank Limited's overdraft

*Third Party Access Code - Western Transmission Systems*

rate applicable at that time. Interest shall accrue on the daily balance of the overcharged amount and shall be payable on demand.

**Annexure A - Approved Connection Deed**

Comment [opt31]:

**Agreement under section 5(3)  
Gas Industry Act 1994**

**1. Transmission Pipelines Australia Pty Ltd**

ACN 079 089 268

of 180 Greens Road, Dandenong, Victoria

(TPA)

Comment [opt32]:

Comment [opt33]:

Comment [opt34]:

Comment [opt35]:

**2. Transmission Pipelines Australia (Assets) Pty Ltd**

ACN 079 136 413

of 180 Greens Road, Dandenong, Victoria

(TPA Assets) and

Comment [opt36]:

Comment [opt37]:

Comment [opt38]:

Comment [opt39]:

**3. Victorian Energy Networks Corporation**

of 433 Smith Street, North Fitzroy, Victoria

(VENCorp)

Comment [opt40]:

Comment [opt41]:

Comment [opt42]:

Comment [opt43]:

**Hereby agree in writing that:**

Subject to section 5(3) of the Gas Industry Act 1994 (Vic), the transmission pipeline or system of transmission pipelines or facilities described below which does or will form part of the Transmission System [as defined in the Access Arrangement of TPA and TPA Assets for the Transmission System dated [ ] in accordance with and by operation of the Extensions/Expansions Policy of TPA and TPA Assets, [as provided for in the Access Arrangement of TPA and TPA Assets for the Transmission System dated [ ]], and which is:

- (a) owned, or to be owned, by TPA and/or TPA Assets; and
- (b) connected to, or to be connected to, the system referred to in the definition of “gas transmission system” in section 3 of the Gas Industry Act 1994 (Vic),

is, or will be, an approved connection for the purposes of the definition of “gas transmission system” in section 3 of the Gas Industry Act 1994 (Vic).

**Description:**