

## Capacity Trading Platform: Exchange Agreement amendments

Consultation 21 August 2018

This paper sets out proposed amendments to the Exchange Agreement to implement the Capacity Trading Platform. Sample product specifications are in the attachment.

### 1 New definitions for clause 2, Definitions and Interpretation

Insert the following definitions in alphabetical order:

**Auction Agreement** means an agreement in the form of the Auction Agreement in the CTA Procedures.

**Capacity** means a right to use a quantity of a Forward Haul Service, Compression Service or Park Service, as applicable to the Product and identified in the Product Specification.

**Capacity Type** means each combination of:

- (a) Transportation Service; and
- (b) Zones (for Forward Haul Service or Compression Service) or Pipeline and Park Service Points (for Park Service),

even if the Transportation Service is offered under different Service Terms, for example as daily, weekly and monthly Products.

**Capacity Variance Amount** is defined in clause 17.3.

**Capacity Variance Quantity** means, for Physical Capacity, that part of a Transfer Quantity in respect of which a Transfer Failure has occurred.

**Combined Transfer** means an STTM Transfer, a DWGM Transfer or a Transfer of Capacity by more than one Facility Operator.

**Compression Delivery Zone** means a Compression Delivery Zone identified in the Transportation Service Point Register.

**Compression Receipt Zone** means a Compression Receipt Zone identified in the Transportation Service Point Register.

**Compression Service** means in relation to a Compression Service Facility, the traded compression service provided for in the Standard OTSA for the facility.

**Compression Service Facility** means a Compression Service Facility identified in the Transportation Service Point Register.

**Compression Zone** means a Compression Receipt Zone or a Compression Delivery Zone.

**CTP Participant** means a Trading Participant who has applied to be registered as such.

**CTA Procedures** means the Capacity Transfer and Auction Procedures made under the National Gas Law as amended from time to time.

**Delivering Participant** means, in relation to a Transfer Quantity for Physical Capacity, the Trading Participant determined to be the Delivering Participant in accordance with clause 14A.3.

**Delivery Netting** means for Physical Capacity Transactions, the process in clause 14A.3 and under the CTA Procedures for notifying net quantities of Capacity for Transfer for each Gas Day.

**DWGM Reference** means information to identify an accredited controllable quantity for the purposes of Part 19 of the Rules.

**DWGM Transfer** means a Transfer of Capacity at a DWGM interface point (as defined in the CTA Procedures).

**Facility Operator** means a Transportation Facility Operator registered under the CTA Procedures in accordance with section 91BRR of the National Gas Law.

**Forward Haul Service** means in relation to a Pipeline, the traded forward haul service provided for in the Standard OTSA for the Pipeline.

**Nominated DWGM Participant** means, in relation to a DWGM Transfer, a Trading Participant who is a party to the DWGM Transfer or the person nominated by the Trading Participant in its capacity as agent for that person.

**Nominated Transportation Agreement** means, in relation to a party to a Physical Capacity Transaction, the agreement nominated by the party as the agreement from which, or to which, a Transfer is to be made to give effect to the Physical Capacity Transaction.

**OTS Code** means the Operational Transportation Service Code as defined in the National Gas Law.

**Park Service** means in relation to a Pipeline, the traded park service provided for in the Standard OTSA for the facility.

**Park Service Point** means a Service Point at which:

- (a) a Transportation Service Provider will receive or deliver gas in connection with the Park Service; and
- (b) a user of the Park Service must hold transportation capacity of the type determined by the Transportation Service Provider in order to be able to use the Park Service.

**Physical Capacity** means any Product where the terms require the Seller to make available and the Buyer to accept, a Transfer of Capacity as specified in the Product Specification.

**Pipeline** means, in relation to Physical Capacity, a pipeline identified in the Transportation Service Point Register.

**Pipeline Delivery Zone** means a Pipeline Delivery Zone identified in the Transportation Service Point Register.

**Pipeline Receipt Zone** means a Pipeline Receipt Zone identified in the Transportation Service Point Register.

**Pipeline Zone** means a Pipeline Delivery Zone or a Pipeline Receipt Zone.

**Primary Facility Agreement** means an agreement between a Transportation Service Provider and a transportation facility user (as defined in the National Gas Law) for the provision of a Transportation Service using transportation capacity acquired by the transportation facility user from the Transportation Service Provider.

**Receiving Participant** means, in relation to a Transfer Quantity for Physical Capacity, the Trading Participant determined to be the Receiving Participant in accordance with clause 14A.3.

**Service Point** means a service point identified in the Transportation Service Point Register.

**Service Term** is defined in clause 12.1.

**Standard OTSA** means, in relation to a Transportation Facility, the standard OTSA (as defined in the National Gas Law) for the Transportation Facility. In relation to any Physical Capacity Transaction, a reference to the Standard OTSA is a reference to the standard OTSA in the form current on the date the Physical Capacity Transaction is formed under this agreement.

**STTM Reference** means the identifier for a registered facility service under Part 20 of the Rules.

**STTM Transfer** means a Transfer of Capacity at an STTM interface point (as defined in the CTA Procedures).

**Transfer** means:

- (a) in relation to a Delivering Participant, to reduce the Delivering Participant's quantity of Capacity under the Delivering Participant's Nominated Transportation Agreement; and
- (b) in relation to a Receiving Participant, to increase the Receiving Participant's quantity of Capacity under the Receiving Participant's Nominated Transportation Agreement.

**Transfer Completion** is defined in clause 14A.2(a).

**Transfer Error** means a Transfer that:

- (a) reaches Transfer Completion and is notified in accordance with clause 14A.2(b) but that is identified as incorrect (for example, is for the wrong quantity, Capacity Type, Gas Day or Nominated Transportation Agreement); or
- (b) does not reach Transfer Completion, but should have.

**Transfer Failure** is defined in clause 14A.5(a) (including where one Transfer in a Combined Transfer has failed to pass Transfer Validation).

**Transfer Quantity** is defined in clause 14A.3(f).

**Transfer Validation** means the validation process for Transfers undertaken under the CTA Procedures.

**Transportation Facility** means each Transportation Facility identified in the Transportation Service Point Register.

**Transportation Service** means, in relation to a Transportation Facility, a Forward Haul Service, Park Service or Compression Service (as applicable).

**Transportation Service Provider** means a transportation service provider within the meaning of the National Gas Law.

**Transportation Service Point Register** means the register of that name maintained in accordance with the CTA Procedures, as amended from time to time.

**Zone** means a Pipeline Zone or a Compression Zone.

**2 Amended definition for clause 2, Definitions and Interpretation**

Replace the following definition:

**Agent Member** means a Member appointed as an Agent Member under this agreement.

**3 Amendments to clause 2.10**

Insert a new paragraph (e1) in clause 2.10 after paragraph (e).

- (e1) the Appointing Members are jointly and severally liable for the acts and omissions of their Agent Member under or in connection with this agreement;

**4 Amendments to clause 4.5**

Amend clause 4.5 as shown.

**4.5 Appointing Members and Agent Members**

**4.5.1 Agent Member ~~Joint~~ applications**

- (a) ~~To appoint an Agent Participant, an application must be made under clause 4.2(a) by the Appointing Participant and the Agent Participant. Two or more persons who wish to become Members and appoint an Agent Member may submit a joint application under clause 4.2(a).~~

- (b) The Appointing Members for an Agent Member may specify that it is a joint appointment (for example, where the Agent Member is appointed by the members of a joint venture). For a joint appointment, the application must be joint and the consent of all Appointing Members will be needed for changes under clause 4.5.2. An Agent Member whose appointment was accepted by the Operator before the date this clause was inserted in this agreement is taken to be a joint appointment by the Appointing Members.

~~Two or more Members who wish to appoint an Agent Member or (if they are already Appointing Members) replace their Agent Member must submit a joint application under this clause 4.5.1.~~

- (c) In addition to satisfying the requirements of clause 4.2 (where applicable), an application under ~~clause 4.2(a) or this clause 4.5.1(a)~~ must:

- (i) contain the information specified by the Operator about the proposed Agent Member; ~~and~~

- (ii) specify whether it is a joint appointment; and

- (iii)(ii) be accompanied by information in a form satisfactory to the Operator evidencing that all the applicants have appointed the proposed Agent Member to act as their agent under and in connection with this agreement ~~Agreement~~ and in respect of the same participant category, and that the Agent Member has accepted that appointment.

- (d) To be eligible to act (and remain) as an Agent Member, a person must:

- (i) have been ~~jointly appointed by two or more Members (one of whom may also be the Agent Member)~~ to be an ~~their~~ Agent Member and that appointment must not have been revoked;

- (ii) be resident in, or have a permanent establishment in, Australia;

- (iii) not be an externally-administered body corporate (as defined in the Corporations Act) or under a similar form of administration under the laws of some other jurisdiction;
  - (iv) not be immune from liabilities incurred as an Agent Member; ~~and~~
  - (v) be capable of being sued in its own name in a court of competent jurisdiction; and
  - (vi) if the person is also a party to an Auction Agreement, have been appointed by the same persons to be their "Agent Participant" under the Auction Agreement, and that appointment must not have been revoked.
- (e) Clause 4.2 applies to the consideration of an a joint application under this clause with any necessary changes. In addition, ~~in the case of an application under either clause 4.2 or this clause,~~ if the Operator is not satisfied that any proposed Agent Member is eligible, then the Operator may refuse to accept the appointment (even it accepts the application for membership).
- (f) If the Operator accepts the appointment of an Agent Member, it must notify the applicants.
- (g) There is deemed to be a Suspension Event for the purposes of clause 19.2(a)(ii) in relation to all the Appointing Members for the Agent Member and the Operator may impose a Trading Halt in accordance with and subject to the provisions of clause 19 if either of the following occurs:
- (i) if the Operator has reasonable grounds to believe that an Agent Member is no longer eligible to be an Agent Member and the Appointing Members (themselves or through the Agent Member) have failed to give the Operator information to verify the Agent Member's continued eligibility within 2 Business Days of the Operator requesting that information from the Appointing Members;
  - (ii) for any reason, there is no current Agent Member in respect of the Appointing Members.

#### **4.5.2 Changes to the Appointing Members**

- (a) The Appointing Members for an Agent Member may, acting jointly, from time to time on application to the Operator containing the information specified by the Operator:
- (i) include an additional person as an Appointing Member for the Agent Member; or
  - (ii) remove a Member as an Appointing Member for the Agent Member.
- (a1) If the Agent Member is also an Agent Participant under an Auction Agreement and an application is made under paragraph (a), a corresponding application must also be made under the Auction Agreement.
- (b) Any application under paragraph (a) to include an additional person as an Appointing Member must be accompanied by information in a form satisfactory to the Operator evidencing that the person has appointed the proposed Agent Member to act as its agent for the purposes of this agreement (and if the Agent Participant is also an "Auction Participant" under an Auction Agreement, the Auction Agreement) and that the Agent Member has accepted that appointment. ~~contain the information specified~~

by the Operator and must be accompanied by information in a form satisfactory to the Operator evidencing:

- ~~(i) in the case of an additional Appointing Member, that the additional Appointing Member has appointed the proposed Agent Member to act as its agent for the purposes of this Agreement jointly with the other Appointing Members and in respect of the same participant category, and that the Agent Member has accepted that appointment; and~~
  - ~~(ii) in both cases, that all Appointing Members for that Agent Member have given their consent to such change.~~
- (c) If the Operator is satisfied that the application is in order, then the Operator must accept the application and take the necessary steps to implement the change under this agreement. ~~Agreement.~~
- (d) A Member who is removed as an Appointing Member for an Agent Member:
- (i) may request the termination of its Membership Agreement;
  - (ii) for so long as it continues as a Member:
    - (A) must comply with all the obligations applicable to it as a Member including the appointment of representatives under clause 5.3; and
    - (B) is automatically suspended from access to and use of the Trading System until the Operator gives the Member the confirmation referred to in clause 6.1(b).

#### **4.5.3 Other provisions relating to Agent Member appointments**

- (a) An Agent Member under a joint appointment:
- (i) cannot be appointed as Agent Member by anyone else; and
  - (ii) except with the consent of the Operator, can only participate in the Exchange in its capacity as Agent Member under the joint appointment.
- (b) Where an Appointing Member is also party to an Auction Agreement, unless otherwise agreed with the Operator, the Appointing Member must at all times have appointed the same Agent Member under these Procedures and Agent Participant under the Auction Agreement.

#### **4.5.4 Trading capacity for Appointing Members and Nominated DWGM Participants**

- (a) A Trading Participant must be appointed as an Agent Member for an Appointing Member before it can include in any of its Orders a contract reference for an Appointing Member's facility agreement (for example, where the Agent Member is a group member placing Orders on behalf of other members of a group). For the purposes of this clause, an "Appointing Member's facility agreement" is an agreement with a Transportation Service Provider for the use of Capacity that the Appointing Member is a party to, but not the Agent Member.
- (b) Each Appointing Member for an Agent Member will be issued with a Participant ID so that contract information for the Appointing Member's facility agreement can be provided to the Operator by the Facility Operator in accordance with the CTA Procedures and the Appointing Member's facility agreement can be linked to the

Agent Member in the Trading System. The issue of a Participant ID to the Appointing Member does not give the Appointing Member access to the Trading System.

(c) A Nominated DWGM Participant must be registered as a Market Participant (as defined in Part 19 of the Rules) in the declared wholesale gas market established under that Part.

(d) A Trading Participant is not required to be appointed as Agent Member for a person before nominating that person as a Nominated DWGM Participant for a DWGM Transfer. However, it must first give the Operator evidence satisfactory to the Operator that the person has appointed the Trading Participant as its agent for this purpose. That information may be provided as part of an application under clause 4.2 or as otherwise agreed with the Operator.

## 5 Amendments to clause 5.1

Insert new paragraph (c) in clause 5.1.

(c) A Trading Participant may apply to be registered as a CTP Participant and (if so registered) may apply to have that registration withdrawn so that it remains registered as a general Trading Participant.

## 6 Amendments to clause 6.3

(a) Amend the start of paragraph (b) to read "Subject to paragraph (d), admission ..."

(b) Insert a new paragraph (d), insert:

"(d) A Trading Participant registered as a CTP Participant will only be admitted to trade Physical Capacity."

## 7 Amendments to clause 10.1

(a) In clause 10.1, amend paragraph (e) to read "listings of available or required Capacity or imbalances submitted by Members under clause 10.5 or 10.6."

## 8 New clause 10.6

Insert new clause 10.6.

### 10.6 Imbalance listing service

#### 10.6.1 Imbalance listing requests

(a) A Trading Participant or Viewing Participant may submit an imbalance listing request to the Operator at any time, indicating that the Trading Participant wishes to sell or buy an imbalance on a Transportation Facility.

(b) An imbalance listing request must include the information, and be submitted in the form, required by the Operator from time to time and will be subject to reasonable validation parameters.

#### 10.6.2 Listing by Operator

(a) As soon as reasonably practicable after receipt of a valid imbalance listing request, the Operator must post a corresponding imbalance listing on the Trading System (available for viewing by Trading Participants and Viewing Participants) containing the following details in accordance with the request (as applicable):

(i) the Transportation Facility;

- (ii) whether the listing is for a sale or purchase;
  - (iii) the contact details of the listing party; and
  - (iv) any other details reasonably determined by the Operator, other than Confidential Information.
- (b) The Operator must remove or close an imbalance listing on any expiry date specified in the imbalance listing request.
- (c) To avoid doubt, neither an imbalance listing request nor a listing of an imbalance on the Trading System is an offer capable of acceptance by another person.

### **10.6.3 Information published by Operator**

The Operator may publish on its website a summary of facilities for which an imbalance has been listed on the Trading System.

## **9 Amendment to clause 12**

- (a) Amend the definition of “Delivery Period” in clause 12.1 so it reads:
- Delivery Period** For Physical Gas, the period over which the delivery of the Commodity is to take place, as specified in the Order. For Physical Capacity, the Service Term.
- (b) In clause 12.1, insert a definition of Service Term:
- Service Term** For Physical Capacity, the period during which the Capacity may be used, as specified in the Order.
- (c) In clause 12.4, delete paragraph (d)(viii) and insert:
- (viii) in the case of an Order relating to Physical Capacity, the Nominated Transportation Agreement and the STTM Reference or DWGM Reference and the Nominated DWGM Participant, if applicable to the Product; and
  - (ix) any other information required by the Product Specification or the Interface Protocol.
- (d) In clause 12.5, delete “and” at the end of paragraph (b)(vi)”; replace the full stop at the end of paragraph (b)(vii) with “; and”; and after paragraph (b)(vii), insert:
- (viii) in the case of an Order relating to Physical Capacity, the Nominated Transportation Agreement or the STTM Reference, is not valid.

## **10 New clause 14A**

### **14A Delivery of Capacity Transactions (Capacity Trading Platform)**

#### **14A.1 Application**

- (a) This clause 14A applies to the Operator and a Trading Participant who is a party to a Physical Capacity Transaction, in its capacity as a Delivering Participant or Receiving Participant.
- (b) The Operator has no liability to any Member in respect of obligations of Trading Participants under this clause 14A or Facility Operators under the CTA Procedures or Transportation Service Providers under agreements for the use of Capacity, and is not responsible for procuring the performance of any of those obligations.

#### **14A.2 Transfer completion and Transfer Errors**

- (a) For the purposes of this agreement, **Transfer Completion** occurs in relation to a Transfer Quantity when:
  - (i) the requirement to Transfer that Transfer Quantity has been notified by the Operator to the relevant Facility Operator under the CTA Procedures and as provided for in this clause;
  - (ii) the Transfer has been validated by the Facility Operator under the CTA Procedures and in the case of a Combined Transfer, each other part of the Combined Transfer has been validated by the applicable Facility Operator;
  - (iii) the Facility Operator has completed the Transfer; and
  - (iv) the Facility Operator has confirmed the Transfer to the Operator in accordance with the CTA Procedures.
- (b) The obligations of Facility Operators with respect to Transfer Validation, Transfer and confirmation are set out in the CTA Procedures.
- (c) The Operator must notify the relevant Trading Participant when Transfer Completion for a Transfer Quantity has occurred, or if any part of the Transfer Quantity has not passed Transfer Validation.
- (d) The Operator must notify the relevant Trading Participant as soon as practicable if it becomes aware of a Transfer Error.
- (e) A Trading Participant must notify the Operator as soon as practicable if it becomes aware of a Transfer Error.
- (f) For the purposes of this agreement, the quantities of Capacity delivered and accepted will be the quantities determined in accordance with the CTA Procedures.

#### **14A.3 Daily Transfer Process**

- (a) Each Gas Day, the Operator will determine the aggregate net trading position of each Trading Participant for each Capacity Type for each Gas Day in the following 14 Gas Days, taking into account:
  - (i) for the immediately following 13 Gas Days, all Physical Capacity Transactions which have not already been taken into account in an earlier calculation (typically comprising only those concluded since the calculation on the previous Gas Day); and
  - (ii) for the 14<sup>th</sup> Gas Day, all Physical Capacity Transactions concluded on or before the Gas Day on which the calculation is made with a Service Term that includes that 14<sup>th</sup> Gas Day.
- (b) The **aggregate net trading position** for a Gas Day, Participant and Capacity Type may be positive, negative or zero and will be equal to:
  - (i) the Transaction Quantity for all Physical Capacity Transactions for that Capacity Type to be taken into account for that Gas Day as provided for in paragraph (a) and for which the Trading Participant is the Buyer and with a Service Term that includes that Gas Day; less
  - (ii) the Transaction Quantity for all Physical Capacity Transactions for that Capacity Type to be taken into account for that Gas Day as provided for in

paragraph (a) and for which the Trading Participant is the Seller and with a Service Term that includes that Gas Day,

as adjusted by the Operator to correct Transfer Errors, if any. The Operator is not required to make any adjustment to correct a Transfer Error the Operator becomes aware of on Gas Day D and that relates to that Gas Day D or the following Gas Day. The Operator may make adjustments to correct a Transfer Error the Operator becomes aware of on a Gas Day and that relate to the Gas Day after the following Gas Day or later.

- (c) A Trading Participant with a negative net aggregate trading position in relation to a Capacity Type for a Gas Day is a **Delivering Participant** in respect of that Gas Day and Capacity Type.
- (d) A Trading Participant with a positive net aggregate trading position in relation to a Capacity Type for a Gas Day is a **Receiving Participant** in respect of that Gas Day and Capacity Type.
- (e) On each Gas Day, the Operator must, in accordance with this clause 14A.3 and the CTA Procedures, calculate and notify to Facility Operators the quantities of Capacity that the Facility Operators must Transfer on that Gas Day for each of the following 14 Gas Days, which must be the aggregate net trading positions.
- (f) A **Transfer Quantity** is each quantity of Capacity required to be Transferred for a Gas Day, Trading Participant and Capacity Type.
- (g) For STTM Transfers and DWGM Transfers, the Operator must give effect to the arrangements in the CTA Procedures applicable to those Transfers.

#### **14A.4 Obligations in relation to the Transfer Quantity**

- (a) Each Gas Day, for each Transfer Quantity for which a Trading Participant is the Delivering Participant in any Gas Day in the following 14 Gas Days, the Trading Participant must:
  - (i) ensure that a quantity of Capacity at least equal to the Transfer Quantity and of the applicable Capacity Type is available on that Gas Day to be Transferred from its Nominated Transportation Agreement;
  - (ii) not do or omit to do anything that may hinder, delay or prevent the Transfer of the Transfer Quantity;
  - (iii) not permit or require any other person to do or omit to do anything that may hinder, delay or prevent the Transfer of the Transfer Quantity; and
  - (iv) co-operate with the Facility Operator to resolve any issues identified by the Facility Operator in relation to the Transfer to ensure that the Transfer can be completed in a timely manner in accordance with the CTA Procedures.
- (b) Each Gas Day D, for each Transfer Quantity for which a Trading Participant is the Receiving Participant in any Gas Day in the following 14 Gas Days, the Trading Participant must:
  - (i) ensure that on Gas Day the Trading Participant has a Nominated Transportation Agreement for the Transfer that extends to the applicable Capacity Type;

- (ii) not do or omit to do anything that may hinder, delay or prevent the Transfer of the Transfer Quantity;
- (iii) not permit or require any other person to do or omit to do anything that may hinder, delay or prevent the Transfer of the Transfer Quantity; and
- (iv) co-operate with the Facility Operator to resolve any issues identified by the Facility Operator in relation to the Transfer to ensure that the Transfer can be completed in a timely manner in accordance with the CTA Procedures.

#### **14A.5 Transfer Failure**

- (a) A **Transfer Failure** occurs with respect to a Transfer Quantity if Transfer Completion for that Transfer Quantity is not reached within the time required under the CTA Procedures including by reason of the Transfer not passing Transfer Validation or the Transfer being cancelled due to systems failure, as provided for in the Capacity Transfer and Auction Timetable in the CTA Procedures.
- (b) If a Transfer Failure occurs with respect to a Gas Day:
  - (i) the Delivering Participant must pay a Capacity Variance Amount in respect of the Capacity Variance Quantity as part of its Settlement Amount for the Billing Period that includes the Gas Day on which the failure occurred; and
  - (ii) the liability of the Delivering Participant under this agreement for that failure is limited to the amount of the payment reflected in the Capacity Variance Amount.
- (c) If a Transfer Failure occurs with respect to a Gas Day:
  - (i) the Receiving Participant must pay a Capacity Variance Amount in respect of the Capacity Variance Quantity as part of its Settlement Amount for the Billing Period that includes the Gas Day on which the failure occurred; and
  - (ii) the liability of the Receiving Participant under this agreement for that failure is limited to the amount of the payment reflected in the Delivery Variance Amount.
- (d) The Operator will determine the cause and extent of Transfer Failures using information provided by Facility Operators under the CTA Procedures.
- (e) If a dispute arises as to the cause or extent of a Transfer Failure and is not resolved and the outcome notified to the Operator under clause 15.2 by the cut-off date prior to Final Statements for the relevant Billing Period, the Operator may settle on the basis of information provided to it by the Facility Operator under the CTA Procedures, subject to adjustment under clause 18 in a Revised Statement when the dispute is resolved or determined.]

#### **14A.6 Termination of Primary Facility Agreement**

- (a) If a Trading Participant is the terminated primary shipper in relation to a terminated primary contract, any amount payable by the Operator to the Trading Participant under this agreement will be reduced by an amount equal to the amount of the service continuity payments payable by the Operator to a Facility Operator for the provision of services during the applicable service continuity period. If that amount exceeds the amount owed by the Operator to the Trading Participant, the Trading Participant must pay the balance to the Operator.

- (b) If a Facility Operator gives the Operator a primary contract termination notice under the CTA Procedures, for each affected Physical Capacity Transaction:
- (i) the Transaction Quantity will be reduced by applying the applicable adjustment factor determined under paragraph (b) for each Gas Day in the Service Term that falls after the end of the service continuity period for the affected Physical Capacity Transaction;
  - (ii) the Transaction Quantity as adjusted will be used for determining the net aggregate trading position of each Trading Participant under clause 14A.3; and
  - (iii) a Primary GTA Termination Adjustment Amount will be determined in accordance with the Settlements and Prudential Methodology in respect of the amount of the reduction and will be included in Settlement.

**Note:**

As capacity cannot be traced, pro-rating is applied across all Transactions holding the Capacity Type affected by the termination, not just those buying from the terminated seller.

- (c) A different adjustment factor is determined for each Gas Day and each Capacity Type and applied to affected Physical Capacity Transactions for that Capacity Type. The adjustment factor is:

$$(A-B)/A$$

where:

- A is the total of the Transaction Quantity for the Gas Day for all affected Physical Capacity Transactions of that Capacity Type; and
- B is the Transaction Quantity for the Gas Day for each relevant primary transaction of that Capacity Type.

- (d) In this clause, the terms “terminated primary shipper”, “terminated primary contract”, “relevant primary transaction”, “service continuity payment” and “service continuity period” have the meaning given in clause 10 of the CTA Procedures and:
- (i) **affected GSH product** means each Product for a Capacity Type that is the same as any of the Capacity Types comprised in a relevant primary transaction;
  - (ii) **affected Physical Capacity Transaction** means each Physical Capacity Transaction for an affected GSH Product concluded on or before the notification date and with a Service Term that includes the period after the end of the service continuity period; and
  - (iii) **notification date** means the Gas Day on which the termination of the terminated primary contract is taken to have been notified to the Operator under the CTA Procedures.

**14A.7 Transfer of title and terms of use**

- (a) For the purposes of this agreement, title to, risk and control of Capacity that is Transferred in accordance with this agreement passes to the Receiving Participant on Transfer Completion for that Capacity.

- (b) Each Receiving Participant acknowledges and agrees that in respect of Capacity purchased through the Exchange (including under a Pre-matched Trade):
  - (i) the terms and conditions for use for the Capacity are the terms and conditions agreed between the Receiving Participant and the relevant Transportation Service Provider;
  - (ii) no warranty or representation is made as to the availability of the Capacity for use or its priority and in particular:
    - (A) where the Capacity relates to a Zone, it may not be possible to access the Receiving Participant's preferred Service Point within the Zone or to transfer the same quantity of Capacity to another Service Point within the Zone; and
    - (B) the Transportation Service Provider may curtail nomination and use of Capacity from time to time;
  - (iii) except to the extent expressly provided for in this agreement including the applicable Product Specification, the Operator and each Delivering Participant expressly disclaims, to the fullest extent permitted by law, any warranty, written or oral, express or implied in relation to the Capacity or Transportation Service, including without limitation any warranty as to quality, merchantability, or fitness for any particular purpose of any Capacity or Transportation Service; and
  - (iv) the right to use Capacity may be terminated by the Transportation Service Provider for reasons beyond the control of the Operator or any Delivering Participant including where the Primary Facility Agreement from which the Capacity originated is terminated.

## 11 Amendments to clause 17 (Settlements)

- (a) Add the following new definitions to clause 17.3.2:
  - Capacity Transaction Amount** An amount payable in respect of a Gas Day, representing the Transaction Price multiplied by the Transaction Quantity under all Physical Capacity Transactions for which the Delivery Period includes all or part of that Gas Day where the Trading Participant is the Buyer (in which case the amount is payable by the Trading Participant to the Operator) or the Seller (in which case the amount is payable by the Operator to the Trading Participant).
  - Capacity Variance Amount** An amount payable by or to a Delivering Participant or a Receiving Participant in respect of its Capacity Variance Quantities in respect of a Gas Day, calculated in accordance with the Rules Methodology.
  - GTA Termination Adjustment Amount** An amount payable in respect of an affected Physical Capacity Transaction (as defined in clause 14A.6(d)).
  - GTA Termination Adjustment** A reduction applied, or an amount payable, in accordance with clause 14A.6(a) (applied to a terminated primary shipper in relation to a terminated primary contract).
- (b) In clause 17.3.3 after each reference to the "Physical Gas Amounts" add a reference to the "Capacity Transaction Amounts".

**12 Amendments to clause 18.7**

Amend clause 18.7 as marked.

- (a) For the purposes of this clause 18, the maximum total payment by the Operator in respect of a Billing Period is determined in accordance with the maximum total payment calculation in clause 22 of the CTA Procedures. ~~equal to:~~
- ~~the aggregate of the amounts received or applied by the Operator in respect of Market Participants by 2:00pm on the relevant payment date for that Billing Period; plus~~
- ~~(ii) — if one or more Market Participants are in default, the aggregate amount which the Operator is able to obtain by that time from the Credit Support provided in respect of those Market Participants under this agreement; less~~
- ~~(iii) — the aggregate of the amounts applied in accordance with paragraph (b).~~
- (b) Any payment received or applied by the Operator in respect of a Market Participant for a Billing Period is taken to be made, and may be applied by the Operator, in satisfaction of the Exchange Fees payable to the Operator by that Market Participant (as specified in the relevant final or Revised Statement issued to that Market Participant) before it is applied by the Operator in satisfaction of any other obligation or liability.
- (c) If the maximum total payment in respect of a Billing Period is not sufficient to meet the aggregate of the net amounts payable by the Operator to each of the Market Participants to whom payments are to be made in respect of the Billing Period, then the amount payable by the Operator to each relevant Market Participant in respect of that Billing Period is reduced by applying the adjustment determined under clause 22 of the CTA Procedures. ~~following:~~

$$AAP = SAP * (A/B)$$

~~where:~~

~~AAP is the reduced amount payable by the Operator to the relevant Market Participant in respect of the relevant Billing Period;~~

~~SAP is the net amount that would have been payable to the relevant Market Participant for the relevant Billing Period but for the application of this rule.~~

~~A is the maximum total payment in respect of the Billing Period; and~~

~~B is the aggregate of the net amounts payable by the Operator to Market Participants under this clause in respect of the Billing Period.~~

**13 Amendments to clause 20 (Default and Termination)**

- (a) In clause 20.1, insert a new paragraph (o).
- (o) if the Market Participant is also a party to an Auction Agreement, a Default Event (as defined in the Auction Agreement) occurs in relation to the Market Participant under the Auction Agreement.
- (b) In the heading to clause 20.5, insert “for Physical Gas”.
- (c) Insert a new clause 20.6.

**20.6 Close out and offset procedure for Physical Capacity**

**20.6.1 General provisions for application of close out and offset**

- (a) In this clause 20.6, the Defaulting Participant is the Trading Participant in relation to which the Default Event occurred.
- (b) The reference to close out and offset in clause 20.5.1(b) is taken to include close out and offset under this clause 20.6, and the Close Out Notice referred to in that clause is taken to extend to this clause.
- (c) The close out and offset arrangements in this clause for Capacity Transactions apply to, and are to be determined separately in respect of:
  - (i) the Close Out Effective Date and each subsequent Gas Day for which there is a Capacity Transaction (other than Pre-matched Trades, which are to be cancelled by the Operator):
    - (A) to which the Defaulting Participant is a party; and
    - (B) for which the Service Period includes a Gas Day falling on or after D+1, where D is the Close Out Effective Date,(each a **relevant Capacity Transaction**); and
  - (ii) each Capacity Transaction for a Capacity Type the same as the Capacity Type of any relevant Capacity Transaction.
- (d) As soon as practicable after giving a Close Out Notice to a Defaulting Participant, the Operator must inform all other Trading Participants who are parties to relevant Capacity Transactions, but any failure or delay in doing so will not affect the application of this clause.
- (e) If there is more than one Defaulting Participant in respect of any relevant Gas Day, the close out and offset arrangements will be applied sequentially for each Defaulting Participant, starting with the Defaulting Participant for whom the Close Out Notice was first given. For this purpose the Operator may modify the arrangements to the extent that the Operator considers fair and reasonable in order to achieve a result which is consistent with the principles underlying this clause 20.6.

**20.6.2 Offset Quantity and Close Out Quantity**

- (a) The total quantity to be offset for a relevant Gas Day and Capacity Type (**Offset Capacity Quantity**) is the lesser of TCQS and TCQB, where
  - TCQS is the total of the Transaction Quantities for relevant Capacity Transactions in which the Defaulting Participant is the Seller; and
  - TCQB is the total of the Transaction Quantities for relevant Capacity Transactions in which the Defaulting Participant is the Buyer.
- (b) The total quantity which is subject to close out for a relevant Gas Day and Capacity Type in respect of relevant Capacity Transactions (**Close Out Capacity Quantity**) is the absolute value of TCQS – TCQB.

**20.6.3 Offset and close out for net receipts**

- (a) This clause 20.6.3 applies for a relevant Gas Day and Capacity Type only if the Offset Quantity is equal to TCQS. TCQS and TCQB have the meanings set out in clause 20.6.2(a) when used in this clause.

- (b) The Operator must calculate a capacity sell reduction factor (**CSRF**) for the Gas Day and Capacity Type as follows:
- $CSRF = \text{Close Out Capacity Quantity} / TCQB.$
- (c) For each relevant Capacity Transaction for which the Defaulting Participant is the Buyer:
- TCQR is the reduction to the Transaction Quantity made in respect of the Seller, equal to the Transaction Quantity multiplied by CSRF and rounded to the nearest whole GJ; and
- ATCQ is the Transaction Quantity in respect of the Seller after adjustment, equal to the original Transaction Quantity less TCQR.
- (d) For each Transaction referred to in clause 20.6.3(c):
- (i) the obligation of the Seller to deliver the Transaction Quantity is terminated and replaced by an obligation to deliver a Transfer Quantity equal to ATCQ on the same Gas Day, subject to clause 20.6.6;
- (ii) the Transaction Quantity to be used for Settlement purposes for that Gas Day will be equal to ATCQ; and
- (iii) the obligations of the Defaulting Participant to accept delivery of the Transaction Quantity (on that Gas Day) and to pay the Operator for the corresponding Commodity are terminated.
- (e) For each relevant Capacity Transaction in which the Defaulting Participant is the Seller:
- (i) the obligation of the Defaulting Participant to make the Transaction Quantity available for Delivery on that Gas Day and the obligation of the Operator to pay the Defaulting Participant for the corresponding Commodity are terminated; and
- (ii) the Buyer must accept delivery of the Transaction Quantity on that Gas Day in the manner provided for in clause 20.5.6.

**20.6.4 Offset and close out for net deliveries**

- (a) This clause 20.6.4 applies for a relevant Gas Day and Capacity Type only if the Offset Quantity is equal to TCQB. TCQS and TCQB have the meanings set out in clause 20.6.2(a) when used in this clause.
- (b) The Operator must calculate a capacity buy reduction factor (**CBRF**) for the relevant Gas Day and Capacity Type as follows:
- $CBRF = \text{Close Out Quantity} / TCQS$
- (c) For each relevant Capacity Transaction in which the Defaulting Participant is the Seller:
- TCQR is the reduction to the Transaction Quantity made in respect of the Buyer, equal to the Transaction Quantity multiplied by CBRF, rounded to the nearest whole GJ; and
- ATCQ is the Transaction Quantity in respect of the Buyer after adjustment, equal to the original Transaction Quantity less TCQR.

- (d) For each Transaction referred to in clause 20.6.4(c):
  - (i) the obligation of the Buyer to accept delivery of the Transaction Quantity is terminated and replaced by an obligation to accept delivery of a Transfer Quantity equal to ATCQ on the same Gas Day, subject to clause 20.6.6;
  - (ii) the Transaction Quantity to be used for Settlement purposes for that Gas Day will be equal to ATCQ; and
  - (iii) the obligation of the Defaulting Participant to make the Transaction Quantity available for delivery on that Gas Day and the obligation of the Operator to pay the Defaulting Participant for the corresponding Commodity are terminated.
- (e) For each relevant Capacity Transaction in which the Defaulting Participant is the Buyer:
  - (i) the obligations of the Defaulting Participant to accept delivery of the Transaction Quantity and to pay the Operator for the corresponding Commodity are terminated; and
  - (ii) the Seller must deliver the Transaction Quantity on that Gas Day in the manner provided for in clause 20.6.6.

#### **20.6.5 Acknowledgment**

If an Offset Amount or Close Out Amount is payable in respect of a Defaulting Participant in relation to a Transaction, and that amount is paid by or set off in respect of that Defaulting Participant in Settlement, the other party to that Transaction has no claim or remedy against the Defaulting Participant under this agreement referable to the same Transaction.

#### **20.6.6 Delivery of Offset Transactions**

For each relevant Gas Day, the delivery or receipt obligations of each party to a relevant Commodity Transaction (other than the Defaulting Participant), as adjusted under clause 20.6.3 or 20.6.4, are to be included in the calculations under clause 14A.3.

#### **20.6.7 Worked example of close out and offset**

*Note to draft: To be completed when the approach above is settled.*

### **14 Amendments to clause 21 (Dispute Resolution)**

Insert the following as new clause 20.6.

#### **20.6 Transfer Failure Disputes**

- (a) If a Trading Participant reasonably believes there to be an error (including an omission) or discrepancy in the information used by the Operator under clause 14A.5(d) to determine the cause and extent of a Transfer Failure, the Trading Participant must notify the Operator and the relevant Facility Operator as soon as practicable and in any event within 60 Business Days after the end of the Billing Period to which the notice relates.
- (b) To the extent that the CTA Procedures or the National Gas Rules provide for the resolution (including determination as a rule dispute) of a matter the subject of a

notice under paragraph (a), those provisions prevail over this clause 20 and the Operator and the Trading Participant must comply with those provisions.

**15 Amendments to clause 22 (Confidentiality)**

Include a new paragraph (i1) after subparagraph (i) in clause 22.3 as follows:

- (i1) the use or disclosure of information in accordance with the CTA Procedures, including to Facility Operators.

**16 Amendments to clause 24 (Liability)**

- (a) In clause 24.1, after “breach of this agreement”, insert “or the CTA Procedures”.
- (b) In clause 24.3(c)(iv), after “clause 24.1”, insert “and clause 24.3A”.
- (c) Insert a new clause 24.3A.

**24.3A No liability for Transportation Loss or Liability**

- (a) No party is liable to any other party under or in connection with this agreement in circumstances for any amount in respect of or comprising Transportation Loss or Liability however arising (including, without limitation, at law, in equity or pursuant to statute) and all such liability is excluded.
- (b) In paragraph (a), **Transportation Loss or Liability** means any loss, damage, cost, liability or expense arising under or in respect of a Transportation Facility Agreement in connection with the use of, or inability to use, Capacity the subject of a Physical Capacity Transaction whether arising in contract, tort, (including negligence) under statute or otherwise, whether or not such loss was foreseeable and even if advised of the possibility of the loss or damage.
- (c) Clause 24.3A(a) applies:
  - (i) to limit or exclude liability to the maximum extent permitted by law;
  - (ii) subject to clause 24.5; and
  - (iii) without prejudice and subject to clauses 24.1 and 24.3(b).
- (d) Insert a new clause 24.7

**24.7 Indemnity in relation to DWGM Transfers**

A Market Participant must indemnify the Operator and keep it indemnified against any liability, claim, cost or expense (including legal expense) whether arising in contract, tort (including negligence), breach of duty or on any other ground suffered or incurred by the Operator in connection with the nomination by the Market Participant of a person as Nominated DWGM Participant in connection with a DWGM Transfer, except to the extent that the liability, claim, cost or expense is due to an act or omission of the Operator done or made in bad faith, within the meaning of section 91K of the National Gas Law.

**17 Amendments to clause 25 (Force Majeure)**

- (a) Amend clause 25.2(b) as shown:

- (b) Force Majeure cannot be claimed in respect of, and does not excuse non-performance of, and does not suspend, any obligation with respect to:
  - (i) payment of any money;
  - (ii) providing or replacing Credit Support;~~or~~
  - (iii) delivery or acceptance of a quantity of gas of the applicable Gas Specification at a Delivery Point under a Transaction (**delivery obligation**), except in the circumstances specified in paragraph (c); or
  - (iv) a Transfer of Capacity except in the circumstances specified in paragraph (d).
  
- (b) Insert a new clause 25.2(d).
  - (d) Force Majeure may only be claimed in respect of a Transfer obligation if, and to the extent that, the Affected Party was prevented or hindered from complying with the Transfer obligation as a result of the Transfer being cancelled or reversed in accordance with the CTA Procedures and that cancellation or reversal was not in turn caused (in whole or part) by:
    - (i) a failure to pass Transfer Validation caused by or attributable to the Affected Party;
    - (ii) non-compliance by the Affected Party or a Nominated DWGM Participant of the Affected Party with its obligations under this agreement or a Gas Transportation Agreement or the National Gas Rules; or
    - (iii) non-compliance by any supplier to, or purchaser from, the Affected Party in respect of the corresponding quantity of Capacity with its obligations to the Affected Party or a Nominated DWGM Participant of the Affected Party.