

## DRAFT OPERATING CODE

(Market-~~B~~ased Balancing Change Request)

{~~13 August~~10 October} 2014

### Notes:

This document is a working version of the Maui Pipeline Operating Code which incorporates all amendments from MPOC Change Requests that are in effect as of 22 July 2013 as well as those that have been approved by GIC but not yet consented to by MDL as of June 2014, supplemented with marked-up changes to facilitate market-based balancing arrangements.

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# MAUI PIPELINE OPERATING CODE

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# 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Operating Code:

**"30 Day Default"** means a default by a Shipper, a Welded Party or MDL under section 22.1(a) or the continuance of a Force Majeure Event under section 22.1(d).

**"Accumulated Excess Operational Imbalance"** or **"AEOI"** means, in relation to a Welded Point:

- (a) if the Welded Point's Running Operational Imbalance is greater than its positive Running Operational Imbalance Limit, then its Running Operational Imbalance minus its positive Running Operational Imbalance Limit; or
- (b) if the Welded Point's Running Operational Imbalance is less than its negative Running Operational Imbalance Limit, then its Running Operational Imbalance minus its negative Running Operational Imbalance Limit; or
- (c) zero.

**"Approved Nomination"** means, for the relevant Day, a Shipper's Nominated Quantity (or part of it) in respect of a Receipt Point and Delivery Point which, as notified to that Shipper by MDL, has been approved under section 8.12 or has been amended under sections 8.16 or 8.29, with any such amended Approved Nomination replacing the previously Approved Nomination.

**"Authorised Quantity"** or **"AQ"** means an AQ Volume for a specific AQ Zone as set out in each TSA.

**"AQ Expiry Date"** means the date agreed by MDL and a Shipper on which that Shipper's Authorised Quantity expires, as set out in that Shipper's TSA.

**"AQ Fee"** means the AQ fee as calculated in accordance with section 19.1(a).

**"AQ Volume"** means the number of GJ (which may be zero) specified for an AQ Zone by a Shipper in its TSA as amended from time to time.

**"AQ Zone"** means a section of the Maui Pipeline either:

- (a) from the Oaonui Welded Point to the inlet of the Mokau compressor station; or
- (b) from the outlet of the Mokau compressor station to the Rotowaro Welded Point.

**"Average Market Price"** means a price per GJ of Gas calculated as set out in section 12.12(a).

**"Balancing Action"** means a Balancing Gas Call or a Balancing Gas Put.

**"Balancing Agent"** means the balancing agent appointed by MDL from time to time ~~to purchase Fuel Gas and purchase or sell Balancing Gas for and on behalf of MDL.~~

**"Balancing Gas"** means Gas purchased as part of a Balancing Gas Call, or sold as part of a Balancing Gas Put, by MDL.

**"Balancing Gas Call"** means any transaction where MDL purchases Gas with the objective of increasing Line Pack. For the avoidance of doubt, this excludes:

- (a) any Gas purchased by MDL as part of a Cash-Out Transaction;
- (b) any Gas purchased from a Shipper pursuant to section 11.8(b); and
- (c) any Fuel Gas purchased.

**"Balancing Gas (Delivery) Point"** means a virtual Delivery Point to which a Shipper may nominate Gas purchased in a Balancing Gas Call.

**"Balancing Gas (Receipt) Point"** means a virtual Receipt Point from which a Shipper may nominate Gas sold in a Balancing Gas Put.

**"Balancing Gas Put"** means any transaction where MDL sells Gas with the objective of reducing Line Pack. For the avoidance of doubt, this excludes:

- (a) any Gas sold by MDL as part of a Cash-Out Transaction; and
- (b) any Gas sold to a Shipper pursuant to section 11.8(a).

**"Balancing Platform"** means an electronic platform used for the short-term trading of ~~short-term quantities of~~ Gas, upon which MDL has both bidding and offering trading rights and on which MDL is counterparty to all trades.

**"Bank"** means a New Zealand registered bank with which MDL holds the Trust Account in accordance with section 20.

**"BGIX"** means a balancing gas information platform that displays information related to Maui Pipeline balancing. Its homepage shall be located at, or identified and linked to on, <http://mauipipeline.co.nz> or such other website as may be notified by MDL to each Party from time to time.

**"Bill Rate"** means, on any Business Day, the average (determined by MDL and rounded up to the nearest fifth decimal place) of the individual bid rates, expressed as a percentage per annum, quoted by entities (each a "bank") on the Reuters Screen Pages "BKBL" and "BKBM" (or such other pages as may replace those pages on that service for displaying quotations for bank bills of exchange having a tenor of three Months) at or about 10.45 a.m. on the relevant Business Day for bills of exchange having a tenor of three Months which have been drawn, accepted or endorsed by such banks and for each non-Business Day, the Bill Rate on the most recent Business Day.

**"Business Day"** means a Day other than a Saturday, Sunday or public holiday on which registered banks are open for business in Auckland and Wellington.

**"Cash Deposit"** means a cash deposit (or a transfer or grant of security over equivalent assets as agreed by MDL and the Shipper).

**"Cash-Out Buy Price"** for a Day means a price per GJ of Gas calculated as set out in section 12.12(i).

**"Cash-Out Quantity"** means, for a Welded Point with an AEOI other than zero for a Day, a quantity of Gas calculated for and as at the end of that Day according to one of the following formulas, as appropriate:

- (a) if the Welded Point has an AEOI greater than zero for that Day:

$$ROI - ( m \times pROIL )$$

or

- (b) if the Welded Point has an AEOI less than zero for that Day:

$$- ( ROI - ( m \times nROIL ) )$$

where:

- (i) ROI is the Running Operational Imbalance;
- (ii) m is the ROIL Multiplier;
- (iii) pROIL is the positive Running Operational Imbalance Limit; and
- (iv) nROIL is the negative Running Operational Imbalance Limit,

for that Welded Point for that Day, provided that if the ~~resulting~~ quantity resulting from the calculation (under (a) or (b), as the case may be) is less than zero then it shall be deemed to be equal to zero.

**"Cash-Out Sell Price"** for a Day means a price per GJ of Gas calculated as set out in section 12.12(h).

**"Cash-Out Trading Fee Price"** means, with respect to a Cash-Out Transaction, an amount that is equal to the unweighted mean value of all categories of trading fees per GJ posted by eligible Trading Platforms on their websites (or provided to MDL) at midday on the Day prior to the Cash-Out Transaction.

**"Cash-Out Transaction"** means:

- (a) the purchase of a Cash-Out Quantity from a Welded Party pursuant to section 12.10; or
- (b) the sale of a Cash-Out Quantity to a Welded Party pursuant to section 12.11.

**"Cash-Out Transmission Price"** means, with respect to a Cash-Out Transaction, an amount that is equal to the cost per GJ that a Shipper with an AQ Volume of zero would have incurred (under section 19.1) for transportation of Gas between the relevant Welded Point and the Payback Point on the relevant Day.

**"Category A Nomination"** means a Nominated Quantity to the extent that it is within a Shipper's AQ.

**"Category B Nomination"** means any part of a Nominated Quantity that is not either a Category A Nomination or a Nominated Quantity of Balancing Gas.

**"Change Request"** has the meaning set out in section 29.4.

**"Changed Provisional Cycle"** means the nomination cycle that occurs on the Day before the Transmission Day, as described in sections 8.11 to 8.13 (inclusive) and sections 9.5 to 9.7 (inclusive).

**"Changed SQ"** means the Scheduled Quantity after a change has been confirmed pursuant to section 9.8 during an Intra-Day Cycle or made pursuant to sections 15.1 or 15.2.

**"Charges"** means all amounts payable to MDL by a Shipper or a Welded Party, as appropriate.

**"Claimant"** means a Shipper, Welded Party or third party who makes a claim against MDL under section 28, where the claim is caused by a purported breach of the relevant ICA or TSA by another Shipper or Welded Party.

**"Commencement Date"** means the commencement date specified in the relevant ICA or TSA.

**"Commercial Operator"** means the person appointed by MDL as commercial operator of the Maui Pipeline from time to time.

**"Confidential Information"** means:

- (a) all information in any form disclosed by a Shipper or Welded Party to MDL in order to comply with section 20;
- (b) in relation to each Shipper, its Shipper's Rolling Forecast, Nominated Quantities and any requested changes to its Approved Nominations and any other information restricted to that Shipper under section 4.2; and

- (c) other information identified by a Shipper or Welded Party (acting reasonably), and notified to MDL, to be confidential, which shall exclude any of the information disclosed in accordance with, and to the specific parties identified in, section 4.

**"Confidentiality Auditor"** means the auditor appointed under section 24.6.

**"Contingency Event"** means an event or circumstance that MDL believes, acting as a Reasonable and Prudent Operator, has detrimentally affected Transmission Services or depleted Line Pack to an unacceptable level, or could do so, and includes an Emergency.

**"Contingency Volume"** means the quantity of Gas which is maintained by MDL in the Maui Pipeline as part of the Line Pack and is designated for use in a Contingency Event, Maintenance, or a Force Majeure Event in accordance with this Operating Code.

**"Daily Incentive Price"** means the price per GJ, calculated as Premium Fuel Value Fee less the Positive Mismatch Price.

**"Daily Operational Imbalance Limit"** means the daily operational imbalance limit for each Welded Point as described in section 12.6.

**"Daisy Chain Nomination"** means the quantity of Gas that a Shipper requests to be transported from a single Receipt Point to a single Delivery Point for a Day without ranking that request in priority to other requests by that Shipper for that Day.

**"Day"** means a period of 24 consecutive hours, beginning at 0000 hours (New Zealand standard time) and "Daily" has a corresponding meaning.

**"Deemed Measured Quantity"** means, in respect of a Day and a Notional Welded Point, a quantity of Gas equal to that Day's Scheduled Quantity for the applicable Trading Hub Delivery Point.

**"Defaulting Party"** has the meaning set out in section 22.1.

**"Default Rate"** means the Bill Rate plus 5% per annum.

**"Defending Party"** means a Welded Party or Shipper who purportedly breaches its ICA or TSA respectively in circumstances where a Claimant makes a claim against MDL under section 28 arising out of or in connection with that purported breach.

**"Delivery Point"** means a Welded Point to which a Shipper nominates to have Gas transported.

**"Disclosing Party"** means a Party disclosing Confidential Information.

**"Displaced Gas Nomination"** means a Nominated Quantity that includes either:

- (a) a Welded Point where Gas is only physically injected into the Maui Pipeline (excluding any bi-directional Welded Point) as a Delivery Point; or
- (b) a Welded Point where Gas is only physically offtaken from the Maui Pipeline (excluding any bi-directional Welded Point) as a Receipt Point.

**"Dispute"** means any dispute, controversy or claim arising out of or in connection with this Operating Code, a TSA and/or an ICA, including any question regarding the existence, validity, interpretation, performance, breach or termination of any of them.

**"Dispute Notice"** means a notice in writing in respect of a Dispute between MDL and the other Party, given by one of those Parties to that other Party under section 23.1 and stating the subject matter and details of the Dispute.

**“Emergency”** means a state of affairs, or an event or circumstance that gives rise to that state of affairs, that MDL, acting as a Reasonable and Prudent Operator, determines to be an emergency, irrespective of the cause of the emergency and of whether MDL or any other person may have caused or contributed to the emergency. Such a state of affairs may exist:

- (a) by reason of an escape, or reasonably suspected escape, of Gas from the Maui Pipeline; or
- (b) in circumstances in which, in MDL’s opinion, acting as a Reasonable and Prudent Operator:
  - (i) the safety of the Maui Pipeline is significantly at risk; or
  - (ii) the safe transportation of Gas by the Maui Pipeline is significantly at risk; or
- (c) where Gas transported by the Maui Pipeline is at such a pressure or of such a quality as to constitute, when supplied to premises, a danger to life, a Station, Metering, property or the environment; or
- (d) where there exists any other circumstances reasonably believed by MDL to constitute an emergency (which, for the avoidance of doubt, may include circumstances on another Pipeline); or
- (e) in particular, but without limitation, where MDL’s ability to maintain the required pressures within the Maui Pipeline is affected or threatened by:
  - (i) an interruption or disruption to the Maui Pipeline; or
  - (ii) an insufficiency of deliveries of Gas to the Maui Pipeline; or
  - (iii) any actual or potential failure of, or damage to, any part of the Maui Pipeline; or
  - (iv) any off-take of a quantity of Gas from the Maui Pipeline which exceeds the relevant Peaking Limit or is outside the relevant Daily Operational Imbalance Limit or is more than the quantities specified in an Operational Flow Order.

**“Excess Daily Imbalance”** means:

- (a) in relation to a Physical Welded Point on a Day, any flow of Gas that deviates from the Scheduled Quantity in a manner that depletes Line Pack in excess of the tolerance provided by the Daily Operational Imbalance Limit; and
- (b) in relation to a Trading Hub Receipt Point on a Day, any negative Operational Imbalance at that Trading Hub Receipt Point for that Day.

**“Expert”** means an independent expert to whom an Expert Dispute is referred under section 23.4(b), and who is appointed in accordance with section 23.4(c).

**“Expert Dispute”** means a dispute in respect of the matters set out in section 23.4(a).

**“Flow Line Pack”** means a GJ amount [calculated by MDL and](#) posted on the BGIX at every nomination cycle being the minimum quantity of Gas required to be in the Maui Pipeline to transport all Approved Nominations on that Day (which for the avoidance of doubt excludes the Contingency Volume and assumes that all Welded Points flow Gas at their Hourly Scheduled Quantities).

**"Force Majeure Event"** means an event or circumstance beyond the reasonable control of a Party, which results in or causes a failure by such Party in the performance of any obligations imposed on it by its ICA or TSA, as appropriate, or an inability of that Party to deliver or take delivery of Gas pursuant to its ICA or TSA, as appropriate, notwithstanding the exercise by such Party of reasonable care. [A failure by a participant on any Trading Platform or Balancing Platform to comply with, observe or perform \(as and when due, in part, or at all\) the rules governing that platform, or any agreement, arrangement or understanding between that participant and the operator of that platform in connection with such rules or the platform, shall not for any purpose be an event or circumstance beyond the reasonable control of any Welded Party being the operator of that platform.](#)

**"Fuel Gas"** means Gas used in connection with the operation of a pipeline compressor.

**"Gas"** means, subject to section 17.19, gas that complies with the Gas Specification.

**"Gas Specification"** means the New Zealand Standard for Reticulated Natural Gas NZS 5442:1999 as amended or replaced from time to time.

**"Gas Transfer Code"** means the gas transfer code entitled "The Gas Transfer Code" set out on the MDL IX (as amended from time to time in accordance with its terms)<sup>1</sup>.

**"GIC"** means the Gas Industry Company Limited.

**"Gigajoule"** or **"GJ"** means the energy equivalent of a quantity of gas, on a gross or higher heating value basis.

**"Gross Historical Usage"** means for a Welded Point (other than the Pooling Point) the mean of a Shipper's Approved Nominations for that Welded Point for each Transmission Day during the previous 12 Month period or the period since the Commencement Date, whichever is the shorter period.

**"GST"** means Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985.

**"GST Amount"** means an amount equal to any GST for which an Invoicing Party is liable in respect of an Invoiced Party pursuant to this Operating Code.

**"Highest Month"** has the meaning set out in section 20.6(b).

**"Hour"** means a period of sixty consecutive minutes commencing on the hour.

**"Hourly Scheduled Quantity"** or **"HSQ"** means, for each Hour during the Transmission Day, the hourly Scheduled Quantity approved by MDL in accordance with section 13.2, or, in the absence of such approval, the remaining Scheduled Quantity at the start of that Hour divided by the remaining number of Hours in that Transmission Day including that Hour, where the remaining Scheduled Quantity at the start of an Hour means the then current Scheduled Quantity at the start of that Hour less the sum of HSQs for all prior Hours in that Day.

**"Incentives Pool"** means the pool of money held on trust and administered by the Incentives Pool Trustee, into which all Incentives Pool Debits are to be paid and out of which Incentives Pool Claims are to be paid.

**"Incentives Pool Account"** means the bank account that contains the funds from time to time of the Incentives Pool.

**"Incentives Pool Claim"** means, for each Day, a claim (in \$) made to the Incentives Pool Trustee by a Welded Party pursuant to section 12.14.

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<sup>1</sup> note that this is the document located on Vector's website dated April 2005 that will be loaded onto the MDL IX in its form as at the date of the Operating Code. Clause 7.4 of the Gas Transfer Code sets out how it may be amended.

**“Incentives Pool Debit”** means, for each Day, every GJ:

- (a) by which a Peaking Limit is exceeded;
- (b) of an Excess Daily Imbalance.

**“Incentives Pool Debit Price”** means the dollar amount payable per Incentives Pool Debit for a Day calculated as either:

- (a) zero if there are no Incentives Pool Claims in respect of that Day; or
- (b) the sum of Incentives Pool Claims for that Day divided by the sum of Incentives Pool Debits for that Day.

**“Incentives Pool Trustee”** means the Commercial Operator in its role as trustee for the Incentives Pool.

**“Independent Auditor”** means the auditor appointed for the purposes set out in section 14.8.

**“Information Recipient”** means the party to whom Confidential Information is disclosed.

**“Initial Period”** means the period between the Commencement Date of a Shipper’s TSA and the first anniversary of that Commencement Date.

**“Interconnection Agreement”** or **“ICA”** means the valid agreement made between MDL and a Welded Party when both MDL and that Welded Party complete and sign a Welded Party Agreement Form.

**“Interest Rate”** means the Bill Rate plus 2% per annum.

**“Intra-Day Cycle”** means a nomination cycle that occurs after the Changed Provisional Cycle, as described in sections 8.14 to 8.16 inclusive and sections 9.8 and 9.9.

**“Intra-Day Nomination”** means a requested amendment to an Approved Nomination or a new Nominated Quantity requested by a Shipper during an Intra-Day Cycle.

**“Intra-Day Nomination Deadline”** means the deadline for a Shipper to make an Intra-Day Nomination during each Intra-Day Cycle, as posted on the MDL IX.

**“Invoice”** means a Monthly Invoice or an MDL Invoice, as the context requires, which is issued pursuant to this Operating Code.

**“Invoiced Party”** means a Party to which an Invoice is issued for Charges or MDL Charges, as the case may be, in accordance with section 21.

**“Invoicing Party”** means a Party that issues an Invoice for Charges or MDL Charges, as the case may be, in accordance with section 21.

**“Issuing Party”** means the Party that issues a Dispute Notice under section 23.2.

**“Large Station”** means a Station that is not a Small Station.

**“Line Pack”** means the total quantity of Gas in the Maui Pipeline at any time.

**“Loss”** means any loss, damage, expense, cost or claim.

**“Low Line Pack Threshold”** means a GJ amount calculated at every nomination cycle and posted on the BGIX being the sum of:

- (a) Flow Line Pack; plus
- (b) Contingency Volume; plus
- (c) 10,000 GJ.

**"Maintenance"** includes any testing, adding to, altering, repairing, replacing, cleaning or maintaining of MDL's or any Welded Party's gas production and/or treatment facilities (including wells), Pipeline or equipment (including pipelines, compressors, valves, filters, meters, line heaters, control, testing, cleaning and monitoring equipment), inspection, recommissioning, upgrade or extension of any of MDL's or any Welded Party's gas production and/or treatment facilities and/or Pipeline and/or equipment where such maintenance materially affects the ability of a Party to comply with this Operating Code, and includes any works preparatory to such maintenance or required for the return to service of a part of such Pipeline or facilities after such maintenance.

**"Maintenance Day"** means a Day, as notified in advance by MDL on the MDL IX in accordance with section 4, on which Scheduled Maintenance on the Maui Pipeline is intended to occur.

**"MAOP"** means the maximum allowable operating pressure of the Maui Pipeline or any part of it, as set out in Schedule 6.

**"Marginal Buy Price"** for a Day means a price per GJ of Gas calculated as set out in section 12.12(c).

**"Marginal Sell Price"** for a Day means a price per GJ of Gas calculated as set out in section 12.12(b).

**"Maui Mining Companies"** means Shell (Petroleum Mining) Company Limited, Shell Exploration NZ Limited, Energy Petroleum Investments Limited, Taranaki Offshore Petroleum Company of New Zealand Limited, Todd Petroleum Mining Company Limited and OMV New Zealand Limited or their respective successors in title.

**"Maui Pipeline"** means the high pressure Gas pipeline running from the point immediately downstream of the Metering at the Oaonui Welded Point to the Rotowaro Welded Point, and including the laterals to the Port of Taranaki and to the Welded Point at the Huntly power station, as well as all Stations and other items of plant, equipment, fixtures and fittings directly appurtenanced to such pipeline but excluding any item controlled by a party other than MDL.

**"MDL"** means Maui Development Limited.

**"MDL Charge"** means an amount payable by MDL to a Shipper or a Welded Party, as the case may be, under this Operating Code.

**"MDL Invoice"** means an invoice issued to MDL by a Shipper or Welded Party, as the case may be, in accordance with section 21.4, for an MDL Charge payable to that Party in respect of the previous Month, together with any outstanding amounts due and owing.

**"MDL IX"** means the MDL information exchange that receives and displays the tolerances, nominations, Scheduled Quantities, incentives and fees, certain notices and other information in relation to MDL's operation of the open access regime for the Maui Pipeline and whose homepage is located at <http://www.mauipipeline.co.nz> when accessed using the user name provided by MDL and the relevant password, or such other website as may be notified by MDL to each Shipper and Welded Party from time to time.

**"MDL's Proposed Scheduled Quantity"** means, in respect of a Welded Point for a Day, the sum of Nominated Quantities for that Welded Point submitted by Shippers to MDL for a Provisional Cycle or a Changed Provisional Cycle under sections 8.8 or 8.11 respectively, as amended as the result of changed Approved Nominations or new Nominated Quantities for that Welded Point during each Intra-Day Cycle.

**"Metering"** means the equipment and facilities installed at or near a Physical Welded Point for the purposes of measuring the quantities of Gas passing through such Welded Point.

**"Metering Owner"** means any person that owns Metering.

**"Methanex"** means Methanex New Zealand Limited.

**"Methanex 20/20 Agreement"** means the Methanex Gas Supply Agreement dated 31 May 2004 between the Maui Mining Companies and Methanex.

**"Minimum Pressure"** means the minimum pressure at which MDL will operate the Maui Pipeline, being 31 bar absolute.

**"Mismatch"** means, in relation to a Shipper on any Day, the sum of that Shipper's Approved Nominations of Gas at Receipt Points on that Day minus the sum of that Shipper's Approved Nominations at Delivery Points on that Day (where the difference is not zero), being either a Positive Mismatch or a Negative Mismatch.

**"Mismatch Notice"** means the notice given to a Shipper by MDL under section 11.5.

**"Mismatch Payback Limit"** means the maximum quantity of Gas that a Shipper can nominate at a Payback Point on a specific Day, as set out in the Mismatch Notice.

**"Mismatch Period"** means a period advised to a Shipper in a Mismatch Notice during which that Shipper must remove its Mismatch.

**"Month"** means a calendar month beginning at 0000 hours (New Zealand standard time) on the first Day of a calendar month and "Monthly" has a corresponding meaning.

**"Monthly Invoice"** means an invoice issued in accordance with section 21 by MDL or the Incentives Pool Trustee to a Shipper or Welded Party for all Charges payable in respect of the previous Month by that Shipper or Welded Party, together with any outstanding amounts in respect of any Month prior to the previous Month.

**"Negative Mismatch"** means a Shipper's Mismatch on a given Day that is less than zero (i.e. where the sum of the Shipper's Approved Nominations at Delivery Points exceeds the sum of its Approved Nominations at Receipt Points).

**"Negative Mismatch Price"** means the negative mismatch price per GJ for the relevant Day posted by MDL on the MDL IX from time to time.

**"Net Historical Usage"** means, where a Welded Point is within a Shipper's AQ Zone, the mean of that Shipper's Approved Nominations less its AQ Volume for that Welded Point for each Transmission Day during the previous 12 Month period, or the period since the Commencement Date, whichever is the shorter period.

**"Nominated Bank Account"** means MDL's bank account as notified by MDL to the other Party from time to time.

**"Nominated Quantity"** means the quantity of Gas that a Shipper requests to be transported on a Day, being either a Daisy Chain Nomination or a Pooled Nomination.

**"Nomination Day"** means the day on which the provisional nominations process for the following Week takes place, being the last Business Day of each Week.

**"Non-defaulting Party"** has the meaning set out in section 22.1.

**"Non-Specification Gas"** means gas that does not comply with the Gas Specification.

**"Notional Point Welded Party"** means the Welded Party at a Notional Welded Point.

**"Notional Welded Point"** means each of a Trading Hub Receipt Point and the corresponding Trading Hub Delivery Point.

**"OBA Principles"** mean the principles of an OBA.

**“Operating Code”** means this operating code for open access to the Maui Pipeline as amended from time to time.

**“Operational Balancing Agreement”** or **“OBA”** means a Primary Allocation Agreement which operates by the principles that:

- (a) a Shipper’s allocation of Gas at a Welded Point is deemed to be equal to its Approved Nominations at that Welded Point; and
- (b) any Operational Imbalance is allocated to the Welded Party at the relevant Welded Point; and
- (c) the Welded Party at each Welded Point seeks to minimise the Running Operational Imbalance at that Welded Point at all times.

**“Operational Flow Order”** has the meaning set out in section 15.1.

**“Operational Imbalance”** means:

- (a) in respect of a Physical Welded Point, the difference between the actual quantity of Gas that flowed through that Welded Point on a Day and the Scheduled Quantity for that Day (under-injection into or over-taking out of the Maui Pipeline by the Welded Party relative to that Day’s Scheduled Quantity being a negative Operational Imbalance and over-injection into or under-taking out of the Maui Pipeline relative to that Day’s Scheduled Quantity being a positive Operational Imbalance); and
- (b) in respect of a Trading Hub Receipt Point, the difference between the Deemed Measured Quantity for a Day and the Scheduled Quantity for that Day. A negative Operational Imbalance shall exist at a Trading Hub Receipt Point where its Deemed Measured Quantity for that Day is less than its Scheduled Quantity for that Day and a positive Operational Imbalance shall exist where its Deemed Measured Quantity for that Day exceeds its Scheduled Quantity for that Day.

**“Operators”** means the Commercial Operator, the System Operator and the Technical Operator.

**“Other Party”** has the meaning set out in section 28.1.

**“Party”** means a party to a TSA or ICA, as relevant.

**“Payback Point”** means a virtual Receipt Point or Delivery Point (which, for the purposes of calculating any Throughput Charges, shall be deemed to be the Bertrand Road Welded Point) to which a Shipper requests Payback Quantities be delivered or from which a Shipper requests Payback Quantities be received in accordance with section 11.7.

**“Payback Quantity”** has the meaning set out in section 11.7.

**“Peaking Charge”** means a charge calculated in accordance with section 13.4.

**“Peaking Limit”** means, in respect of any Hour for each Physical Welded Point, the greater of:

- (a) the Hourly Scheduled Quantity multiplied by the Peaking Tolerance for that Welded Point; and
- (b) the minimum peaking limit (in GJ) for that Welded Point, as specified on the MDL IX, provided that if the Hourly Scheduled Quantity changes during a Transmission Day, the change to the Peaking Limit shall take effect:
  - (i) immediately if the Changed SQ is greater than the most recently agreed Scheduled Quantity; and

- (ii) if the Changed SQ is less than the most recently agreed Scheduled Quantity, at the end of the second Hour after the Changed SQ is confirmed by MDL.

**“Peaking Tolerance”** means, in respect of any Hour, the peaking tolerance for the relevant Physical Welded Point posted on the MDL IX as a percentage amount.

**“Physical Point Welded Party”** means a Welded Party at a Physical Welded Point.

**“Physical Delivery Point”** means a Delivery Point that is a Physical Welded Point.

**“Physical Welded Point”** means any point at which there is a connection between the Maui Pipeline and the infrastructure of a Welded Party.

**“Pipeline”** means:

- (a) a Transmission Pipeline;
- (b) the Maui Pipeline; and
- (c) any other pipeline that is connected to the Maui Pipeline via a Welded Point and includes all items of plant, equipment, fixtures and fittings directly appurtenanced to that pipeline, but which shall exclude any item:
  - (i) such as a gas production facility or a gas consuming facility connected to that pipeline; or
  - (ii) not controlled by the owner of such pipeline.

**“Pipeline Contingency Event”** means an event or circumstance that a Welded Party believes, acting as a Reasonable and Prudent Operator, has detrimentally affected:

- (a) gas production and/or processing facilities; or
- (b) transmission services on, or depleted line pack in, its Pipeline to an unacceptable level, or could do so, and includes a Pipeline Emergency.

**“Pipeline Emergency”** means a state of affairs, or an event or circumstance that gives rise to that state of affairs, that a Welded Party, acting as a Reasonable and Prudent Operator, determines to be an emergency, irrespective of the cause of the emergency and of whether that Welded Party, or any other person may have caused or contributed to the emergency. Such a state of affairs may exist:

- (a) by reason of an escape, or suspected escape, of Gas from its Pipeline; or
- (b) in circumstances in which, in the Welded Party’s opinion, acting as a Reasonable and Prudent Operator:
  - (i) the safety of the Pipeline is significantly at risk; or
  - (ii) the safe transportation of Gas by a Transmission Pipeline is significantly at risk; or
- (c) where Gas transported by the Pipeline, or a pipeline connected to it, is at such a pressure or of such a quality as to constitute, when supplied to premises, a danger to life, a Station, Metering, property or the environment; or
- (d) where there exists any other circumstances reasonably believed by the Welded Party to constitute an emergency (which, for the avoidance of doubt may include circumstances upstream or downstream of a Transmission Pipeline or at gas production or processing facilities connected to a Pipeline); or
- (e) in particular, but without limitation, where the Welded Party’s ability to maintain safe pressures within the Pipeline is affected or threatened by:

- (i) an interruption or disruption to the Pipeline;
- (ii) an insufficiency of deliveries of Gas to a Transmission Pipeline; or
- (iii) any actual or potential failure of, or damage to, any part of the Pipeline.

**"Pipeline Owner"** means MDL or a Physical Point Welded Party, as the context requires.

**"Pooled Nomination"** means a quantity of Gas that a Shipper requests to be transported from:

- (a) one or more Receipt Points ranked by that Shipper to the Pooling Point; and
- (b) the Pooling Point to one or more Delivery Points ranked by that Shipper.

**"Pooling Point"** means a virtual point on the Maui Pipeline, being a Delivery Point or Receipt Point as appropriate, which shall be treated for any invoicing purposes as being located at the Bertrand Road Welded Point.

**"Positive Mismatch"** means a Shipper's Mismatch on a given Day that is greater than zero (i.e. where the sum of the Shipper's Approved Nominations at Receipt Points exceeds the sum of its Approved Nominations at Delivery Points).

**"Positive Mismatch Price"** means the positive mismatch price per GJ for the relevant Day posted by MDL on the MDL IX in accordance with section 4.

**"Premium Fuel Value Fee"** is a fee per GJ posted on the MDL IX that is the higher of the Negative Mismatch Price and the gas price equivalent of the electricity spot price during the Day. The gas price equivalent of the electricity spot price will be determined by the assumed electrical conversion efficiency for a New Zealand gas fired generation plant (deemed to be 140 kWh/GJ) multiplied by the highest mean electricity spot price for any two hour period on the Transmission Day at the nearest node to any major gas fuelled electricity generation plant whose generation capability is greater than 30MW.

**"Primary Allocation Agreement"** means the rules in place at a Welded Point governing the method for allocating Gas between the Shippers and the Welded Party at that Welded Point.

**"Proposed Scheduled Quantity"** means the Welded Party's proposed Scheduled Quantity for a Welded Point for a Day, which shall be:

- (a) the proposed Scheduled Quantity entered by the Welded Party for that Welded Point; or
- (b) if no such proposed Scheduled Quantity is entered by the Welded Party, the sum of the Nominated Quantities entered or confirmed by that Welded Party for that Welded Point.

**"Provisional Cycle"** means the nomination cycle that occurs on the Nomination Day as described in sections 8.8 to 8.10 (inclusive) and sections 9.2 to 9.4 (inclusive).

**"Provisional Nomination"** means a Shipper's Nominated Quantity of Gas, or any part of it, which has been provisionally approved by MDL on the Nomination Day and confirmed to that Shipper in accordance with section 8.10.

**"Reasonable and Prudent Operator"** means, in relation to the performance of obligations under this Operating Code:

- (a) for MDL and each TP Welded Party, an operator of a high pressure gas transmission system whose standard of performance is equal to or better than good gas transmission operating practice as determined by reference to proper and prudent practices recognised internationally as applying to the operation of such systems;

- (b) for a Welded Party (excluding any TP Welded Party and Notional Point Welded Party), an operator of gas facilities (which include production and treatment and gas consuming facilities, as the case may be) whose standard of performance in relation to those facilities is equal to or better than good gas facility operating practice as determined by reference to proper and prudent practice recognised internationally as applying to the operation of such facilities;
- (c) for a Shipper, a shipper of gas whose standard of performance is equal to or better than good gas shipping practice as determined by reference to proper and prudent practice recognised internationally as applying to the shippers of gas; and
- (d) for an operator of a ~~Trading System~~ [Trading Platform](#), (including a Notional Point Welded Party), an operator and manager of a ~~Trading System~~ [Trading Platform](#) whose standard of performance is equal to or better than international practice for the operation and management of wholesale gas markets on gas transmission systems as determined by reference to proper and prudent practices recognised internationally as applying to such markets.

**“Receipt Point”** means a Welded Point from which a Shipper nominates to have Gas transported.

**“Receiving Party”** means a Party to which a Dispute Notice is issued under section 23.2.

**“ROIL Multiplier”** means a multiplication factor determined in accordance with section 12.18 that is used in calculating the Cash-Out Quantity for a Welded Point with an AEOI other than zero for a Day.

**“Rolling Capacity Forecast”** means MDL’s forecast, made in good faith, of expected Maui Pipeline capacity for the next 12 Month period, including total capacity (as it may be defined by MDL from time to time) and indicating the Days on which, and the extent to which, such expected Maui Pipeline capacity may be greater or less than the sum of all Shipper Rolling Forecasts.

**“Running Operational Imbalance”** means the cumulative balance of Operational Imbalance for each Welded Point calculated for and as at the end of each Day<sub>n</sub> being the sum of:

- (a) either:
  - (i) if Day<sub>n</sub> is the Commencement Date, zero; or
  - (ii) for all subsequent Days:
    - (aa) the Running Operational Imbalance for that Welded Point at the end of Day<sub>n-1</sub>, plus
    - (bb) any quantity of Gas purchased from MDL by the Welded Party in relation to that Welded Point on Day<sub>n-1</sub> pursuant to a Cash-Out Transaction, minus
    - (cc) any quantity of Gas sold to MDL by the Welded Party in relation to that Welded Point on Day<sub>n-1</sub> pursuant to a Cash-Out Transaction;
- (b) the Operational Imbalance at that Welded Point for that Day<sub>n</sub>; and
- (c) the adjustment for any Operational Imbalance transferred or traded to or from another Welded Point during Day<sub>n</sub> pursuant to section 12.5 or section 12.15.

**“Running Operational Imbalance Limit”** means a GJ limit for a Welded Point’s Running Operational Imbalance. Subject to paragraph (c), eEach Welded Point shall have a positive and a negative Running Operational Imbalance Limit, which may have different absolute values and which shall be determined as follows.

(a) ~~The positive Running Operational Imbalance Limits for Welded Points located at Large Stations shall be posted on the MDL IX in accordance with section 4 and~~ shall be at least the ~~greater maximum value~~ of:

- (i) ~~corresponding parameter set out the a GJ amount being not less than the~~ “ROIL (GJ)” value listed in Schedule 7 for the relevant Welded Point; and
- (ii) ~~corresponding parameter set out a percentage, being not less than the~~ “ROIL (% of SQ)” value listed in Schedule 7, for the relevant Welded Point multiplied by ~~of~~ the average of the Scheduled Quantities at the relevant Welded Point during the previous 30 Days.

~~provided that a negative Running Operational Imbalance Limit is expressed (after its calculation) as a negative number.~~

(b) The negative Running Operational Imbalance Limit shall be the negative expression of the maximum value (whereby the negative expression is applied after the maximum value calculation) of:

- (i) the “ROIL (GJ)” value listed in Schedule 7 for the relevant Welded Point; and
- (ii) the “ROIL (% of SQ)” value listed in Schedule 7 for the relevant Welded Point multiplied by the average of the Scheduled Quantities at the relevant Welded Point during the previous 30 Days.

(c) ~~The Running Operational Imbalance Limits at each Notional Welded Point and at each Physical Welded Point located at a Small Station and Notional Welded Points shall each have Running Operational Imbalance Limits in all cases be shall of~~ zero.

**“Scheduled Maintenance”** means Maintenance on the Maui Pipeline for which MDL has given 30 Days prior written notice via the MDL IX to each relevant Welded Party and Shipper that will be affected, that Maintenance will occur at the times, and affect the Scheduled Quantity in the manner, stated in such notice.

**“Scheduled Quantity”** means the net quantity of Gas (being the difference between receipt and delivery nominations) agreed by MDL and the Welded Party to pass through (or, in the case of a Notional Welded Point, be deemed to have passed through) the relevant Welded Point for a Day.

**“Shipper”** means a person named as a Shipper in a valid and subsisting TSA, being a person who wishes to have Gas transported through the Maui Pipeline.

**“Shipper Agreement Form”** means a form substantially as set out in Schedule 2 to this Operating Code.

**“Shipper Rolling Forecast”** means a Shipper’s forecast of its Nominated Quantities for each Receipt Point (excluding the Trading Hub Receipt Point) and each Delivery Point (excluding the Trading Hub Delivery Point) for each Day of the next 12 Month period.

**“Small Station”** means a Station having a maximum design flow rate of Gas less than or equal to 5,000 standard m<sup>3</sup>/h that is specified in Schedule 8. Any Station listed as a Small Station in Schedule 8 whose maximum design flow rate subsequently exceeds 5,000 standard m<sup>3</sup>/h shall immediately cease being a Small Station and shall be deemed not to be specified as a Small Station in Schedule 8.

**“Standard Product”** means a product traded on a Trading Platform or a Balancing Platform, the terms and conditions of which require:

- (a) either:
    - (i) an Approved Nomination to or from (as the case may be) the Welded Point at which the platform is located; or
    - (ii) two Approved Nominations, one being to the Welded Point at which the platform is located from another Welded Point and the other being from the Welded Point at which the platform is located to another Welded Point;
- and
- (b) delivery on a specified Transmission Day.

**“Station”** means a facility at which a Physical Welded Point and/or Metering is located.

**“Station Operator”** means the party that operates and maintains a Station.

**“Station Owner”** means the person that owns a Station.

**“System Operator”** means the person appointed to that role by MDL from time to time. At the commencement of this Operating Code, the System Operator is NGC New Zealand Limited.

**“Target Taranaki Pressure”** means the pressure calculated by MDL at or near the Bertrand Road Welded Point to be sufficient to:

- (a) deliver Shippers’ Approved Nominations; and
- (b) provide, using reasonable endeavours, a reasonable quantity of Gas for use in a Contingency Event; and
- (c) provide, using reasonable endeavours, a reasonable quantity of Gas to allow for delivery within the relevant Peaking Limit and Daily Operational Imbalance Limit.

**“Tariff 1”** means the per GJ per km tariff applied to provide for depreciation and a return on capital for the Maui Pipeline, as posted on the MDL IX from time to time.

**“Tariff 2”** means the per GJ tariff applied to provide for the recovery of operating costs, as posted on the MDL IX from time to time.

**“Technical Operator”** means the person appointed to that role by MDL from time to time. At the commencement of this Operating Code, the Technical Operator is NGC New Zealand Limited.

**“Throughput Charge”** means the Monthly charge payable by a Shipper to MDL being the sum of the amounts calculated in accordance with sections 19.1(a), 19.1(b) and 19.1(c).

**“TP Shipper”** has the meaning set out in section 2.14(a).

**“TP Welded Party”** means, in respect of a Transmission Pipeline, a Welded Party that controls that Transmission Pipeline.

**“Trading Hub Delivery Point”** means a notional Delivery Point established for the purposes of a ~~Trading System~~ Trading Platform (which, for the purposes of calculating any Throughput Charges, shall be deemed to be located at a point on the Maui Pipeline specified in the relevant ICA).

**“Trading Hub Receipt Point”** means a notional Receipt Point established for the purposes of a ~~Trading System~~ Trading Platform (which, for the purposes of calculating any Throughput Charges, shall be deemed to be located at a point on the Maui Pipeline specified in the relevant ICA).

**~~Trading System~~ Trading Platform** means an electronic wholesale market platform system used for the short-term trading of ~~short-term quantities of~~ Gas, upon which MDL has both bidding and offering trading rights, that is not a Balancing Platform.

**Transmission Day** means the Day on which an Approved Nomination or Scheduled Quantity is to be:

- (a) in respect of Physical Welded Points, injected into or off-taken from the Maui Pipeline; or
- (b) in respect of a Notional Welded Point, transported from or delivered to that Notional Welded Point.

**Transmission Pipeline** means any high pressure transmission pipeline connected to, but excluding the Maui Pipeline, that is used for the open access transportation of Gas, and includes all items of plant, equipment, fixtures and fittings directly appurtenanced to that pipeline, but excluding any item which is controlled by a party other than that pipeline's TP Welded Party and any low pressure distribution system.

**Transmission Services** means the services for the transmission of Gas through the Maui Pipeline.

**Transmission Services Agreement** or **TSA** means the valid agreement created between MDL and a Shipper when both MDL and that Shipper complete and sign a Shipper Agreement Form.

**Trust Account** means the trust account that MDL holds for the purpose of holding Cash Deposits received from Shippers in accordance with section 20.

**Week** means a period of seven Days beginning at 0000 hours (New Zealand standard time) on Monday and ending at 2400 hours (New Zealand standard time) on the following Sunday.

**Welded Party** means the person named as a welded party in a valid and subsisting ICA.

**Welded Party Agreement Form** means a form substantially as set out in Schedule 3 to this Operating Code.

**Welded Point** means a Physical Welded Point or a Notional Welded Point.

**Year** means a period of 365 (or 366 in a leap year) consecutive Days commencing at midnight (New Zealand standard time) on the 30th day of September in each Year or 0000 hours in the 1<sup>st</sup> day of October.

1.2 **Interpretation:** In this Operating Code, unless the context otherwise requires:

- (a) section and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Operating Code;
- (b) words importing persons shall include corporations, limited liability companies, governments or agencies of a state, partnerships and unincorporated associations;
- (c) subject to section 28.4, in interpreting any provision of this Operating Code, each ICA and TSA shall be deemed to be between MDL and only the other Party to such agreement. For the avoidance of doubt, an indemnity given by one Party to another Party under this Operating Code shall only be given in respect of the Party to the same ICA or TSA, as appropriate. A Shipper or Welded Party shall not be liable to, or give an indemnity to, anyone other than MDL unless expressly provided;
- (d) for purposes of interpreting an ICA, any reference to a Welded Party shall be to the welded party stated in the ICA, except where the context requires otherwise;

- (e) for the purposes of interpreting a TSA, any reference to a Shipper shall be the shipper stated in that TSA, except where the context requires otherwise;
- (f) a Welded Party may carry on the functions or business of a gas wholesaler, gas retailer, shipper, pipeline owner, distribution network owner, allocation agent, gas transfer agent or any other role in the gas industry, but for the purposes of this Operating Code (including the quantification of Loss), shall be treated as a separate person for each such function or business notwithstanding that in law all or any of the functions or businesses may be carried on by the same legal entity;
- (g) words importing the singular shall include the plural and vice versa, and words importing one gender shall include the other;
- (h) references to a document or law include all amendments of, supplements to, or replacements of such document or law;
- (i) reference to sections and schedules are references to sections and schedules of this Operating Code respectively, and the provisions and conditions contained in the schedules shall have the same effect as if set out in the body of this Operating Code;
- (j) references to the Parties include their respective successors and permitted assignees;
- (k) any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (l) other parts of speech and grammatical forms of a word or phrase defined in this Operating Code shall have a corresponding meaning;
- (m) references to any time of the day shall, unless expressly referring to New Zealand standard time (that is, GMT + 12.00 hours), be references to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time);
- (n) a reference to a "quantity of Gas" is a reference to Gigajoules of Gas;
- (o) a reference to a "price" for Gas includes a negative price (being, for the avoidance of doubt, a transaction where the seller of a quantity of Gas pays the buyer to take title to that quantity of Gas) and the payment obligations in respect of a negative dollar value shall be interpreted so that the payer of a negative value shall be the payee of the same positive value;
- (p) "including" means comprising, but not by way of limitation, any class, list, or category;
- (q) "injecting" includes causing or allowing to flow;
- (r) a reference to dollars or \$ is a reference to New Zealand Dollars; ~~and~~
- (s) any reference in this Operating Code to a Party acting as a Reasonable and Prudent Operator shall not be construed or relied on to limit in any way the general obligation of each Party to act as a Reasonable and Prudent Operator in all its operations under the relevant TSA or ICA; and
- (t) all references in this Operating Code to Gas bought, purchased or sold by MDL shall include references to Gas transactions entered into by Open Access Personnel for and on behalf of MDL.

## **2. PIPELINE SERVICES**

- 2.1 MDL will deal with all users of the Maui Pipeline on an arm's length basis and in a manner consistent with this Operating Code. MDL undertakes that:
- (a) every ICA with a Welded Party (excluding (i) a TP Welded Party, (ii) Methanex in relation to the Bertrand Road Welded Point, (iii) a Notional Point Welded Party) and every TSA with a Shipper shall include only the terms and conditions of this Operating Code and necessary individual information such as Delivery Point, AQ Volume, AQ discount and the relevant Welded Party's or Shipper's address; and
  - (b) any special terms and conditions contained in its TSA or ICA with a TP Welded Party, Methanex or a Notional Point Welded Party shall be disclosed to all Shippers and Welded Parties in accordance with section 4.1.
- 2.2 On and subject to the terms and conditions of this Operating Code, MDL's responsibilities and obligations shall include:
- (a) accepting quantities of Gas for injection, and making quantities of Gas from the co-mingled stream in the Maui Pipeline available for off-take, at Welded Point(s);
  - (b) operating the Maui Pipeline as a Reasonable and Prudent Operator; and
  - (c) complying with relevant legislative and regulatory requirements.

### **Reasonable and Prudent Operators**

- 2.3 Notwithstanding any other provision in this Operating Code, any TSA or ICA, MDL and each Shipper and Welded Party shall at all times during the term of its TSA or ICA respectively, act as a Reasonable and Prudent Operator in all of its operations under such agreements.

### **Transmission Services**

- 2.4 MDL shall provide, and each Shipper shall accept, Transmission Services on the terms and conditions set out in this Operating Code.
- 2.5 Subject to the provisions of this Operating Code, MDL shall, acting as a Reasonable and Prudent Operator:
- (a) allow any person that can demonstrate to MDL's reasonable satisfaction that it will meet the requirements of a Shipper set out in this Operating Code to enter into a TSA;
  - (b) on a 24 hours per Day basis, receive at each Receipt Point, transmit through the Maui Pipeline, and deliver to each Shipper at the relevant Delivery Point the Shipper's Approved Nominations;
  - (c) subject to complying with section 2.19, use reasonable endeavours to manage the Target Taranaki Pressure to be as low as practicable while maintaining sufficient Line Pack to meet its obligations under this Operating Code;
  - (d) administer the nominations regime of receiving Nominated Quantities, and providing Approved Nominations as required in accordance with section 8, and issuing operational orders;
  - (e) use reasonable endeavours to provide Maui Pipeline capacity consistent with its Rolling Capacity Forecast; and
  - (f) maintain the pressure of the Maui Pipeline at a pressure that is not more than the MAOP.

- 2.6 MDL will not:
- (a) provide the Transmission Services to any party unless that party has signed a TSA; or
  - (b) allow any party to connect to the Maui Pipeline unless that party has signed an ICA,
- each subject to and conditional upon the terms and conditions of this Operating Code.

### **Future Services**

#### ***Blending***

- 2.7 MDL will not enter into any contract to allow any Welded Party to inject Non-Specification Gas into the Maui Pipeline, even if such gas, when blended with Gas in the Maui Pipeline, would not cause any Non-Specification Gas to be made available at any Delivery Point.

#### ***Storage/Parking***

- 2.8 Subject to MDL's obligation to maintain a Contingency Volume on the terms and conditions set out in this Operating Code, MDL will not enter into any contract to allow Gas to be stored for any specific individual Shipper or Welded Party in the Maui Pipeline.

#### ***Peaking***

- 2.9 MDL will not enter into any contract to allow any Welded Party to exceed a Peaking Limit except in accordance with section 13.2.

#### ***Offers of new services***

- 2.10 If MDL makes any new service available on the Maui Pipeline, it will offer that service to all Shippers and Welded Parties (as relevant) on the terms set out in an amendment to this Operating Code made in accordance with section 29.4.

#### ***Developable Capacity***

- 2.11 From time to time new investments on the Maui Pipeline will need to be considered. These may be as simple as upgrading Metering or may involve significant construction, such as building a new compressor station or pipeline. They may also span a range of time horizons, have different risk profiles and require customised financial and legal arrangements. The general principles that MDL will apply to such new investments are as follows:

- (a) MDL will always endeavour to offer a Transmission Service on the Maui Pipeline even if it involves the development of new capacity;
- (b) MDL has first right to invest in the development of the Maui Pipeline;
- (c) MDL will, acting as a Reasonable and Prudent Operator, set standards for the construction, operation and maintenance of the new facilities;
- (d) Shippers and Welded Parties will be given the opportunity to contribute to the costs of developing new capacity but MDL shall be under no obligation to grant any special right or interest in the Maui Pipeline or the Transmission Services to such Shipper or Welded Party in consideration for such contribution; and
- (e) the costs of new investments incurred by MDL will be included in the calculation of Throughput Charges.

#### ***New Interconnection***

- 2.12 MDL shall allow any person (a "New Welded Party") to enter into an ICA and establish a new Welded Point to connect its pipeline or facilities to the Maui Pipeline provided that:

- (a) the New Welded Party can demonstrate to MDL's reasonable satisfaction that it will meet the requirements of a Welded Party set out in this Operating Code including, without limitation, the requirements of Schedule 1; and
- (b) MDL will, acting as a Reasonable and Prudent Operator, set standards for the location, design and construction of the new Welded Point and any Station and the New Welded Party will comply with such standards; and
- (c) such new Welded Point does not interfere with the then existing safe operation and integrity of any Pipeline; and
- (d) the New Welded Party indemnifies MDL against any Loss that may arise from the construction, testing and commissioning of the new Welded Point.

MDL shall add any new Physical Welded Points to Schedules 7 and 8 (and such addition shall not be subject to the processes that apply to Change Requests set out in section 29).

### **Transmission Pipelines**

2.13 The Parties acknowledge that:

- (a) the operations of the Maui Pipeline and any Transmission Pipeline need to be compatible; and
- (b) a TP Welded Party must be able to recover all costs and liabilities incurred by the TP Welded Party under this Operating Code from a shipper on any of its Transmission Pipelines in respect of whose Gas such costs and liabilities are attributable (regardless of whether, at the time of receipt into any of its Transmission Pipelines, such Gas is owned by that shipper or by a previous owner).

2.14 MDL shall not deliver, and a Shipper shall not request MDL to deliver, any quantity of Gas to a Welded Point with a Transmission Pipeline unless:

- (a) where that Shipper sells or trades, or will sell or trade, that Gas (or any part of it) at that Welded Point, that Shipper, and each other party who receives or will receive any quantity of Gas attributable to that Shipper (that Shipper and each other such party to be known as a "TP Shipper"), has a valid and binding gas transfer agreement whose terms comply with the Gas Transfer Code; and
- (b) where that Shipper takes delivery of that Gas (or any part of it) at a Welded Point with a Transmission Pipeline for transport through any part of the Transmission Pipeline, that Shipper has a valid and binding transmission services agreement with the TP Welded Party of that Welded Point, the terms of which are consistent with the principles set out in Schedule 9, so as to achieve the outcomes described in section 2.13; and
- (c) where that Shipper sells or trades, or will sell or trade, that Gas (or any part of it) to a TP Shipper, that TP Shipper has a valid and binding transmission services agreement with the TP Welded Party for that Welded Point, the terms of which are consistent with the principles set out in Schedule 9, so as to achieve the outcomes described in section 2.13. Prior to any request for such delivery of Gas being made, that Shipper shall notify MDL and the TP Welded Party of each TP Shipper that it has sold or traded with, or will sell or trade with.

2.15 Subject to section 2.16, MDL shall indemnify each TP Welded Party for any Loss that the TP Welded Party suffers under this Operating Code as a result of any breach by MDL of section 2.14.

- 2.16 MDL shall be entitled to rely on information posted on a TP Welded Party's relevant internet site from time to time as to which Shippers and TP Shippers have entered into, and have, valid transmission services and gas transfer agreements as required under section 2.14. That TP Welded Party must give notice to MDL if any such agreement with a Shipper or TP Shipper is suspended or terminated.

### **Instructions to Technical Operator, System Operator and Commercial Operator**

- 2.17 MDL will post on the MDL IX in accordance with section 4.1 the following documents:
- (a) any material written instructions to each of the Technical Operator, System Operator and Commercial Operator in relation to:
    - (i) the parameters listed in section 4.1; and/or
    - (ii) the exercise of any MDL discretion under this Operating Code that has been delegated to such Operator; and
  - (b) any written response to an instruction given under section 2.17(a) received by MDL from time to time from the Technical Operator, System Operator and Commercial Operator, including, without limitation, a summary of the processes that each of them will follow in order to give effect to such instructions.

### **Maui Pipeline Pressure**

- 2.18 Each Welded Party injecting Gas at a Welded Point must inject Gas against the prevailing pressure in the Maui Pipeline at that Welded Point.
- 2.19 The Target Taranaki Pressure shall be between 42 and 48 bar gauge, except as may be required as a result of a Contingency Event, Force Majeure Event or Maintenance. MDL shall give each Shipper and Welded Party not less than 12 months notice if it proposes to change the Target Taranaki Pressure below 42 bar gauge or above 48 bar gauge and any such change may only be implemented through a Change Request determined in accordance with section 29.
- 2.20 If necessary to keep the expected Maui Pipeline pressure under the maximum Target Taranaki Pressure limit, MDL will adjust Shippers' Nominated Quantities and Approved Nominations in accordance with section 8.
- 2.21 MDL shall not install any equipment on or near the Maui Pipeline after 1 January 2005 that has the effect of decreasing pressure at a Delivery Point unless:
- (a) it obtains the prior written consent of the Welded Party of that Welded Point, such consent not to be unreasonably withheld or delayed; or
  - (b) such installation is necessary for the provision of Transmission Services in accordance with this Operating Code.

### **Breach by Shippers**

- 2.22 If MDL becomes aware that a Shipper is in breach of any of the material terms or conditions on which the Shipper has the use of any Receipt Point or Delivery Point, then MDL shall be entitled to suspend any Transmission Services provided to that Shipper for the duration of any non-compliance if, and to the extent that, in MDL's opinion, such action is necessary to protect the use of the Maui Pipeline by other Shippers.

### **Breach by Welded Parties**

- 2.23 If MDL becomes aware that a Welded Party is in breach of an Operational Flow Order in relation to any Welded Point, then MDL shall be entitled to suspend injections or off-takes of Gas at that Welded Point (by whatever lawful means are available to MDL) to the extent necessary, and for the duration of, any non-compliance, provided that in MDL's opinion, acting as a Reasonable and Prudent Operator, such action is necessary to protect the operational integrity of the Maui Pipeline or the wider New Zealand gas pipeline system.

### **Breach by MDL**

- 2.24 If a Welded Party becomes aware that MDL is in breach of a material provision of its ICA in relation to any Welded Point, then the Welded Party shall be entitled to suspend injections or off-takes of Gas at the relevant Welded Point (by whatever lawful means are available to the Welded Party) to the extent necessary, and for the duration of any non-compliance, provided that in the Welded Party's opinion, acting as a Reasonable and Prudent Operator, such action is necessary to protect the operational integrity of the Welded Party's Pipeline or the wider New Zealand gas pipeline system.

### **Right to use Pipeline**

- 2.25 The Maui Mining Companies have consented to MDL having the exclusive right to:
- (a) use the Maui Pipeline to provide Transmission Services to Shippers; and
  - (b) allow Welded Parties to connect Pipelines to the Maui Pipeline.

### 3. BALANCING ACTIONS

#### Operational balancing

3.1 MDL may undertake Balancing Actions with the objective of:

- (a) maintaining Line Pack and/or pressure on the Maui Pipeline within operational limits, or returning them towards the operating range within those limits;
- (b) managing Line Pack, including to support the transportation of Approved Nominations.

#### Products

3.2 When undertaking a Balancing Action MDL shall use:

- (a) ~~a Standard Products, the terms and conditions of which require:; or~~
  - (i) ~~delivery to and offtake from a Welded Point, in each case in accordance with an Approved Nomination; and~~
  - (ii) ~~delivery on a specified Transmission Day; or~~
- (b) ~~a non-standard products~~, the terms and conditions of which reflect MDL's specific delivery requirements in terms of time and/or location on the Maui Pipeline.

#### Sources

3.3 MDL may undertake a Balancing Action by using a ~~Trading System~~[Trading Platform](#), a Balancing Platform, or a product bought or sold by negotiated bilateral agreement.

#### ~~Trading System~~[Trading Platform](#) eligibility criteria

3.4 To be eligible for use by MDL for Balancing Actions a ~~Trading System~~[Trading Platform](#) must meet the following criteria:

- (a) any Shipper must be entitled to participate on the ~~Trading System~~[Trading Platform](#) upon terms and conditions which:
  - (i) are publicly disclosed;
  - (ii) do not unjustifiably discriminate against any Shipper; and
  - (iii) are the same (necessary amendments apart) for all Shippers;
- (b) trading must be anonymous, at least until a transaction is concluded;
- (c) trading participants must be able to see currently available bids and offers;
- (d) traded prices and volumes must be made publicly available;
- (e) ~~immediately upon a trade being concluded the Trading System~~[Trading Platform](#) operator must provide MDL ~~with the price, quantity and delivery Day terms of such trade (free of charge) with the 'real time' data, in a form reasonably acceptable to MDL, that is necessary to enable MDL to satisfy its obligations under section 3.8;~~
- (f) the terms and conditions referred to in (a) above must include terms and conditions that are acceptable to MDL (acting as a Reasonable and Prudent Operator) and which:
  - (i) either require each participant to provide credit assurance for its trades or allow MDL to list or specify persons with whom it agrees to trade before any trade occurs;
  - (ii) provide for the ~~Trading System~~[Trading Platform](#) operator to monitor market conduct and compliance with its market rules;

- (iii) provide for the identification and notification to trading participants of market disruption;
  - (iv) prohibit, and provide for the identification and notification to trading participants of, market manipulation;
  - (v) prohibit the ~~Trading System~~ Trading Platform operator and its personnel from trading in Gas in any way and by any means;
  - (vi) require each participant to have all the rights necessary to deliver, or take delivery, on the relevant Day of all the Gas which is the subject of a transaction;
  - (vii) require the ~~Trading System~~ Trading Platform operator always to act as a Reasonable and Prudent Operator; and
  - (viii) are not inconsistent with any of the other criteria or requirements set out in this section 3.4.
- (g) Immediately after a change to:
- (i) the terms and conditions governing how market participants trade on a Trading Platform; or
  - (ii) any market arrangements outside of the terms and conditions referred to in (i) above which could impact the assessment of whether a Trading Platform meets the criteria set out in this section 3.4; or
  - (iii) the trading fees referred to in the definition of Cash-Out Trading Fee Price, has been approved (and in any case, at least one Business Day prior to that change coming into effect), the relevant Trading Platform operator must notify MDL of the particulars of that change.

#### ~~Merit order~~ Balancing product selection

- 3.5 When considering which product (or combination of products) to use for a Balancing Action in a given situation, MDL, acting as a Reasonable and Prudent Operator, shall:
- (a) consider the nature of the balancing objective, in particular with respect to time and location;
  - (b) consider the available products on offer;
  - (c) in all cases use the product (or combination of products) which MDL considers, ~~acting as a Reasonable and Prudent Operator~~, will meet the balancing objective in the most cost effective manner possible; and
  - (d) ~~all things being equal~~ subject always to the considerations expressed in paragraphs (a) to (c) above, give preference to the use of:
    - (i) ~~Trading System~~ first, use products listed on a Standard Products over non-standard products;
    - (ii) ~~second, use products listed on a Balancing Platform~~ products listed on an eligible Trading Platform over products:
      - (aa) listed on a Balancing Platform;
      - (bb) bought or sold by negotiated bilateral agreement; and
    - (iii) ~~third, use products listed on a Balancing Platform over~~ products bought or sold by negotiated bilateral agreement.

## Information

- 3.6 MDL shall ~~use reasonable endeavours to~~ publish on the BGIX, in accordance with section 4.4:
- (a) the name of (and website link to) any ~~Trading System~~ [Trading Platform](#) that meets the criteria set out in section 3.4;
  - (b) the name of (and website link to) any active Balancing Platform.
- 3.7 [If MDL has published on the BGIX the name of a Trading Platform under section 3.6\(a\) but at a later time determines that the Trading Platform does not meet the eligibility criteria in section 3.4 \(or has reason to believe that may be so\), then MDL shall publish a notice to that effect on the MDL IX and remove the name of the Trading Platform from the BGIX until further notice.](#)
- 3.8 MDL shall ~~use reasonable endeavours to~~ publish on the BGIX, in accordance with section 4.4, the evolution of the Marginal Buy Price and Marginal Sell Price.
- 3.9 MDL shall publish on the BGIX, in accordance with section 4.4, the price and quantity of all Balancing Actions.

## Open Access Personnel

- 3.10 ~~MDL's Particular~~ Open Access Personnel shall not transact on any ~~Trading System~~ [Trading Platform](#) or Balancing Platform for any reason other than undertaking a Balancing Action or purchasing Fuel Gas. [For this purpose "Particular Open Access Personnel" means an individual who at the relevant time:](#)
- (a) [receives remuneration in any way or by any means from an entity within the definition of Open Access Personnel; and](#)
  - (b) [has access, or within the current or the previous Week had access, to Confidential Information other than information which is the Confidential Information only of the entity referred to in \(a\) above.](#)
- 3.11 ~~All references in this Operating Code to Gas bought, purchased or sold by MDL shall include references to Gas transactions entered into by Open Access Personnel for and on behalf of MDL.~~

## 4. THE MDL IX

4.1 MDL shall use best endeavours to make the following information available to all Parties on the MDL IX on the terms set out in this section 4:

### Information generally available on the MDL IX

Information	Frequency of Posting
The Maui Pipeline Operating Code	Updated as necessary in accordance with section 29.
Special terms and conditions for a particular Shipper or Welded Party	Updated when amended.
Gas Transfer Code	Updated when amended.
Daily Incentive Price	For each Transmission Day, by 11.00 am the following Day. Updated subject to changes to the Premium Fuel Value Fee.
General notices - non-critical notices - critical notices	Daily as required.
Indicative capacity of Maui Pipeline available for Transmission Services each Day	For each Transmission Day, by 6pm on the Day before.
Rolling Capacity Forecast	Updated monthly, within 6 Business Days of receipt of all Shippers' Rolling Forecasts.
Maintenance Days for Scheduled Maintenance	In accordance with sections 18.11 and 18.12.
Line Pack	Updated Hourly in arrears.
MAOP	Updated as required in accordance with this Operating Code.
Negative Mismatch Price	From time to time, with effect not less than 1 Day after posting.
Incentives Pool Debit Price	As soon as reasonably practicable after all Incentives Pool Debits have been calculated and all Incentives Pool Claims have been submitted for that Day.
Positive Mismatch Price	From time to time with effect not less than 1 Day after posting.
Premium Fuel Value Fee	Promptly once information becomes available from the electricity market.
Target Taranaki Pressure at the time all Approved Nominations are confirmed	For each Transmission Day by 5.00 pm on the previous Day.
Throughput Charges	In accordance with section 19.9.
Time equivalent of Contingency Volume for each Day	Hourly in arrears in accordance with changes to Line Pack.
Contingency Volume that MDL aims to have available for each Day	For each Transmission Day by 5.00 pm on the previous Day.
Contingency Volume that MDL has available from time to time	Hourly in arrears in accordance with changes to Line Pack.
AQ Volumes available to be allocated by MDL in each AQ Zone	As posted by MDL from time to time.
Mismatches available for trading	As posted by Shippers from time to time.

Information	Frequency of Posting	
Operational Imbalances available for trading	As posted by Welded Parties from time to time.	
AQ available for trading	As posted by Shippers from time to time.	
Peaking arrangements agreed in accordance with section 13.2	Promptly after MDL agrees to arrangement.	
Metering data from each Large Station Welded Point	Hourly within 30 minutes after the end of each Hour.	
Operational Imbalance for each Welded Point	<i>Unvalidated:</i> For each Transmission Day by 8.00am the following Day.	<i>Validated:</i> For each Transmission Day by 12.00pm on the next Business Day and in accordance with sections 12.2 to 12.4.
<p>Any written material instructions issued by MDL to either the Commercial Operator, Technical Operator or System Operator in relation to the setting of the following operating parameters (or if MDL calculates any of them itself, the basis on which it does so):</p> <ul style="list-style-type: none"> <li>• Target Taranaki Pressure</li> <li>• Indicative capacity of Maui Pipeline available for Transmission Services each Day</li> <li>• Rolling Capacity Forecast</li> <li>• Negative Mismatch Price</li> <li>• Positive Mismatch Price</li> <li>• Target Taranaki Pressure at the time all Approved Nominations are confirmed</li> <li>• Time equivalent of Contingency Volume for each Day</li> <li>• Contingency Volume that MDL aims to have available for each Day</li> <li>• Contingency Volume that MDL has available from time to time</li> <li>• AQ Volumes available to be allocated by MDL in each AQ Zone</li> <li>• Mismatch Period</li> <li>• Mismatch Payback Limit</li> <li>• Daily Operational Imbalance Limit</li> <li>• Peaking Limit</li> <li>• Peaking Tolerance</li> <li>• Running Operational Imbalance Limit</li> </ul>	At the time such instructions are issued by MDL.	
<p>The Commercial Operator, Technical Operator and System Operator's procedures for implementation of MDL's instructions relating to the setting of operating parameters including:</p> <p>(a) the matters that they will take into account; and</p> <p>(b) a summary of any required calculations</p>	As soon as practicable, but prior to implementation of such procedures by the Commercial Operator, Technical Operator and System Operator.	
Records and accounts and Independent	By 31 March in each calendar year	

<b>Information</b>	<b>Frequency of Posting</b>	
Auditor's report of the Incentives Pool Account		
Intra-Day Nomination Deadlines	Updated from time to time on 30 Days' notice.	
Nominated date for restoration of Contingency Volume pursuant to section 15.10	In accordance with section 15.10.	
Any change to an index used in section 28	Updated when amended.	
Running Operational Imbalance for each Welded Point	<i>Unvalidated:</i> For each Transmission Day by 8.00am on the following Day.	<i>Validated:</i> For each Transmission Day by 12.00pm on the next Business Day and in accordance with sections 12.2 to 12.4.
Provisional Cycle Scheduled Quantity at each Welded Point pursuant to section 9.4	Each Nomination Day by 6.00 pm.	
Changed Provisional Cycle Scheduled Quantity at each Welded Point pursuant to section 9.7	For each Transmission Day by 5.00 pm of the Previous Day.	
Intra-Day Cycle changes to Scheduled Quantities at each Welded Point	Within 1 Hour after the Intra-Day Nomination Deadline.	
Hourly Scheduled Quantity at each Welded Point	For each Transmission Day, by 12.00pm on the following Day.	
Quantities of Gas purchased or sold at each Welded Point pursuant to a Cash-Out Transaction	For each Transmission Day, by 12.00pm on the following Day.	
Quantities of Gas traded at each Welded Point via MDL IX and in accordance with section 12.15	For each Transmission Day, by 12.00pm on the following Day.	

4.2 MDL shall use best endeavours to provide each Shipper with secure access to a section of the MDL IX that contains that Shipper's information including:

**Information restricted to each Shipper on the MDL IX**

<b>Information</b>	<b>Frequency of Posting</b>
Provisional Nomination for each Welded Point pursuant to section 8.10	By 6.00 pm on each Nomination Day.
Approved Nomination for each Welded Point for the following Day pursuant to section 8.12	For each Transmission Day, no later than 5.00 pm on the previous Day and as updated from time to time.
Intra-day Approved Nominations for each Welded Point pursuant to section 8.16	For each Transmission Day, no more than 1 Hour after the Intra-Day Nomination Deadline.
Mismatch Period	On the Day that MDL issues a Mismatch Notice.
Mismatch	For each Transmission Day, by 9.00 am the following Day.
Mismatch Payback Limit	Posted as part of Mismatch Notice.

<b>Information</b>	<b>Frequency of Posting</b>
Nominated Quantities that have been confirmed by Welded Parties	One hour before the deadline for MDL to post the applicable Approved Nomination.

- 4.3 MDL shall use best endeavours to provide each Welded Party with secure access to a section of the MDL IX that contains information applicable to that Welded Party, including:

**Information restricted to each Welded Party on the MDL IX**

<b>Information</b>	<b>Frequency of Posting</b>
Provisional Nomination for each Welded Point pursuant to section 8.10	By 6.00 pm on each Nomination Day.
Daily Operational Imbalance Limit for each Welded Point	For each Transmission Day, by 5.00 pm the previous Day and updated for each Intra-Day Cycle.
Peaking Limits	For each Transmission Day, by 5.00 pm of the previous Day.
GJ amounts used in Running Operational Imbalance Limit calculation	At least 7 Days before they take effect.
GJ amounts used in Daily Operational Imbalance Limit calculation	At least 7 Days before they take effect.
Percentage amounts used in Running Operational Imbalance calculation	At least 7 Days before they take effect.
Percentage amounts used in Daily Operational Imbalance calculation	At least 7 Days before they take effect.
Running Operational Imbalance Limit (positive and negative) for each Welded Point	For each Transmission Day, by 5.00pm of the previous Day.
Scheduled Quantities at each Welded Point for the following Day	For each Transmission Day, by 5.00 pm of the previous Day.
Requested Nominated Quantities for each Shipper at each Welded Point pursuant to section 9.3	Immediately after 4.00pm each Nomination Day.
Requested changes to Provisional Nominations and new Nominated Quantities for each Shipper pursuant to section 9.6	For each Transmission Day, immediately after 4.00 pm of the previous Day.
Approved Nominations for each Shipper	For each Transmission Day, by 5.00 pm of the previous Day and as updated from time to time.
Intra-Day Nomination at each Welded Point pursuant to section 8.15 for each Shipper	Immediately after the Intra-Day Nomination Deadline.
MDL's Proposed Scheduled Quantity at each Welded Point pursuant to section 9.2	On each Nomination Day, immediately after 4.00 pm.
MDL's Proposed Scheduled Quantity at each Welded Point pursuant to section 9.5	For each Transmission Day, by 4.00 pm of the previous Day.
Shippers' Rolling Forecast at each Welded Point pursuant to section 8.6	Immediately after the receipt of the Rolling Forecast pursuant to section 8.6

Information	Frequency of Posting
Peaking in excess of Peaking Limits	For each Transmission Day by 12.00 midday of the following Day.
Any quantity of gas used for settling any or all of the Accumulated Excess Operational Imbalance pursuant to a Cash-Out Transaction	For each Transmission Day by 12.00 midday of the following Day.

4.4 MDL shall use reasonable endeavours to publish the following information on the BGIX:

**Information generally available on the BGIX**

Information	Frequency of Posting
Real time metering information for all Welded Points located at <a href="#">a Large Stations</a>	Continuous.
Flow Line Pack	Within 2 hours after each Intra-Day Nomination Deadline.
Low Line Pack Threshold	Within 2 hours after each Intra-Day Nomination Deadline.
<del>Trading System</del> <a href="#">Trading Platforms</a> eligible for use by MDL	When eligible.
Balancing Platforms	When established.
Marginal Buy Price and Marginal Sell Price	As soon as reasonably practicable after each received trade notification or Balancing Action that updates the price.
Balancing Gas Puts and Balancing Gas Calls made	As soon as reasonably practicable following confirmation of the transaction.
Fuel Gas purchases	As soon as reasonably practicable after the Fuel Gas purchase has taken place.
Temporary ROIL Multiplier increases	As soon as reasonably practicable after the temporary increase has been granted.
Cash-Out Transactions	As soon as reasonably practicable after the Cash-Out Transaction has taken place.
<a href="#">Cash-Out Trading Fee Price</a>	<a href="#">For each Transmission Day, by 5.00 pm of the previous Day.</a>
Values of the "adjustment" used for calculating the Marginal Sell Price and the Marginal Buy Price	At least 1 Day before they take effect.
Default rule for the derivation of the Average Market Price <del>in circumstances set out in section 12.12(f)</del>	When issued or <del>amended</del> <a href="#">at least 5 Business Days before an amended rule takes effect.</a>

4.5 Each variable contained in the tables above shall be amended by MDL on the frequency indicated in the relevant table. MDL shall amend "validated" variables from time to time if it becomes aware that such data is materially inaccurate, provided that MDL must give each affected Welded Party and Shipper notice of any such changes as soon as practicable and such notice shall include a reason for the change and shall include a replacement invoice or, in the case of overcharges, credit note (whether changes occur before or after the original invoices that relate to the period have been paid).

- 4.6 MDL shall make operational information in respect of Force Majeure or Contingency Events available on the MDL IX as soon as practicable and shall update that information as necessary.
- 4.7 As the MDL IX and BGIX are dependent on an electronic information system which will be accessed via the Internet, and include information supplied by or derived from other parties, MDL makes no warranty about their availability, or about the accuracy or availability of specific information posted on them, at any time.
- 4.8 Each Shipper and Welded Party must maintain the information systems set out in Schedule 5 (as amended from time to time) in order to access the MDL IX.
- 4.9 Subject to section 4.7, MDL will make the MDL IX available to each Shipper and Welded Party who complies with the MDL IX requirements on and subject to the terms and conditions set out in Schedule 5.
- 4.10 If, as the result of a failure of the MDL IX or any aspect of its underlying information systems, either a Provisional Cycle, Changed Provisional Cycle or Intra-Day Cycle is delayed, then MDL shall notify all affected Shippers and Welded Parties, by whatever means are reasonably available to MDL, of the effect of such delay, including any amended deadlines for giving notices or providing confirmations under section 8 or section 9.
- 4.11 The *Conditions of Access and Use* of the MDL IX set out in Schedule 5 may only be amended in accordance with section 29. MDL may change the *Technical Configuration Requirements* set out in Schedule 5 by giving not less than 12 months prior written notice to each Shipper and Welded Party and, accordingly, section 29 shall not apply to any such changes.
- 4.12 If a Welded Party or Shipper is unable to access the MDL IX using the Internet (for any reason outside its reasonable control) to give notice of its Proposed Scheduled Quantity or to confirm or enter Nominated Quantities, then that Welded Party or Shipper may communicate such information to MDL by whatever means are available to it, and MDL shall use its reasonable endeavours to input such data into the MDL IX, before the expiry of the deadlines set out in this Operating Code.

## **5. TECHNICAL STANDARDS FOR STATIONS AND WELDED POINTS**

- 5.1 Each Party agrees that, in respect of Stations in existence on 1 January 2005, the Welded Party shall be relieved of the obligations set out in Schedule 1 provided that, to the extent that such Stations comply with Schedule 1 on that date, the Station Operator of such Station undertakes to continue to maintain the Station's compliance with those aspects of Schedule 1.
- 5.2 Except as specifically provided under this section 5 or Schedule 1, in respect of each Station relating to a Welded Point, MDL will, or will procure the Station Owner to, ensure that its:
- (a) new Stations are constructed in accordance with, and otherwise at all times comply with, the requirements of Schedule 1; and
  - (b) existing Stations comply with the technical requirements set out in Schedule 1.

### **Disconnection**

- 5.3 MDL may require a Welded Party to disconnect its Welded Point:
- (a) where reasonably required to give effect to any of MDL's rights of disconnection, suspension of injection or off-take, interruption, or termination of an ICA as specifically provided for in this Operating Code; or
  - (b) with the agreement of the Welded Party at that Welded Point.
- 5.4 The Welded Party may disconnect its Welded Point:
- (a) where reasonably required to give effect to any rights of disconnection, suspension of injection or off-take, interruption, or termination of an ICA as specifically provided for in this Operating Code; or
  - (b) with the agreement of MDL.
- 5.5 Where MDL or a Welded Party disconnects a Welded Point under section 5.3 or 5.4, MDL shall give the Welded Party, or the Welded Party shall give MDL, as appropriate, notice of the disconnection as soon as reasonably practicable.

## **6. DELIVERY OF GAS: TITLE AND RISK**

- 6.1 Each of MDL, the Welded Party and the Shipper agrees that:
- (a) once a Shipper's Gas has entered the Maui Pipeline it may not be possible to distinguish that Gas from any other Gas being transported in the Maui Pipeline;
  - (b) it is unlikely that MDL will deliver to a Shipper the actual molecules of Gas received from that Shipper;
  - (c) the service provided by MDL to a Shipper is the transport of energy in the form of Gas; and
  - (d) by delivering the equivalent energy quantity of Gas to a Shipper at the relevant Delivery Point in accordance with the terms of this Operating Code, MDL will be deemed to have delivered that Shipper's molecules of Gas to it.
- 6.2 Nothing in this Operating Code shall grant to a Shipper any proprietary rights in the Maui Pipeline.
- 6.3 The control of, and risk (including the risk of loss) in, a Shipper's Approved Nomination at a Receipt Point shall pass from a Shipper to MDL at such Receipt Point and shall be held by MDL until the Approved Nomination at a Delivery Point is delivered to that Shipper at such Delivery Point, at which time control of such Gas shall revert to that Shipper. For the avoidance of doubt, the title to Gas shall not pass from a Shipper to MDL except in accordance with section 11.8(b), a Cash-Out Transaction, or section Error: Reference source not found.
- 6.4 Each Shipper shall:
- (a) have good title (either in its own right or acting as an agent) to all of that Shipper's Approved Nominations at the time of injection at, or transportation from, Receipt Points; and
  - (b) ensure that all such Gas at the Receipt Point and the Delivery Point is free of any lien, charge, encumbrance or adverse claim (as to title or otherwise).
- 6.5 Subject to sections 28.2 and 28.3, each Shipper shall indemnify MDL for any Loss that it incurs as a direct result of any breach by such Shipper of section 6.4 to the extent that MDL has acted as a Reasonable and Prudent Operator to mitigate its Loss, provided that section 28.13 shall govern the Parties' obligations in relation to such indemnity.
- 6.6 If a Shipper has bought or sold a quantity of Gas pursuant to sections 11.8(a) or 11.8(b) as appropriate, such Gas will be deemed to have been delivered, and title in such Gas deemed to have passed, at the time that the Mismatch occurred.
- 6.7 MDL shall have the right to co-mingle the Shippers' Gas with other Gas in the Maui Pipeline during transmission.
- 6.8 MDL may subject the Gas in the Maui Pipeline to compression, cleaning and other processes consistent with MDL's operation of its Maui Pipeline.

## 7. AUTHORISED QUANTITIES

- 7.1 A Nominated Quantity that is within the Shipper's Authorised Quantity will have priority over any Shipper's non-AQ Nominated Quantities. MDL warrants that there will be sufficient capacity in the Maui Pipeline to transport all Authorised Quantities until the relevant AQ Expiry Date on any Day that is not affected by a Force Majeure Event, Contingency Event or Maintenance.
- 7.2 Every Shipper must agree an AQ with MDL which may be zero. A Shipper may have more than one AQ. Each AQ consists of an AQ Zone, an AQ Volume and an AQ Expiry Date. An AQ Expiry Date will be 30 September in any Year until, and including, 2020 (or any later Year notified by MDL to all Shippers on the MDL IX).
- 7.3 MDL will make AQ Volumes available to Shippers up to a maximum of 70% of the capacity of the Maui Pipeline in each AQ Zone.
- 7.4 Prior to allocating any AQs, MDL shall obtain the GIC's approval for the queuing rules that it will use for such allocation. Once the GIC has approved the queuing rules, MDL will notify all Shippers of the amount of AQ available for allocation on the MDL IX and distribute AQ in accordance with such approved queuing rules.
- 7.5 Subject to section 7.6, a Shipper will pay the AQ Fee in relation to every Day, regardless of that Shipper's Approved Nominations for that Day. MDL shall negotiate a discount off the AQ Fee with each Shipper based on the financial value to MDL of having the increased certainty of cashflow during the term of the AQ, the AQ Volume and the AQ Zone to which the AQ relates.
- 7.6 If MDL curtails a Shipper's Nominated Quantity on a Day below the AQ, the AQ Fee shall not be payable in respect of any GJ of Gas that is not transported on that Day as a result of such curtailment.
- 7.7 A Shipper ("**AQ Seller**") may allow another Shipper ("**AQ Buyer**") to use all or part of its AQ for an AQ Zone for a particular Day or Days provided that any such arrangement is notified and confirmed to MDL by both the AQ Seller and AQ Buyer by using the appropriate part of the MDL IX on or before 2.00pm on the Day before Transmission Day. For that Day the AQ Seller shall cease to have any liability or rights in relation to such AQ as it allows an AQ Buyer to use and MDL will:
- (a) invoice the AQ Buyer for that Day as the holder of the traded AQ (but without the AQ Seller's discount applying); and
  - (b) invoice or credit, as appropriate, the AQ Seller to take account of the reduced AQ in respect of that Day.

## 8. NOMINATIONS AND RENOMINATIONS

### General Principles

- 8.1 A Shipper must:
- (a) subject to sections 8.1(c) and 8.1(d), for each Nominated Quantity, nominate at which Receipt Point that Gas will enter (or in the case of the Trading Hub Receipt Point be deemed to enter) the Maui Pipeline; and
  - (b) subject to sections 8.1(c) and 8.1(d), for each Nominated Quantity, nominate at which Delivery Point that Gas will be taken out of (or in the case of the Trading Hub Delivery Point be deemed to be taken out of) the Maui Pipeline; and
  - (c) subject to section 8.1(d), if it wishes to create the opposite Mismatch for a quantity of Gas (the **"Payback Quantity"**) in order to reduce its Mismatch Balance, nominate the Payback Point as its Receipt Point or Delivery Point for that Payback Quantity; and
  - (d) for each Displaced Gas Nomination, make such a nomination only if:
    - (i) it has obtained the prior written consent of the Welded Party of the Welded Point affected by such nomination; and
    - (ii) it has agreed to any terms and conditions required by MDL or that Welded Party, provided that MDL shall not confirm any Nominated Quantity that would create a net receipt at a physical offtake Welded Point or net delivery at a physical injection Welded Point.
- 8.2 Each Shipper must ensure that the sum of its Nominated Quantities at Receipt Points on a Day are equal to the sum of its Nominated Quantities at Delivery Points on that Day. MDL will not confirm any Nominated Quantity that does not comply with this section 8.2.
- 8.3 Each Shipper warrants that all forecasts, notifications and requests for variations of Nominated Quantities and Provisional Nominations made by it pursuant to this section 8 are made in good faith.
- 8.4 A Shipper may appoint an agent or grant authorisations to a third party (including a Welded Party) to give notice of any Shipper Rolling Forecast, Nominated Quantity or Provisional Nomination ("**Notification**") or any requested amendment of a Notification on its behalf. Any Notification or any requested amendment of a Notification given by the agent or party holding authorisation to make such notice must be made using the relevant log-in to the MDL IX for such Notification. Any such appointment must be advised in writing to MDL in advance of the Notification or amendment and may be relied on by MDL until revoked as provided below. The Shipper shall notify MDL in writing of any cancellation of an agent's or authorised party's appointment at least one full Business Day before such cancellation is to take effect.
- 8.5 MDL's calculation of the total capacity of the Maui Pipeline for providing Transmission Services under this Operating Code on any Day is absolute and final provided that such calculations will be based on a maximum Target Taranaki Pressure of 48 bar gauge or as adjusted in accordance with section 2.19. MDL will post available capacity of the Maui Pipeline on the MDL IX in accordance with section 4, and will disclose, on request by a Shipper or Welded Party, the basis on which it calculates the capacity to the Shipper, Welded Party or an independent expert appointed by a Shipper or Welded Party.

### ***Shipper Rolling Forecasts***

- 8.6 Not later than 6 Business Days prior to the start of each Month, each Shipper will give to MDL its updated Shipper Rolling Forecast. MDL will promptly notify the Shipper's forecast with respect to each Welded Point for each Day on the section of the MDL IX available to the Welded Party at that Welded Point in accordance with section 4.3.
- 8.7 Not later than 6 Business Days from the date on which MDL receives updated Shipper Rolling Forecasts from Shippers, MDL shall post an updated Rolling Capacity Forecast in respect of each Physical Welded Point for each Day of the next 12 Months on the section of the MDL IX available to each relevant Shipper and Welded Party in accordance with section 4.1.

### ***Provisional Cycle***

- 8.8 By 4:00pm on the Nomination Day, the Shipper must notify MDL of its Nominated Quantities for each Welded Point for each Day of the following Week (that is, the following Monday to Sunday inclusive) either by using the appropriate screen on the MDL IX or submitting an electronic file in the form prescribed by MDL to the MDL IX.
- 8.9 A Shipper may amend its Nominated Quantities for the Provisional Cycle at any time before 4.00pm on the Nomination Day via the MDL IX.
- 8.10 As soon as practicable and no later than 6:00pm on the Nomination Day, MDL will confirm to each Shipper its Provisional Nominations for each Receipt Point and Delivery Point, such confirmations to be posted on the section of the MDL IX available to the relevant Shipper in accordance with section 4.2.

### ***Changed Provisional Cycle***

- 8.11 If the Shipper wishes to amend its Provisional Nominations, then, by 4:00pm on the Day before the Transmission Day, the Shipper must notify MDL of any new Nominated Quantities or changes to its Provisional Nominations for each Welded Point for the following Day either by using the appropriate screen on the MDL IX or submitting an electronic file in the form prescribed by MDL to the MDL IX. For the avoidance of doubt, to the extent that the Shipper does not notify MDL of any new Nominated Quantities or changes to its Provisional Nominations, then its Provisional Nominations will automatically be entered for the Changed Provisional Cycle.
- 8.12 As soon as practicable and no later than 5:00pm on the Day before Transmission Day, MDL will confirm to each Shipper its Approved Nominations, such confirmations to be posted on the section of the MDL IX available to the relevant Shipper in accordance with section 4.2.
- 8.13 A Provisional Nomination shall not become an Approved Nomination, and the Shipper's request to amend a Provisional Nomination shall not have effect, until MDL has confirmed that Approved Nomination to the Shipper via the MDL IX. This confirmation shall replace a previously notified Provisional Nomination for that Day.

### ***Intra-Day Cycles***

- 8.14 MDL shall allow a minimum of 4 Intra-Day Cycles to occur throughout each Transmission Day.
- 8.15 A Shipper may request an Intra-Day Nomination via the MDL IX.
- 8.16 MDL shall use reasonable endeavours to approve each Intra-Day Nomination as soon as practicable, but not more than 1 Hour, after the Intra-Day Nomination Deadline immediately following that Intra-Day Nomination, provided that:
- (a) there is sufficient capacity in the Maui Pipeline; and

- (b) the relevant Scheduled Quantity at each affected Welded Point has been amended and confirmed by each relevant Welded Party within 30 minutes after the Intra-Day Nomination Deadline; and
- (c) any change to an Approved Nomination made during a Transmission Day is subject to the limitation that 1/24th of any previously Approved Nomination (the **"Hourly AN"**) shall be deemed to have flowed each Hour during that Day and accordingly, the Approved Nomination shall not be reduced below the sum of the Hourly AN for each Hour prior to and including the Hour in which the amended Approved Nomination is approved.

Such approved nomination shall be deemed to be an Approved Nomination and shall replace any previous Approved Nomination for that Receipt Point and Delivery Point. If approval is not given by both MDL and the Welded Party, the request for the Intra-Day Nomination will be of no effect.

### **Reduction of Nominated Quantities, Provisional Nominations or Approved Nominations due to lower Proposed Scheduled Quantity**

#### ***Provisional Cycle***

8.17 If MDL's Proposed Scheduled Quantity at a Welded Point for the Provisional Cycle is more than the Scheduled Quantity under section 9.4, then MDL shall reconcile the difference by reducing Shippers' Nominated Quantities at that Welded Point in accordance with the following order of priority (from highest to lowest priority and pro-rating any nominations that have equal priority) so that they are equal in aggregate to the Scheduled Quantity under section 9.4:

- (a) Shippers' Nominated Quantities confirmed under section 9.3;
- (b) Shippers' Nominated Quantities not confirmed under section 9.3.

#### ***Changed Provisional Cycle***

8.18 If MDL's Proposed Scheduled Quantity at a Welded Point for the Changed Provisional Cycle is more than the agreed Scheduled Quantity under section 9.7, then MDL shall reconcile the difference by reducing Shippers' Nominated Quantities and/or Provisional Nominations at that Welded Point in accordance with the following order of priority (from highest to lowest priority and pro-rating any nominations that have equal priority) so that they are equal in aggregate to the agreed Scheduled Quantity under section 9.7:

- (a) Shipper's Nominated Quantities confirmed under section 9.6;
- (b) Shippers' Nominated Quantities not confirmed under section 9.6.

#### ***Intra-Day Cycle***

8.19 If MDL's Proposed Scheduled Quantity at a Welded Point for the Intra-Day Cycle is more than the agreed Scheduled Quantity under section 9.7 because a Welded Party has confirmed under section 9.8, then MDL shall reconcile the difference by reducing Shippers' Nominated Quantities and/or Approved Nominations at that Welded Point in accordance with the following order of priority (from highest to lowest priority and pro-rating any nominations that have equal priority) so that they are equal in aggregate to the Scheduled Quantity under section 9.8:

- (a) Approved Nominations;
- (b) Intra-Day Nominations for Nominated Quantities that have been confirmed via the MDL IX;
- (c) Intra-Day Nominations for Nominated Quantities that have not been confirmed.

## **Curtailment of Nominated Quantities**

### ***Provisional Cycle***

- 8.20 For the Provisional Cycle, MDL shall allocate the capacity of the Maui Pipeline according to the rules set out in sections 8.23 and 8.24 by running its capacity allocation algorithms after 5.00pm on the Nomination Day and after any curtailment in accordance with section 8.17 has been completed.

### ***Changed Provisional Cycle***

- 8.21 For the Changed Provisional Cycle, MDL shall allocate the capacity of the Maui Pipeline according to the rules set out in sections 8.25 and 8.26 by running its capacity allocation algorithms after 4.30pm on the Day before Transmission Day and after any curtailment in accordance with section 8.18 has been completed.

### ***Intra-Day Cycle***

- 8.22 For each Intra-Day Cycle, MDL shall allocate the capacity of the Maui Pipeline according to the rules set out in sections 8.27 and 8.28 by running its capacity allocation algorithms at least 30 minutes after each Intra-Day Nomination Deadline and after any curtailment in accordance with section 8.19 has been completed.

## **Curtailment of Nominated Quantities, Provisional Nominations or Approved Nominations due to Capacity Limitations**

### ***Provisional Cycle***

- 8.23 During the Provisional Cycle, MDL shall make the capacity on the Maui Pipeline available to Shippers by applying the following order of priority to Nominated Quantities (from highest to lowest priority and pro-rating any Nominated Quantities that have equal priority):
- (a) Nominated Quantities for Balancing Gas;
  - (b) Category A Nominations (which shall be pro-rated according to each Shippers' AQ holding from the affected AQ Zone); and
  - (c) Category B Nominations (which shall be pro-rated in accordance with the Net Historical Usage at each Welded Point).
- 8.24 If MDL is required to curtail Shippers' Nominated Quantities during the Provisional Cycle for a Day as the result of:
- (a) a shortage of capacity in the Maui Pipeline, then the available capacity shall be allocated between Shippers' Nominated Quantities as set out in section 8.23;
  - (b) a shortage of capacity at a particular Welded Point that is caused by MDL having reduced the Scheduled Quantity at that Welded Point because of a constraint at that Welded Point, then capacity shall be allocated as set out in section 8.23 provided that Category A Nominations and Category B Nominations shall have equal priority and be pro-rated according to Gross Historical Usage.

### ***Changed Provisional Cycle***

- 8.25 During the Changed Provisional Cycle, MDL shall make the capacity on the Maui Pipeline available to Shippers by applying the following order of priority to Nominated Quantities (from highest to lowest priority and pro-rating Nominated Quantities that have equal priority):
- (a) Nominated Quantities for Balancing Gas;

- (b) Category A Nominations (which shall be pro-rated according to each Shippers' AQ holding from the affected AQ Zone); and
  - (c) Category B Nominations (which shall be pro-rated in accordance with the Net Historical Usage at each Welded Point).
- 8.26 If MDL is required to curtail Shippers' Nominated Quantities for a Day during the Changed Provisional Cycle as the result of:
- (a) a shortage of capacity in the Maui Pipeline, then the available capacity shall be allocated as set out in section 8.25;
  - (b) a shortage of capacity at a particular Welded Point that is caused by MDL having reduced the Scheduled Quantity at that Welded Point because of a constraint at that Welded Point, then capacity shall be allocated as set out in section 8.25 provided that Category A Nominations and Category B Nominations shall have equal priority and be pro-rated according to Gross Historical Usage.

### ***Intra Day Cycle***

- 8.27 During each Intra-Day Cycle, MDL shall make the capacity on the Maui Pipeline available to Shippers by applying the following order of priority to Nominated Quantities (from highest to lowest with the same level of priority to be pro-rated based on the proportion that they bear to all Nominated Quantities within that level):
- (a) Approved Nominations;
  - (b) Intra-Day Nominations for Balancing Gas;
  - (c) Intra-Day Nominations which are Category A Nominations (which shall be pro-rated according to each Shippers' AQ holding from the affected AQ Zone); and
  - (d) Intra-Day Nominations which are Category B Nominations (which shall be pro-rated in accordance with the Net Historical Usage at each Welded Point).
- 8.28 During each Intra-Day Cycle, if MDL is required to curtail Shippers' Intra-Day Nominations or Approved Nominations for a Day as the result of:
- (a) a shortage of capacity in the Maui Pipeline in accordance with section 15.1, then such capacity shall be allocated as set out in section 8.27;
  - (b) a Welded Party reducing its Scheduled Quantity for a Welded Point in accordance with section 15.2, then capacity shall be allocated between Shippers' Intra-Day Nominations and/or Approved Nominations as set out in section 8.27 with the exception that sections 8.27(b), 8.27(c) and 8.27(d) shall be pro-rated based on the proportion that their Intra-Day Nominations and/or Approved Nominations bear to all Intra-Day Nominations and/or Approved Nominations in such sections;
  - (c) a shortage of capacity at a particular Welded Point that is caused by MDL having reduced the Scheduled Quantity at that Welded Point in accordance with section 15.1, then capacity shall be allocated as set out in section 8.27 provided that Intra-Day Nominations of Category A Nominations and Category B Nominations shall have equal priority and be pro-rated according to Gross Historical Usage.

### ***Balancing Curtailed Nominated Quantities or Approved Nominations***

- 8.29 Subject to section 8.30, where there is a constraint at a Delivery Point or Receipt Point or on the Maui Pipeline, in respect of which a Shipper has an Approved Nomination then, in respect of:

- (a) a Pooled Nomination:
  - (i) if the Approved Nomination at a Receipt Point is curtailed, the Approved Nomination at the Delivery Points will be reduced in accordance with the rank of such Approved Nominations (highest number first);
  - (ii) if the Approved Nomination at a Delivery Point is curtailed, the Approved Nomination at the Receipt Points will be reduced in accordance with the rank of such Approved Nominations (highest number first),

in each case to reach a balanced Pooled Nomination net of any Approved Mismatch;  
and
- (b) a Daisy Chain Nomination:
  - (i) if the Approved Nomination at a Receipt Point is curtailed, the Approved Nomination at the Delivery Points will be reduced;
  - (ii) if the Approved Nomination at a Delivery Point is curtailed, the Approved Nomination at the Receipt Point will be reduced,

in order to balance the quantities at the Delivery Points with the quantities at Receipt Points.

8.30 If a reduction or curtailment arises pursuant to section 15.1 or 15.2 then, to the extent that MDL determines that it will release Line Pack, MDL shall notify the affected Shippers and Welded Parties that:

- (a) an event or circumstance under section 15.1 or 15.2 has occurred; and
  - (b) that affected Shippers may now have Mismatch,
- in which case section 8.29 will not apply.

8.31 Notwithstanding any other provision of this Operating Code, MDL shall not deliver, and a Shipper shall not request MDL to deliver, any quantity of Gas to or from a Notional Welded Point unless that Notional Welded Point is at the relevant time registered on the MDL IX as included in that Shipper's TSA. MDL shall, if requested by the Notional Point Welded Party in writing, in respect of a Shipper:

- (a) register the Notional Welded Points on the MDL IX as included in that Shipper's TSA; or
- (b) de-register the Notional Welded Points from that Shipper's TSA on the MDL IX.

## 9. SCHEDULED QUANTITIES

### General Principles

- 9.1 The Scheduled Quantity at a Welded Point shall equal the sum of all Approved Nominations at that Welded Point. Accordingly, if one changes, so must the other. Such changes must take effect simultaneously and in accordance with this section 9.

### Provisional Cycle

- 9.2 By 4.00 pm on the Nomination Day, MDL shall notify each Welded Party of MDL's Proposed Scheduled Quantity for each of that Welded Party's Welded Points for each Day in the following week (that is, the following Monday to Sunday inclusive) using the appropriate screens on the MDL IX.
- 9.3 Between 4.00pm and 5.00pm on the Nomination Day, using the relevant screens on the MDL IX, a Welded Party may, in relation to each Day in the following Week either:
- (a) confirm MDL's Proposed Scheduled Quantity at each of its Welded Points; or
  - (b) confirm a lower Proposed Scheduled Quantity than MDL's Proposed Scheduled Quantity at any of its Welded Points;
- and/or
- (c) confirm all of the Nominated Quantities at each of its Welded Points; or
  - (d) confirm some of the Nominated Quantities at any of its Welded Points; and/or
  - (e) confirm a lower Nominated Quantity than that nominated by a Shipper at any of its Welded Points.
- 9.4 In respect of each Welded Point, if a Welded Party:
- (a) confirms under sections 9.3(a) or 9.3(b), the Scheduled Quantity shall be the quantity so confirmed;
  - (b) confirms under sections 9.3(c), 9.3(d) or 9.3(e) and not under sections 9.3(a) or 9.3(b), the Scheduled Quantity shall be the sum of the Nominated Quantities so confirmed for that Welded Point;
  - (c) does not confirm under section 9.3 at all, the Scheduled Quantity shall be MDL's Proposed Scheduled Quantity under section 9.2.

### Changed Provisional Cycle

- 9.5 By 4.00pm on the Day before Transmission Day, MDL shall notify each Welded Party of MDL's Proposed Scheduled Quantity for each of that Welded Party's Welded Points for the Transmission Day using the appropriate screens on the MDL IX.
- 9.6 Between 4.00pm and 4.30pm on the Day before Transmission Day, using the appropriate screens of the MDL IX, a Welded Party may, in relation to the Transmission Day, either:
- (a) confirm MDL's Proposed Scheduled Quantity at each of its Welded Points; or
  - (b) confirm a lower Proposed Scheduled Quantity than MDL's Proposed Scheduled Quantity at any of its Welded Points;
- and/or
- (c) confirm all of the Nominated Quantities at each of its Welded Points; or
  - (d) confirm some of the Nominated Quantities at any of its Welded Points; and/or

- (e) confirm a lower Nominated Quantity than that nominated by a Shipper at any of its Welded Points.

9.7 In respect of each Welded Point, if a Welded Party:

- (a) confirms under sections 9.6(a) or 9.6(b), the Scheduled Quantity shall be the quantity so confirmed;
- (b) confirms under sections 9.6(c), 9.6(d) or 9.6(e) and not under sections 9.6(a) or 9.6(b), the Scheduled Quantity shall be the sum of the Nominated Quantities so confirmed for that Welded Point;
- (c) does not confirm under section 9.6 at all, the Scheduled Quantity shall be MDL's Proposed Scheduled Quantity under section 9.5.

#### ***Intra-Day Cycles***

9.8 The Welded Party may advise MDL via the MDL IX within 30 minutes of the Intra-Day Nomination Deadline for each Intra-Day Cycle whether it confirms any proposed amendment to a Scheduled Quantity (or any part of it) for any of its Welded Points as the result of an Intra-Day Nomination which, if so confirmed, will replace any previously agreed Scheduled Quantity for that Welded Point. If the Welded Party does not so confirm any such proposed amendment to the Scheduled Quantity, the Intra-Day Nomination will be of no effect.

9.9 The Welded Party shall not confirm the reduction of a Scheduled Quantity pursuant to sections 9.8 or 15.2 if that change would reduce the Scheduled Quantity below the sum of the Hourly Scheduled Quantities for each Hour prior to and including the Hour in which the Changed SQ would be confirmed.

#### ***Auto-confirmation***

9.10 A Welded Party may request MDL to automatically confirm:

- (a) all Nominated Quantities at its Welded Point; or
- (b) all Nominated Quantities at its Welded Point up to a maximum Scheduled Quantity set by that Welded Party and notified to MDL from time to time via the relevant screen on the MDL IX.

## **10. ALLOCATIONS**

- 10.1 Under this Operating Code, Gas quantities at Welded Points are allocated to Shippers in accordance with the Primary Allocation Agreement's OBA Principles.
- 10.2 The effect of the application of the Primary Allocation Agreement's OBA Principles for Shippers is that each Shipper will be allocated its Approved Nomination at each Welded Point each Day (as that Approved Nomination is amended in accordance with the provisions of this Operating Code).
- 10.3 MDL shall, pursuant to the Gas Transfer Code provide the Gas Transfer Agent (as "Gas Transfer Agent" is defined in the Gas Transfer Code) with the information required of a "Welded Party" (as "Welded Party" is defined in the Gas Transfer Code) at the times and in the format required by the Gas Transfer Code.

## 11. SHIPPER MISMATCH

- 11.1 The difference between the sum of a Shipper's Approved Nominations at its Receipt Points and the sum of that Shipper's Approved Nominations at its Delivery Points on the Maui Pipeline for a Day is known as Mismatch.
- 11.2 Where there is a Positive Mismatch, the Maui Pipeline is being used to store Gas, and when there is a Negative Mismatch the Line Pack is being drawn from.
- 11.3 Because the Maui Pipeline operates using the Primary Allocation Agreement's OBA Principles at all Welded Points, Mismatch does not generally arise. Accordingly this section 11 shall apply only in the circumstances described in section 8.30.
- 11.4 MDL shall calculate each Shipper's Mismatch immediately after the end of each Day and post the Mismatch for that Day on the MDL IX in accordance with section 4.
- 11.5 If, following any Day, a Shipper has a Mismatch, then MDL shall provide that Shipper with a Mismatch Notice in respect of that Day requiring the Shipper to remove its Mismatch before the end of the Mismatch Period, such Mismatch Notice to be posted on the MDL IX in accordance with section 4. The length of the Mismatch Period will be set by MDL, acting as a Reasonable and Prudent Operator, at between one and seven Days taking into account the size of the Mismatch, the reasons it arose and the impact on the Maui Pipeline provided that MDL shall extend the Mismatch Period if a Shipper's Nominated Quantity or Approved Nomination that includes the Payback Point is curtailed by an event under section 15.1 or 15.2.
- 11.6 Once a Shipper receives a Mismatch Notice, then that Shipper must remove its Mismatch before the end of the Mismatch Period by either:
- (a) in the event of a Negative Mismatch:
    - (i) trading its Mismatch with another Shipper who has a Positive Mismatch so as to reduce or cancel both Shippers' respective Mismatches; or
    - (ii) having (or creating under section 11.7) a Positive Mismatch.
  - (b) in the event of a Positive Mismatch:
    - (i) trading its Mismatch with another Shipper who has a Negative Mismatch so as to reduce or cancel both Shippers' respective Mismatches; or
    - (ii) having (or creating under section 11.7) a Negative Mismatch.

A Mismatch Notice will cease to be of effect at the end of the Mismatch Period stated in that Mismatch Notice or when the Mismatch stated in that Mismatch Notice is removed, whichever is earlier.

- 11.7 If a Shipper wishes to request a Nominated Quantity that reduces its current Mismatch (the "**Payback Quantity**"), it shall nominate the Payback Point as its Receipt Point or Delivery Point for that Payback Quantity, as appropriate. The Payback Quantity for a Day may not exceed the Mismatch Payback Limit for that Day.
- 11.8 If a Shipper has not removed its Mismatch before the end of the Mismatch Period, then:
- (a) if the Shipper has a Negative Mismatch, the Shipper shall buy from MDL a quantity of Gas equal to the quantity of Gas required to remove that Shipper's Mismatch at the Negative Mismatch Price; or
  - (b) if the Shipper has a Positive Mismatch, the Shipper shall sell to MDL a quantity of Gas equal to the quantity of Gas required to remove that Shipper's Mismatch at the Positive Mismatch Price,

with such sales to take effect on the first Day after that Mismatch Period.

- 11.9 Each Shipper that trades its Mismatch in accordance with sections 11.6(a)(i) or 11.6(b)(i) must notify or confirm, as appropriate, such trade by using the appropriate section on the MDL IX. The trade shall not have effect until the process for such trade is completed in accordance with the MDL IX.
- 11.10 The Negative Mismatch Price and the Positive Mismatch Price shall be published on the MDL IX in accordance with section 4. These prices will reflect the Marginal Buy Price and the Marginal Sell Price respectively. MDL undertakes that, as the operator of the Maui Pipeline, it shall not seek to make a profit or loss from its activities in relation to Balancing Actions, Cash-Out Transactions, or settling Mismatches.

## 12. OPERATIONAL IMBALANCES

- 12.1 Each Physical Point Welded Party shall inject or off-take a quantity of Gas from a Physical Welded Point on a Day equivalent to the Scheduled Quantity for that Welded Point. Notwithstanding the previous sentence and section 28, each Party acknowledges that a Physical Point Welded Party may inject or off-take a quantity of Gas greater or less than the Scheduled Quantity on any Day, and, subject to section 27, the sole consequences of which are set out in this section 12.
- 12.2 Subject to sections 12.4 and 12.5, MDL will use reasonable endeavours to notify each Welded Party of the Operational Imbalance at each of that Welded Party's Welded Points for each Day via the MDL IX in accordance with section 4.
- 12.3 If, for any reason, MDL is not able to notify a Welded Party of the validated Operational Imbalance for a relevant Welded Point in accordance with section 4, then MDL (acting as a Reasonable and Prudent Operator) shall use unvalidated quantities to determine the Operational Imbalance at such Welded Point and shall re-calculate the Operational Imbalance using validated quantities as soon as they become available (and post such Operational Imbalance on the MDL IX in accordance with section 4 as soon as reasonably practicable after that).
- 12.4 The Operational Imbalance and Running Operational Imbalance of all Physical Welded Points located at [a Small Stations](#) will be determined within 5 Business Days of the beginning of each Month with respect to each Day of the previous Month and notified by MDL to the Welded Party by 8.00am of the sixth Business Day of the Month by posting such Operational Imbalance and Running Operational Imbalance on the MDL IX in accordance with section 4.
- 12.5 A Welded Party that has a Physical Welded Point located at a Small Station shall remove any Accumulated Excess Operational Imbalance of such Welded Point calculated in accordance with section 12.4 within 5 Business Days of receiving notice from MDL that it has an Accumulated Excess Operational Imbalance in respect of such Welded Point by transferring (using the Operational Imbalance trading function of the MDL IX) all Running Operational Imbalance at that Welded Point to one or more Physical Welded Points located at [a Large Stations](#).

### Daily Operational Imbalances

- 12.6 Subject to this section 12.6, MDL shall set a Daily Operational Imbalance Limit at each Welded Point that is not located at a Small Station for each Day which will be not less than the quantity calculated in accordance with the parameters set out in Schedule 7 and will be:
- (a) the higher of a number of GJ and a percentage of the Scheduled Quantity at that Welded Point for that Day; and
  - (b) posted on the section of the MDL IX in accordance with section 4.
- The Daily Operational Imbalance Limit at each Notional Welded Point shall be zero.
- 12.7 If there is an Excess Daily Imbalance at a Welded Point that is not located at a Small Station for a Day, then the Welded Party of that Welded Point shall incur an Incentives Pool Debit for each GJ of the Excess Daily Imbalance.
- 12.8 Each Daily Operational Imbalance Limit shall:
- (a) be set as high as reasonably practicable and in any event, the limit shall be no less than the quantity calculated in accordance with the parameters set out in Schedule 7 (except that the Daily Operational Imbalance Limit at each Notional Welded Point shall be zero);
  - (b) only be set at a Welded Point in relation to a negative Operational Imbalance; and

- (c) not apply in relation to a positive Operational Imbalance at Welded Points.

### Running Operational Imbalances

12.9 Each Physical Point Welded Party shall use its reasonable endeavours to manage the flow of Gas at each of its Welded Points so that its Running Operational Imbalance at each such Welded Point tends towards zero over a reasonable period of time.

12.10 If, at the end of any Day, a Physical Welded Point located at a Large Station ~~Notional Welded Point~~ or a Notional Welded Point ~~Physical Welded Point located at a Large Station~~ has an AEOI greater than zero then MDL shall:

- (a) calculate the Cash-Out Quantity for that Welded Point for that Day; and
- (b) if the Cash-Out Quantity is greater than zero:
  - (i) calculate the Cash-Out Sell Price for that Welded Point for that Day; and
  - (ii) purchase that Cash-Out Quantity from the Welded Party at that Welded Point at that Cash-Out Sell Price,

and any such transaction will be deemed to be completed, with title in such Gas deemed to pass from the Welded Party to MDL, at the end of that Day.

12.11 If, at the end of any Day, a Physical Welded Point located at a Large Station ~~Notional Welded Point~~ or a ~~Physical Welded Point located at a Large Station~~ Notional Welded Point has an AEOI less than zero then MDL shall:

- (a) calculate the Cash-Out Quantity for that Welded Point for that Day; and
- (b) if the Cash-Out Quantity is greater than zero:
  - (i) calculate the Cash-Out Buy Price for that Welded point for that Day; and
  - (ii) sell that Cash-Out Quantity to the Welded Party at that Welded Point at that Cash-Out Buy Price,

and any such transaction will be deemed to be completed, with title in such Gas deemed to pass from MDL to the Welded Party, at the end of that Day.

12.12 Prices used for Cash-Out Transactions and for transactions pursuant to section 12.13 shall be calculated for a Day as follows.

(a) Unless the default rule defined in accordance with section 12.12(f) applies, tThe Average Market Price shall be the energy weighted average price of all trades in Sstandard Pproducts made for delivery on that Day, provided that those trades were made on the Day or on the previous Day on a ~~Trading System~~Trading Platform that meets the criteria set out in section 3.4.

(b) The Marginal Sell Price shall be calculated as the lower of:

- (i) the lowest transaction ~~proceeds-price~~ per GJ of any Balancing Gas Put, using a Sstandard Pproduct, that is made for offtake that Day, ~~where transaction proceeds represent transaction price minus any applicable trading fees or charges~~; or
- (ii) the Average Market Price for that Day minus an adjustment.

(c) The Marginal Buy Price shall be calculated as the higher of:

- (i) the highest transaction ~~costs-price~~ per GJ of any Balancing Gas Call, using a Sstandard Pproduct, made for delivery that Day, ~~where transaction costs represent transaction price plus any applicable trading fees or charges~~; or
- (ii) the Average Market Price for that Day plus an adjustment.

- (d) The values of the “adjustment” used for calculating the Marginal Sell Price and the Marginal Buy Price on a Day, which may be two different values, shall be posted by MDL on the BGIX in accordance with section 4.4. These values shall be expressed as a percentage of the Average Market Price on that Day.
- (e) The percentage referred to in (d) above shall not exceed ten percent ~~unless prior approval for a higher percentage has been obtained from GIC.~~
- (f) MDL shall define a default rule for the derivation of the Average Market Price for a Day in circumstances where information is not sufficiently ~~or reliably~~ available or reliable for that Day; including but not limited to circumstances where:
  - (i) no eligible Trading Platforms were available on that Day; or
  - (ii) the volume traded on eligible Trading Platforms both on that Day and on the prior Day for Delivery that Day was (in both cases) less than a specified volume.
- (g) The default rule referred to in (f) above, including the circumstances where it shall apply, and the details of any amendments to that rule shall be published on the BGIX in accordance with section 4.4.
- (h) The Cash-Out Sell Price shall be calculated as the Marginal Sell Price minus the sum of:
  - (i) the Cash-Out Transmission Price for the relevant Welded Point for that Day; and
  - (ii) the Cash-Out Trading Fee Price for the relevant Day,

provided that if the result of that calculation is less than \$ 0.01/GJ then the Cash-Out Sell Price shall be \$ 0.01/GJ.
- (i) The Cash-Out Buy Price shall be calculated as the Marginal Buy Price plus the sum of:
  - (i) the Cash-Out Transmission Price for the relevant Welded Point for that Day; and
  - (ii) the Cash-Out Trading Fee Price for the relevant Day.

12.13 Where a Running Operational Imbalance at any Welded Point remains outstanding (after completion of any Cash-Out Transaction) at the end of the Day that termination of an ICA in respect of that Welded Point takes effect, then the Welded Party of that Welded Point shall settle with MDL that Running Operational Imbalance by either buying from or selling to MDL (as appropriate) the corresponding quantity of Gas, in either case at the Average Market Price for that Day, with such transactions to take effect at the end of that Day.

#### **“Forced” Operational Imbalances**

12.14 If another Welded Party incurs an Incentives Pool Debit on a Day which results in a Welded Party being unable to off-take its Scheduled Quantity at its Welded Point on that Day or having its Scheduled Quantity at its Welded Point curtailed under section 15.1 then that Welded Party:

- (a) may claim an amount from the Incentives Pool equal to the Daily Incentive Price multiplied by the quantity of Gas that it has not been able to off-take up to the Scheduled Quantity in place prior to any change as a result of such event at that Welded Point on the relevant Day; and
- (b) shall not incur any Incentives Pool Debits for exceeding the Peaking Limit in respect of any affected Welded Point on that Day.

## Trading Running Operational Imbalances

- 12.15 A Welded Party may trade the amount of Running Operational Imbalance (or part of it) at a Welded Point with any other Welded Point, owned by itself or by another Welded Party, in accordance with the procedure on the MDL IX. The Welded Party that obtains a positive adjustment of Running Operational Imbalance as a result of such a trade shall pay MDL the Throughput Charge that MDL would have been entitled to receive had the trade not occurred, provided that no such Throughput Charge shall be payable in respect of any transfer made in accordance with section 12.5.
- 12.16 Adjustments for trades on each Transmission Day will be included in the Running Operational Imbalance posted on the MDL IX the next Day in accordance with section 4.

## Deemed flow at Notional Welded Points

- 12.17 Notwithstanding any other provision of this Operating Code, for the purposes of calculating Operational Imbalance, Running Operational Imbalance and Excess Daily Imbalance in relation to a Notional Welded Point the quantity of Gas that on a Day has flowed through the applicable Trading Hub Delivery Point and the corresponding Trading Hub Receipt Point, respectively, shall be the Deemed Measured Quantity of that Notional Welded Point for that Day. The Parties acknowledge that the effect of this section 12.17 is that there shall be no Operational Imbalance, Running Operational Imbalance or Excess Daily Imbalance at any Trading Hub Delivery Point. A Notional Point Welded Party shall use all reasonable endeavours to ensure that at all times there is no Operational Imbalance, Running Operational Imbalance or Excess Daily Imbalance at its Trading Hub Receipt Point(s).

## ROIL Multiplier

- 12.18 The ROIL Multiplier used for calculating a Cash-Out Quantity for a Welded Point on a Day shall be determined as follows.
- (a) Its default value is 1.
  - (b) It shall not be less than 1.
  - (c) MDL, acting as a Reasonable and Prudent Operator, may temporarily increase it for one or more Welded Points for one or more Days in case of:
    - (i) a Contingency Event;
    - (ii) Maintenance; or
    - (iii) another event or circumstance in which MDL ~~acting as a Reasonable and Prudent Operator~~ considers that a Welded Point should temporarily be allowed an increased tolerance,in which case MDL ~~will~~ shall publish the details of such temporary increase on the BGIX.
  - (d) It shall during a transitional period be increased for all Physical Welded Points located at a Large Station to:
    - (i) a value of at least 2 for any Day up to ~~30 June 2015~~ 1 March 2016 or such later date as may be notified by MDL; and
    - (ii) a value of at least 1.5 for any Day ~~between 1 July 2015 and 31 December 2015~~ during a period of six Months starting from 1 March 2016 or from such other date as notified by MDL in accordance with (i) above (whichever is the later).

## 13. PEAKING

### Peaking Tolerances

- 13.1 MDL shall, acting as a Reasonable and Prudent Operator, set a Peaking Limit for each Physical Welded Point for each Day as required for the safe and reliable operation of the Maui Pipeline. The Peaking Limit shall be as large as reasonably practicable and in any event not less than the quantities calculated using the parameters set out in Schedule 7. MDL shall post the Peaking Limit on the MDL IX in accordance with section 4.

### Operational Profiles

- 13.2 At each Physical Welded Point, the Welded Party must act as a Reasonable and Prudent Operator to inject or offtake Gas at an Hourly rate during the Day within the Peaking Limit unless it has previously given MDL reasonable prior written notice of (and obtained MDL's consent, not to be unreasonably withheld or delayed) when and the extent to which it will be exceeding the Peaking Limit or interrupting Gas flow at the Physical Welded Point for operational reasons (including Maintenance scheduled by the Welded Party). MDL will post the details of any such arrangement on the MDL IX in accordance with section 4.1.

### Exceeding the Peaking Limit

- 13.3 Subject to sections 1, 13.4, 14.4 and 14.5, if the quantity of Gas that flows through a Physical Welded Point during any Hour of a Day exceeds the then current Peaking Limit for that Physical Welded Point (or any other limit agreed pursuant to section 13.2), then that Welded Party shall incur Incentives Pool Debits, calculated as follows:

- (a) the quantity of Gas in each Hour shall be determined from Metering;
- (b) for any Hour in which the Gas flow quantity exceeded the Peaking Limit for that Hour, the Welded Party shall incur Incentives Pool Debits calculated as:

$$IPD = (Q_{ave} - PL)$$

where:

IPD = Incentives Pool Debit for any Hour; and

$Q_{ave} = (Q_{H-1} + Q_H + Q_{H+1}) / 3$  ; and

$Q_{H-1}$  = the quantity of Gas in the Hour preceding any Hour in which the quantity of Gas exceeded the Peaking Limit for the Day; and

$Q_H$  = the quantity of Gas in the Hour in which the quantity of Gas exceeded the Peaking Limit for the Day; and

$Q_{H+1}$  = the quantity of Gas in the Hour succeeding any Hour in which the quantity of Gas exceeded the Peaking Limit for the Day; and

PL = Peaking Limit (or any other limit agreed pursuant to section 13.2),

provided that, for any Hour in respect of which  $Q_{ave}$  is less than the Peaking Limit for that Day, no Incentives Pool Debits shall be incurred.

- 13.4 If the quantity of Gas that flows through a Physical Welded Point during any Hour of a Day exceeds the then current Peaking Limit for that Physical Welded Point (or any other limit agreed pursuant to section 13.2) then, provided:

- (a) the Incentive Pool Trustee has not

- (i) received a validated Incentives Pool Claim under section 14.1(a) in respect of that Day; and
- (ii) invoiced the Welded Party that has incurred Incentive Pool Debits in accordance with section 14.1(c); and

(b) Line Pack falls below the Low Line Pack Threshold on that Day; and

(c) a Balancing Gas Call is made for that Day,

that Welded Party shall pay to MDL a Peaking Charge, calculated as follows:

(d) the quantity of Gas in each Hour shall be determined from Metering;

(e) for any Hour in which the Gas flow quantity exceeded the Peaking Limit for that Hour, the Welded Party shall incur a Peaking Charge calculated as:

$$PC = (Q_{ave} - PL) \times (MBP - MSP)$$

where:

PC = Peaking Charge for any Hour; and

$Q_{ave} = (Q_{H-1} + Q_H + Q_{H+1}) / 3$  ; and

$Q_{H-1}$  = the quantity of Gas in the Hour preceding any Hour in which the quantity of Gas exceeded the Peaking Limit for the Day; and

$Q_H$  = the quantity of Gas in the Hour in which the quantity of Gas exceeded the Peaking Limit for the Day; and

$Q_{H+1}$  = the quantity of Gas in the Hour succeeding any Hour in which the quantity of Gas exceeded the Peaking Limit for the Day;

PL = Peaking Limit (or any other limit agreed pursuant to section 13.2);

MBP = the Marginal Buy Price for the Day; and

MSP = the Marginal Sell Price for the Day,

provided that, for any Hour in respect of which  $Q_{ave}$  is less than the Peaking Limit for that Day, no Peaking Charge shall be incurred.

13.5 A Welded Party shall be relieved of its obligations under this section 13 for any Hour that such obligation is affected by:

- (a) a Force Majeure Event;
- (b) a Contingency Event;
- (c) a Pipeline Contingency Event that affects its Pipeline; or
- (d) Maintenance (excluding Scheduled Maintenance).

13.6 Notwithstanding any other provision in this section 13, Peaking Limits shall not apply to any Small Station.

## 14. INCENTIVES POOL

- 14.1 The Parties have created an Incentives Pool to provide a system of liquidated damages under which payments by each Welded Party that has an Excess Daily Imbalance or exceeds a Peaking Limit are paid into the Incentives Pool Account and payments from the Incentives Pool Account are made to the relevant Parties in accordance with this section 14. The Incentives Pool Trustee will, in respect of each Day:
- (a) receive Incentives Pool Claims from Welded Parties;
  - (b) calculate the Incentives Pool Debit Price for that Day;
  - (c) invoice each Welded Party that incurs an Incentives Pool Debit at the Incentives Pool Debit Price;
  - (d) collect payments from each relevant Welded Party as invoiced pursuant to section 14.1(c); and
  - (e) pay valid Incentives Pool Claims to the relevant claimants, in accordance with this Operating Code.
- 14.2 All money in the Incentives Pool (including any interest earned on such money) in respect of any Day will be held on trust by the Incentives Pool Trustee in the Incentives Pool Account for the benefit of the claimants who have made or are entitled to make valid Incentives Pool Claims in relation to that Day.
- 14.3 The Incentives Pool Trustee warrants that:
- (a) the Incentives Pool Account is an account separate from all of the Incentives Pool Trustee's other bank accounts;
  - (b) the funds in the Incentives Pool Account will not be subject to any charge or encumbrance in favour of any bank or third party,
- and, where requested by a Shipper or Welded Party, the Incentives Pool Trustee shall provide evidence of that fact. The Incentives Pool Trustee shall procure from the Bank with which the Incentives Pool Account is maintained a written acknowledgement that the funds in it are held on trust by the Incentives Pool Trustee and are not funds of the Incentives Pool Trustee, or to be commingled with funds of the Incentives Pool Trustee.
- 14.4 Payment of claims from the Incentives Pool shall only be made by the Incentives Pool Trustee in accordance with this Operating Code. The Incentives Pool Trustee's liability as a trustee shall be limited to the funds for the time being in (or due and payable to) the Incentives Pool, provided it has not been negligent in respect of, or in wilful default of, its obligations relating to the Incentives Pool.
- 14.5 A Welded Party's sole and exclusive remedy against MDL or any other Welded Party for any inability to take its full Scheduled Quantity of Gas on a Day as a result of an Operational Imbalance or exceeding a Peaking Limit in any Hour, whether in contract, tort or otherwise, is limited to a payment under this section 14.
- 14.6 Notwithstanding section 28, the Welded Party's sole liability to any other Welded Party, MDL or a Shipper arising from, or in relation to, a claim that MDL or another Welded Party was prevented from taking its full Scheduled Quantity of Gas on a Day as a result of an Operational Imbalance or exceeding a Peaking Limit in any Hour, whether in contract, tort or otherwise, is limited to making a payment under section 12.11(b) or section Error: Reference source not found, or in respect of an Incentives Pool Debit incurred pursuant to section 12.7 or 13.3, or a Peaking Charge incurred pursuant to section 13.4 as appropriate.

- 14.7 The Incentives Pool Trustee shall keep full, complete and current records and accounts of all moneys paid into and out of the Incentives Pool by or to a Welded Party. The Incentives Pool Trustee shall publish all transactions for a calendar year in an annual report posted on the MDL IX by 31 March of the following calendar year.
- 14.8 The Incentives Pool Trustee shall ensure that the Incentives Pool Account is audited annually by the Independent Auditor, and shall publish the Independent Auditor's report on the MDL IX in accordance with section 4. The costs of such audit shall be met by MDL and included in the calculation of Tariff 2.

#### **Incentives Pool Procedure**

- 14.9 The Incentives Pool Trustee shall calculate for each Day:
- (a) the total Incentives Pool Debits by adding the sum of Incentives Pool Debits arising for that Day under sections 12.7 and 13.3;
  - (b) the total Incentives Pool Claims in relation to that Day by adding the amounts claimed by any Welded Party under section 12.14;
  - (c) the Incentives Pool Debit Price.
- 14.10 The Incentives Pool Trustee shall invoice each Welded Party that has incurred an Incentives Pool Debit at the Incentives Pool Debit Price per GJ.
- 14.11 The Incentives Pool Trustee shall pay each Incentives Pool Claim as soon as it receives payment for all Incentives Pool Debits provided that, despite the Incentives Pool Trustee taking all reasonable steps to enforce payments, if any such payment is late or not made, the Incentives Pool Trustee shall pay Incentives Pool Claims on a pro rata basis.

## 15. INTERRUPTIONS

15.1 MDL may, without incurring any liability to a Shipper or Welded Party under the relevant TSA or ICA respectively:

- (a) immediately and without prior notice interrupt or reduce transmission of Gas from and/or to any Welded Point, and curtail Approved Nominations and associated Scheduled Quantities at any relevant Welded Point; and/or
- (b) give a Welded Party notice of an operational flow order as soon as reasonably practicable to curtail or shutdown the transfer of Gas to or from the Maui Pipeline (such notice to be marked as an "**Operational Flow Order**"), and the Welded Party shall comply with such order,

for any period which in MDL's opinion is necessary:

- (i) to prevent Non-Specification Gas from entering, or being taken from, the Maui Pipeline; or
- (ii) where Maintenance (other than Scheduled Maintenance) on the Maui Pipeline is required; or
- (iii) where a Force Majeure Event occurs; or
- (iv) where a Contingency Event occurs; or
- (v) where that Welded Party has an Excess Daily Imbalance or exceeds its Peaking Limit at a Welded Point and MDL considers that delivery of Gas to that Welded Party may impair MDL's ability to deliver Gas to any other customer of MDL; or
- (vi) to prevent Operational Imbalance occurring at Notional Welded Points,

provided that in so doing MDL acts as a Reasonable and Prudent Operator, in a non-discriminatory manner and in accordance with this Operating Code, whereupon the Approved Nominations shall be curtailed in accordance with section 8.28 and balanced in accordance with section 8.29 and the Scheduled Quantities deemed reduced.

15.2 Subject to section 15.11, the Welded Party may, acting as a Reasonable and Prudent Operator, and without incurring any liability under its ICA, immediately and without prior notice, only by giving notice to MDL via the System Operator (and not via an Intra-Day Cycle) that the Scheduled Quantity at a Welded Point shall be reduced for any period which in the Welded Party's opinion is necessary:

- (a) to prevent Non-Specification Gas from entering, or being taken from, its Pipeline;
- (b) where Maintenance (other than Scheduled Maintenance) is required;
- (c) where a Force Majeure Event occurs;
- (d) where a Contingency Event occurs, or, in relation to that Welded Party's Pipeline, where a Pipeline Contingency Event occurs,

whereupon the Approved Nominations shall be curtailed in the priority order set out in section 8.28 and balanced in accordance with section 8.29 and the Scheduled Quantity deemed reduced.

15.3 In the event of interruption or reduction of transmission in the circumstances set out in section 15.1, MDL will use its reasonable endeavours to:

- (a) notify the affected Shippers and Welded Parties of MDL's intention to interrupt or reduce transmission on each occasion as early as reasonably practicable, and, where reasonably practicable, prior to interruption or reduction of transmission;

- (b) provide information to the affected Shippers and Welded Parties on the reason, timing, duration, and impact of the interruption or reduction of transmission;
  - (c) minimise the period of interruption or reduction of transmission; and
  - (d) where reasonably practicable, consult with the affected Shippers and Welded Parties as to the timing of the interruption or reduction so as to minimise the disturbance to each Shipper's and Welded Party's business.
- 15.4 In the event of interruption or reduction of transmission in the circumstances set out in section 15.2, the Welded Party will use its reasonable endeavours to:
- (a) notify MDL of the Welded Party's intention to reduce the Scheduled Quantity as early as reasonably practicable; and
  - (b) where reasonably practicable, consult with MDL as to the timing of the interruption or reduction of Gas flow at the Welded Point so as to minimise the disturbance to MDL's business.
- 15.5 MDL will use its reasonable endeavours to maintain a Contingency Volume for use during a Contingency Event, Maintenance or Force Majeure Event.
- 15.6 A time equivalent of the Contingency Volume will be posted on the MDL IX on a Daily basis. MDL shall not be required to deplete the Line Pack beyond using the Contingency Volume to support a Contingency Event, Maintenance (including Scheduled Maintenance), Pipeline Contingency Event or Force Majeure Event upstream or downstream of the Maui Pipeline.
- 15.7 MDL shall determine the proportion of the Contingency Volume that is available to be released during a Contingency Event, Maintenance, Pipeline Contingency Event or Force Majeure Event.
- 15.8 If MDL is required to operate the Maui Pipeline using a reduced Contingency Volume during or following a Contingency Event, Maintenance, Scheduled Maintenance, a Pipeline Contingency Event or a Force Majeure Event in accordance with this Operating Code, then the unavailability of the full Contingency Volume alone shall not be considered to be a breach of MDL's obligation to operate as a Reasonable and Prudent Operator.
- 15.9 MDL may use the Contingency Volume (or part of it) to assist a Welded Party or Shipper where an event under sections 15.1 or 15.2 has occurred. Such Welded Party or Shipper shall be responsible for replacing any amount of Contingency Volume by clearing any Operational Imbalance or Mismatch respectively, as soon as reasonably practicable.
- 15.10 As soon as reasonably practicable, and in any event within one Business Day after MDL determines the end of a Contingency Event, Force Majeure Event or Maintenance, MDL shall notify each Welded Party and each Shipper via the MDL IX that MDL's Contingency Volume is reduced until a nominated date by which the Contingency Volume can be restored.
- 15.11 Any change to a Scheduled Quantity made during a Transmission Day under this section 15 is subject to the limitation that the Hourly Scheduled Quantity shall be deemed to have flowed each Hour during that Day and accordingly, the Scheduled Quantity shall not be reduced below the sum of the Hourly Scheduled Quantities for each Hour prior to and including the Hour in which the Changed Scheduled Quantity is confirmed.

## **16. MEASUREMENT AND TESTING**

### **Overview**

- 16.1 Gas quantities injected into or delivered from the Maui Pipeline at a Physical Welded Point shall be determined with Metering from the Metering Owner.

### **Metering**

- 16.2 As at 1 January 2005, the Metering owned by Methanex located at or near its Welded Point at Bertrand Road is of a different type to that described in Part Two of Schedule 1. For as long as Methanex continues to operate, test and maintain its Metering located at or near its Welded Point at Bertrand Road in accordance with section 16.5, such Metering will be deemed to meet all requirements of this Operating Code.
- 16.3 Each Metering Owner shall ensure that, in relation to any Physical Welded Point that it constructs after the date on which the relevant Welded Party enters into an ICA, its Metering will comply with Schedule 1.

### **Testing of Metering facilities**

- 16.4 Subject to sections 5.1 and 16.5, each Metering Owner shall test its Metering in accordance with Part Three of Schedule 1 to verify, and where necessary re-establish, the accuracy of such Metering.
- 16.5 Methanex shall operate, test and maintain its Metering located at or near its Welded Point at Bertrand Road in accordance with the requirements of the Methanex 20/20 Agreement.
- 16.6 In relation to Metering that MDL or a Welded Party does not own, MDL or the Welded Party, as appropriate, may at any time request a special test of any relevant Metering, or gas measurement device forming part of such Metering, including in the presence of MDL or a Welded Party, as appropriate, or its representative, and the relevant Pipeline Owner shall procure that the Metering Owner complies with such request, provided that:
- (a) the Metering Owner shall not be required to undertake such special testing more frequently than once in any 60 Day period;
  - (b) where the Metering or gas measurement device is found to be functioning accurately, the Party that requested the special test will reimburse the Metering Owner for all costs incurred by the Metering Owner in undertaking the testing; and
  - (c) where the Metering is found to be functioning inaccurately the Metering Owner shall bear all costs incurred by the Metering Owner in undertaking the special test (but not any costs incurred by MDL or the Welded Party or any other party). The Metering Owner at its own cost and as soon as reasonably practicable shall service, repair, recalibrate or replace the Metering, as may be required, to re-establish its accuracy.

### **Corrections for Inaccurate Metering**

- 16.7 Where Metering is found to be Inaccurate, Gas quantities computed by such Metering shall be corrected in accordance with Part Four of Schedule 1, where "Inaccurate" has the meaning set out in Schedule 1.

## 17. GAS SPECIFICATION

17.1 In this section 17:

**“Direct Injecting Party”** means a Welded Party who injects any quantity of gas into the Maui Pipeline direct from a gas production or processing facility.

**“Indirect Injecting Party”** means a party who injects any quantity of gas into a Transmission Pipeline which then flows into the Maui Pipeline.

**“Receiving Party”** means:

- (a) MDL, when it receives any quantity of gas into the Maui Pipeline; and
- (b) any Welded Party who receives any quantity of gas from the Maui Pipeline.

**“Injecting Welded Party”** means a Welded Party who receives any quantity of gas from an Indirect Injecting Party which then flows into the Maui Pipeline.

17.2 Each Direct Injecting Party shall:

- (a) ensure that all gas that it injects into the Maui Pipeline complies with the Gas Specification; and
- (b) monitor, in accordance with the Gas Specification, all such gas so as to demonstrate such compliance.

17.3 Each Injecting Welded Party shall procure each Indirect Injecting Party that injects gas into that Injecting Welded Party’s Transmission Pipeline to:

- (a) ensure that all such gas complies with the Gas Specification; and
- (b) monitor, in accordance with the Gas Specification, all such gas so as to demonstrate compliance with the Gas Specification.

17.4 Neither a Welded Party nor MDL shall knowingly inject Non-Specification Gas into the other’s (or another Welded Party’s) Pipeline, except with the prior written consent of the Receiving Party who receives such Non-Specification Gas.

17.5 If a Welded Party detects or, in its reasonable opinion, suspects Non-Specification Gas is flowing, or is likely to flow, through a Welded Point with its Pipeline, then as soon as reasonably practicable upon becoming aware of it, that Welded Party shall notify MDL (except where MDL has given that party notice of the Non-Specification Gas).

17.6 As soon as reasonably practicable upon detecting or, in its reasonable opinion, suspecting that Non-Specification Gas is flowing, or is likely to flow, through a Welded Point, MDL shall notify all Welded Parties and Shippers of the same.

17.7 Each Direct Injecting Party that injected the Non-Specification Gas shall:

- (a) immediately provide to MDL such information as is available to it in relation to the duration of the injection of Non-Specification Gas and the extent of the non-compliance with the Gas Specification and otherwise assist MDL to the maximum extent reasonably practicable to mitigate the effects of the Non-Specification Gas; and
- (b) promptly take all steps reasonably practicable to prevent any repetition of such non-compliance with the Gas Specification.

17.8 Each Injecting Welded Party shall procure that each Indirect Injecting Party that injected Non-Specification Gas into that Injecting Welded Party’s Pipeline shall:

- (a) remedy the non-compliance with the Gas Specification as soon as reasonably practicable;

- (b) immediately provide to the Injecting Welded Party such information as is available to it in relation to the duration of the injection of Non-Specification Gas and the extent of the non-compliance with the Gas Specification and otherwise assist MDL to the maximum extent reasonably practicable to mitigate the effects of the Non-Specification Gas; and
  - (c) promptly take all steps reasonably practicable to prevent any repetition of such non-compliance with the Gas Specification.
- 17.9 Each Direct Injecting Party shall demonstrate that it has adequate facilities, systems and procedures in place to ensure that it is able to comply with section 17.2 upon receipt of, and within the time specified in, a reasonable written request to do so from:
- (a) MDL; or
  - (b) a Welded Party, where that Welded Party has given MDL notice pursuant to section 17.11 and MDL has not complied with such notice.
- 17.10 Each Injecting Welded Party shall procure that each relevant Indirect Injecting Party demonstrates that it has adequate facilities, systems and procedures in place to ensure that any gas that it injects into that Injecting Welded Party's Transmission Pipeline is able to comply with the Gas Specification upon receipt of a reasonable written request to do so from:
- (a) that Injecting Welded Party; or
  - (b) MDL, where MDL has given that Injecting Welded Party notice pursuant to section 17.12 and that Injecting Welded Party has not complied with such notice.
- 17.11 MDL shall exercise its rights under section 17.9(a) promptly upon receipt of a reasonable written request to do so from a Welded Party through whose Welded Point gas from the relevant Direct Injecting Party may flow. Subject to section 26.2, MDL shall allow that Welded Party to be present for any such demonstration.
- 17.12 The Injecting Welded Party shall require the appropriate Indirect Injecting Party to perform its obligations described in section 17.10 upon receipt of a reasonable request to do so from MDL, where MDL has received that Indirect Injecting Party's gas into the Maui Pipeline. Subject to section 26.2, the Injecting Welded Party shall procure the right for MDL to be present for any such demonstration.
- 17.13 If a Direct Injecting Party or an Injecting Welded Party does not comply with section 17.9 and 17.10, then MDL or the requesting Welded Party under section 17.9(b) may:
- (a) enter upon the relevant premises or land used by the relevant Direct Injecting Party or Injecting Welded Party to undertake such inspections, inquiries or testing of gas as may be reasonably necessary to ascertain whether that party is able to comply with section 17.2 or the requirement in section 17.3, as the case may be; or
  - (b) request the relevant Direct Injecting Party or Injecting Welded Party to immediately cease injecting gas into a Pipeline until such time as that party does comply with sections 17.9 or 17.10, as appropriate and the relevant party shall comply with that request; or
  - (c) conduct the tests required in the relevant sections itself.
- Subject to section 26.2, the non-compliant party shall allow, or procure, access to the requesting party at the times and places reasonably requested to do so, and shall pay for the costs of such tests.

- 17.14 Any demonstration under sections 17.9 or 17.10, as appropriate, shall be made to a requesting party under sections 17.10, 17.11, 17.12 or 17.13, as the case may be. That requesting party shall have no liability to:
- (a) a Direct Injecting Party who breaches section 17.2(a) by reason only that the requesting party exercised its rights under section 17.10; or
  - (b) an Injecting Welded Party who receives gas into its Pipeline from an Indirect Injecting Party who does not comply with its obligations as described in section 17.3(a); or
  - (c) an Indirect Injecting Party where that Indirect Injecting Party injects gas that does not comply with the Gas Specification into a Pipeline.
- 17.15 Without limiting anything in this section 17, a Direct Injecting Party shall monitor gas before injecting it into the Maui Pipeline, and an Injecting Welded Party shall procure that the Indirect Injecting Party shall monitor its gas before it flows into that Injecting Welded Party's Transmission Pipeline, for the characteristics and components and at the minimum frequency as follows:
- (a) Wobbe Index and relative density - monitor continuously;
  - (b) water content and hydrocarbon dewpoint - monitor as required and in any event no less frequently than Daily;
  - (c) H<sub>2</sub>S and total Sulphur - monitor as required and in any event no less than quarterly;
  - (d) Oxygen - monitor continuously; and
  - (e) halogens and hydrogen - monitor as reasonably required and in any event no less frequently than quarterly,
- provided that to the extent that:
- (i) the gas production and processing facility of a Direct Injecting Party or Indirect Injecting Party, as the case may be, is designed and operated to prevent any of the characteristics or components in (a) to (e) above exceeding the limits set out in the Gas Specification; or
  - (ii) that Direct Injecting Party or Indirect Injecting Party as the case may be, is reasonably able to demonstrate that the components specified in (c) to (e) above have so far not occurred naturally in its gas, and are not able or expected to be present in or introduced into its gas in the future,
- the relevant Party may test for such components at the frequency reasonably required to demonstrate compliance with the Gas Specification.
- 17.16 In the event that Non-Specification Gas is injected into the Maui Pipeline and/or another Pipeline, as the case may be, MDL and each Welded Party shall co-operate to identify the Direct Injecting Party or Indirect Injecting Party responsible.
- 17.17 Each Direct Injecting Party, MDL and Welded Party (and the Injecting Welded Party shall procure that the Indirect Injecting Party) shall:
- (a) use only a duly qualified and competent person with the appropriate equipment and facilities to conduct any testing of gas required under this section 17; and
  - (b) when testing for compliance with the Gas Specification, comply with the testing methodology set out in the Gas Specification.
- 17.18 Each Direct Injecting Party shall, and each Injecting Welded Party shall procure the relevant Indirect Injecting Party to, pay for all costs of monitoring and testing the gas it injects.

- 17.19 All sections of this Operating Code (excluding the definition "Non-Specification Gas" in sections 1.1, 17, 28 and Schedule 1) shall apply to Non-Specification Gas as if it was gas meeting the Gas Specification.
- 17.20 Each Party agrees that the Injecting Welded Party shall be relieved of its obligations under this section 17 to the extent that the Injecting Welded Party is required to procure any action by an Indirect Injecting Party that it has a valid interconnection contract in place with but, as at 1 June 2005, that contract does not allow it to procure such action.
- 17.21 For the purposes of section 28 and the definition of "Reasonable and Prudent Operator", any failure by a Direct Injecting Party to comply with this section 17 shall constitute a failure to act as a Reasonable and Prudent Operator.

#### **MDL and TP Welded Party Gas Specification Compliance**

- 17.22 MDL shall indemnify a Welded Party for any Loss incurred by that Welded Party arising out of or in relation to Non-Specification Gas injected into that Welded Party's Pipeline from the Maui Pipeline. For the purposes of this section 17.22, any Non-Specification Gas will be deemed to have been such at the time it was injected into the Maui Pipeline, unless it can be shown that MDL caused it to become Non-Specification Gas. This indemnity is subject to the limitations, exclusions and procedures set out in section 28.
- 17.23 Subject to the limitations set out in section 28, each Injecting Welded Party shall indemnify MDL for any loss incurred by MDL arising out of or in relation to Non-Specification Gas injected into the Maui Pipeline from that Injecting Welded Party's Pipeline. For the purposes of this section 17.23, any Non-Specification Gas will be deemed to be such at the time it was injected into that Injecting Welded Party's Pipeline, unless it can be shown that that Injecting Welded Party caused it to become Non-Specification Gas. This indemnity is subject to the limitations, exclusions and procedures set out in section 28.

## **18. MAINTENANCE OF PIPELINE**

### **Pressure**

- 18.1 MDL will act as a Reasonable and Prudent Operator to maintain sufficient total Line Pack necessary to:
- (a) deliver Approved Nominations in accordance with this Operating Code; and
  - (b) provide the posted flexibility for Daily Operational Imbalance Limits, Peaking Limits, and Contingency Volume.
- 18.2 MDL will make Gas available for off-take from the Maui Pipeline at each Welded Point where Gas is scheduled to flow out of the Maui Pipeline during a Day at not less than the Minimum Pressure, unless the Welded Party at the Welded Point agrees to a lower pressure at such Welded Point.
- 18.3 Subject to sections 18.4 to 18.7 and 18.16, MDL shall not knowingly schedule operations which would:
- (a) result in the Maui Pipeline pressures falling to operationally unacceptable levels; or
  - (b) otherwise jeopardise the integrity of:
    - (i) the Maui Pipeline and the ability of MDL to provide the Transmission Services; or
    - (ii) a Transmission Pipeline and the ability of a TP Welded Party to provide transmission services.

### **Maintenance**

- 18.4 MDL shall operate, perform Maintenance on, and repair the Maui Pipeline in accordance with the provisions of this Operating Code.
- 18.5 MDL shall determine the Maintenance required in respect of the Maui Pipeline.
- 18.6 In performing Maintenance on the Maui Pipeline, MDL shall comply fully with all statutes and regulations.
- 18.7 MDL shall carry out Scheduled Maintenance on the Maui Pipeline and shall use reasonable endeavours to carry out Scheduled Maintenance only during a Maintenance Day.

### **Maintenance Planning**

- 18.8 Each Shipper and Welded Party shall provide MDL as soon as reasonably practicable with the information MDL may reasonably require to plan the Maintenance of the Maui Pipeline.
- 18.9 MDL shall ensure that as much Maintenance on the Maui Pipeline as is reasonably practicable is Scheduled Maintenance.
- 18.10 MDL shall use reasonable endeavours to plan such Scheduled Maintenance on the Maui Pipeline to minimise disruption to the Maui Pipeline in as cost-effective, efficient and commercially prudent manner as possible.
- 18.11 MDL shall provide notice of Scheduled Maintenance on the Maui Pipeline to affected Parties via the MDL IX as early as is practicable prior to, and in any event, not less than 30 Days before, a Maintenance Day. Notices advising of Scheduled Maintenance will include:
- (a) the nature of the Scheduled Maintenance;
  - (b) the expected impact on Maui Pipeline capacity; and
  - (c) the expected duration of the Scheduled Maintenance.

- 18.12 MDL may revise the nature, timing and duration of any Maintenance Day notified to a Shipper and/or a Welded Party as a result of circumstances that a Reasonable and Prudent Operator would not have foreseen, by:
- (a) providing for additional Maintenance on the Maui Pipeline; and/or
  - (b) varying the dates or period(s) of any Scheduled Maintenance on the Maui Pipeline, provided that MDL gives affected Shippers and Welded Parties a reasonable period of notice unless a shorter period of notice is agreed between MDL and the affected Shippers and Welded Parties.
- 18.13 To the extent that, as a result of performing unscheduled Maintenance on the Maui Pipeline in accordance with this Operating Code, MDL cannot:
- (a) make Gas available for off-take at a Welded Point; or
  - (b) accept into the Maui Pipeline Gas tendered for delivery at a Welded Point,
- each Welded Party shall be relieved of any breach of the applicable Peaking Limits.

### **Maintenance Limits**

- 18.14 MDL will use its reasonable endeavours to limit the number of Maintenance Days for the carrying out of Scheduled Maintenance on the Maui Pipeline.
- 18.15 The above limitation shall be without prejudice to MDL's rights to carry out any additional unscheduled Maintenance on the Maui Pipeline that MDL may consider to be necessary, subject to MDL having given each affected Shipper and Welded Party such notice as is reasonably practicable, recognising that such Maintenance is unscheduled.
- 18.16 MDL shall apply any reduction of capacity in the Maui Pipeline resulting from Maintenance on the Maui Pipeline on a Maintenance Day amongst any Shippers directly affected by such Maintenance in accordance with section 8.29.
- 18.17 Each Shipper and Welded Party shall provide reasonable assistance to MDL in its Scheduled Maintenance on the Maui Pipeline by using reasonable endeavours to take delivery of Gas at Welded Points in the manner requested by MDL.

## 19. FEES AND CHARGES

### Shippers

19.1 Each Shipper shall pay to MDL the Throughput Charges being the sum of A + B + C where

(a) **A** is the **AQ Fee** being:

**Tariff M** x AQ Volume

where

**Tariff M** = Tariff 1 multiplied by the distance between the southern and the northern end of each AQ Zone specified in that Shipper's AQ, less any agreed percentage discount for a long term AQ commitment specified in a TSA provided that the AQ Fee shall be reduced to the extent that an AQ is curtailed on a Day in accordance with section 8 and to the extent that the Shipper trades its AQ in accordance with section 7.7; and

(b) **B** is  $\text{Tariff 1} \times \sum(Q_i - \text{AQ Volume}_i) \times D_i$

where

**Q<sub>i</sub>** is the net quantity of Gas being transported between two adjacent Welded Points for that Shipper according to its Approved Nominations at each of those Welded Points; and

**AQ Volume<sub>i</sub>** is that Shipper's AQ Volume between the two adjacent Welded Points to which the relevant quantity of Gas (Q) relates; and

**D<sub>i</sub>** is the distance between the two adjacent Welded Points to which the relevant quantity of Gas (Q) relates

provided that if  $(Q_i - \text{AQ Volume}_i)$  is less than zero, then  $(Q_i - \text{AQ Volume}_i)$  for that **D<sub>i</sub>** shall equal zero; and

(c) **C** is Tariff 2 multiplied by the sum of that Shipper's Approved Nominations at Physical Delivery Points regardless of distance.

19.2 Each Shipper shall pay to MDL the Negative Mismatch Price for any Gas that MDL sells to that Shipper in accordance with section 11.8(a).

### Welded Parties

19.3 Each Welded Party shall, where applicable, pay to the Incentives Pool Trustee the number of Incentives Pool Debits that it has incurred multiplied by the Incentives Pool Debits Price for the applicable Day.

19.4 Each Welded Party shall pay to MDL:

(a) an amount equal to the product of the Cash-Out Buy Price and the Cash-Out Quantity with respect to ~~for~~ any Cash-Out Transaction with that Welded Party ~~under-pursuant to~~ section 12.11;

(b) an amount equal to the product of the Average Market Price ~~for-and~~ any quantity of Gas that MDL sells to that Welded Party ~~under-pursuant to~~ section 12.13;

(c) any Peaking Charges in accordance with section 13.4; and

(d) any Throughput Charges for traded Operational Imbalance in accordance with section 12.15.

### Payments by MDL

- 19.5 MDL shall pay to each Shipper the Positive Mismatch Price multiplied by the quantity of Gas that MDL buys from that Shipper under section 11.8(b).
- 19.6 MDL shall pay to each Welded Party:
- (a) an amount equal to the product of the Cash-Out Sell Price and the Cash-Out Quantity with respect to ~~for~~ any Cash-Out Transaction with that Welded Party ~~under~~ pursuant to section 12.10;
  - (b) an amount equal to the product of the Average Market Price ~~for~~ and any quantity of Gas that MDL buys from that Welded Party ~~under~~ pursuant to section 12.13.

### General

- 19.7 All amounts per GJ to be paid pursuant to this section 19 shall be expressed in cents per GJ of Gas rounded to 4 decimal places. All quantities of Gas shall be rounded to the nearest whole GJ.
- 19.8 Unless otherwise agreed, all Charges and MDL Charges that rely on measurement (other than a Deemed Measured Quantity) are to be computed on measured quantities of Gas generated by the Metering at the relevant Welded Point.
- 19.9 MDL may review and/or change Tariff 1 and/or Tariff 2 in accordance with the tariff principles set out in Schedule 10 with 60 Days' prior written notice, but no more than once in any 12 Month period, except where the change in Tariff 1 and/or Tariff 2 is made in accordance with section 21.9 or 21.10.

## 20. PRUDENTIAL REQUIREMENTS

- 20.1 Each Shipper must comply, at its election, with one of the following demonstrations of creditworthiness. A Shipper must either:
- (a) hold an acceptable credit rating in accordance with section 20.3; or
  - (b) pay a Cash Deposit. MDL will deal with such funds in accordance with section 20.8; or
  - (c) arrange for a third party to provide one or a combination of the following securities, for the amount required in accordance with this section 20, provided the party providing the security maintains an acceptable credit rating in accordance with section 20.4:
    - (i) an unconditional guarantee or letter of credit in favour of MDL; or
    - (ii) an unconditional third party guarantee in favour of MDL; or
    - (iii) a security bond in favour of MDL; or
  - (d) provide any combination of the securities listed in sections 20.1(b) and 20.1(c) (or any similar securities approved by MDL); or
  - (e) comply with such other arrangements as MDL and the Shipper agree.
- 20.2 Each Welded Party must comply, at its election, with one of the following demonstrations of creditworthiness. A Welded Party must either:
- (a) hold an acceptable credit rating in accordance with section 20.3; or
  - (b) arrange for a third party to provide one or a combination of the following securities, for the amount required in accordance with this section 20, provided the party providing the security maintains an acceptable credit rating in accordance with section 20.4:
    - (i) an unconditional guarantee or letter of credit in favour of MDL; or
    - (ii) an unconditional third party guarantee in favour of MDL; or
    - (iii) a security bond in favour of MDL; or
  - (c) comply with such other arrangements as MDL and the Welded Party agree.
- 20.3 For the purposes of sections 20.1(a) and 20.2(a) a Shipper or Welded Party holds an acceptable credit rating if:
- (a) it carries a long term credit rating of at least Baa2 (Moody's Investor Services Inc.), BBB (Standard & Poors Ratings Group), B (AM Best), or some other reference from a reputable person which is reasonably acceptable to MDL (including confirmation from an independent auditor that, in its opinion, the relevant Shipper or Welded Party satisfies the criteria that would be applied in the granting of such a credit rating); and
  - (b) in the case of a credit rating that is of the minimum level permitted under section 20.3(a), that rating is not subject to negative credit watch (by the applicable rating agency) and, in the case of a reference, that reference continues to be reasonably acceptable to MDL.

- 20.4 For the purposes of sections 20.1(c) and 20.2(b) a third party security provider holds an acceptable credit rating if:
- (a) it carries a long-term credit rating of at least Baa2 (Moody's Investor Services Inc.), BBB (Standard & Poors Ratings Group), B (AM Best), or some other reference from a reputable person which is reasonably acceptable to MDL (including confirmation from an independent auditor that, in its opinion, the relevant third party security provider satisfies the criteria that would be applied in the granting of such a credit rating); and
  - (b) in the case of a credit rating that is of the minimum level permitted under section 20.4(a), that rating is not subject to negative credit watch (by the applicable rating agency) and, in the case of a reference, that reference continues to be reasonably acceptable to MDL.
- 20.5 The Shipper, Welded Party or third party security provider (as the case may be) will provide such evidence of the acceptable credit rating (as set out in section 20.3 or 20.4), as MDL or its agent may from time to time reasonably require.
- 20.6 Where a Shipper elects to provide a Cash Deposit and/or have a third party provide a guarantee, letter of credit and/or bond to satisfy the prudential requirements in section 20.1(b), (c) or (d), the maximum amount of the Cash Deposit and the maximum amount which may be payable pursuant to the guarantee, letter of credit and/or bond or under any combination thereof shall be:
- (a) during the Initial Period, an amount equal to three times MDL's reasonable estimate of the highest Throughput Charge the Shipper will incur during the Initial Period; and
  - (b) after the Initial Period, an amount equal to three times the Shipper's highest Throughput Charge incurred during the previous rolling 12 Month period (**Highest Month**),
- provided that, if the Shipper's Throughput Charge in respect of any Month is greater than either:
- (c) MDL's estimate under section 20.6(a); or
  - (d) that payable in respect of the Highest Month under section 20.6(b),
- the Shipper shall, within 30 Days of the end of that Month, increase the Cash Deposit or the maximum amount which may be payable pursuant to the guarantee, letter of credit and/or bond (as the case may be) to an amount equal to three times that Throughput Charge.
- 20.7 The Shipper or Welded Party will immediately notify MDL should any of the following occur:
- (a) the Shipper or Welded Party receives notice or becomes aware of a change to its credit rating (or reference, as applicable) that results in it no longer holding an acceptable credit rating in terms of section 20.3; or
  - (b) the Shipper or Welded Party reasonably believes that its financial position is likely to be materially adversely impaired such that its ability to purchase Transmission Services will be consequently affected; or
  - (c) the Shipper or Welded Party learns that a third party security provider (upon which its current satisfaction of the prudential requirements in this section 20 is dependent) no longer holds an acceptable credit rating in terms of section 20.4.

Any information provided by the Shipper or Welded Party to MDL under this section 20.7 shall be Confidential Information.

- 20.8 MDL will comply with the following rules in relation to the establishment and operation of the Trust Account to hold Cash Deposits paid in accordance with section 20.1(b):
- (a) MDL will establish the Trust Account with the Bank for the purpose of holding Cash Deposits received from Shippers in accordance with the relevant prudential requirements agreed with any Shipper;
  - (b) the Shipper's Cash Deposit will be credited to a sub-account, separate from all other amounts deposited into the Trust Account and clearly identified as relating to the Shipper's funds;
  - (c) the Trust Account will bear interest at the best rate reasonably obtainable from time to time from the Bank. Interest will be paid out to the Shipper on a quarterly basis net of account fees, unless agreed otherwise;
  - (d) MDL will refund any Cash Deposit (less any amount owed to MDL plus interest) in the event that its TSA is terminated, provided that the Shipper:
    - (i) is not otherwise in default of this Operating Code; and
    - (ii) has discharged all such obligations to MDL, including payment of all outstanding amounts under this Operating Code;
  - (e) in the event that the Shipper fails to pay an amount pursuant to this Operating Code which is not subject to a genuine dispute, MDL may on 2 Working Days notice draw down that amount, plus Default Interest from the Cash Deposit and MDL will immediately notify the Shipper of the amount drawn down;
  - (f) in the event that MDL draws down a Cash Deposit under section 20.8(e), the Shipper responsible for the Cash Deposit shall be required to re-establish the Cash Deposit within 10 Days. If the Shipper fails to re-establish the Cash Deposit within 10 Days, MDL may, in its sole discretion, either suspend or terminate the TSA with that Shipper.
- 20.9 If a TSA or ICA is terminated, MDL will release any associated guarantee, letter of credit and/or bond subject to section 20.8(d).
- 20.10 Each Welded Party shall maintain insurance in respect of potential liability, loss, or damage arising under this Operating Code or at common law or under any statute in respect of any claims for property damage, personal liability, and public liability, such insurance to be for not less than the liability caps set out in section 28.4.

## 21. INVOICING AND PAYMENT

- 21.1 The Charges and MDL Charges payable under this Operating Code will be invoiced and paid in accordance with this section 21.
- 21.2 On or before the 10th Business Day of each Month, MDL shall render to each Shipper and Welded Party a Monthly Invoice.
- 21.3 On or before the 5th Day of each Month following a Month in which an MDL Charge is incurred or remains unpaid after having previously been invoiced, MDL shall advise each Shipper and Welded Party of the amount of MDL Charges payable in respect of the previous Month. On or before the 10th Business Day of each such Month, each such Shipper and Welded Party shall render to MDL an MDL Invoice. In the event that MDL does not advise a Shipper or Welded Party of the amount of MDL Charges payable until after the 5th Day of the Month, then the MDL Invoice shall be rendered within 5 Days of receipt of such advice.
- 21.4 Invoices rendered pursuant to section 21.2 or 21.3 shall include, but not be limited to, the following information:
- (a) the identity of the Shipper or Welded Party;
  - (b) the period to which the Invoice relates;
  - (c) a unique number by which the Invoice may be identified;
  - (d) in relation to a Monthly Invoice for each Shipper:
    - (i) the Approved Nominations at each Receipt Point and each Delivery Point for each Day during the Month;
    - (ii) the Mismatch (if any) derived from the energy values referred to in section 21.4(d)(i);
    - (iii) the Gas bought from MDL to rectify a Mismatch in accordance with section 11.8(a);
    - (iv) Mismatch trades in accordance with section 11.6;
    - (v) any Authorised Quantities bought or sold in accordance with section 7.7; and
    - (vi) the Throughput Charges in accordance with section 19.1.
  - (e) in relation to a Monthly Invoice for each Welded Party where applicable:
    - (i) the Scheduled Quantity, Operational Imbalance, Running Operational Imbalance, Daily Operational Imbalance Limit and Running Operational Imbalance Limit for each of its Welded Points for each Day during the Month;
    - (ii) the basis for, and the amount payable for, ~~settling~~ Cash-Out Transactions;
    - (iii) the number of Incentives Pool Debits incurred, and the Incentives Pool Debit Price, for each Day during the Month;
    - (iv) the Peaking Charges incurred, and both the Positive and Negative Mismatch Prices, for each Day during the Month;
    - (v) the quantity of Gas sold on each Day at each relevant Welded Point at the relevant Cash-Out Buy Price under section 12.11;
    - (vi) the quantity of Gas sold on a relevant Day at the Average Market Price in accordance with section 12.13;
    - (vii) Operational Imbalance trades in accordance with section 12.15;
  - (f) in relation to an MDL invoice where applicable:

- (i) the quantity of Gas purchased on each Day at the Positive Mismatch Price under section 11.8(b);
  - (ii) the quantity of Gas purchased on each Day at each relevant Welded Point at the relevant Cash-Out Sell Price under section 12.10;
  - (iii) the quantity of Gas purchased on a relevant Day at the Average Market Price in accordance with section 12.13;
  - (iv) any MDL Charges payable by MDL;
- (g) in relation to a Shipper or a Welded Party, any Charges payable pursuant to section 19 for the Month;
- (h) any adjustments for prior Months; and
- (i) GST.
- 21.5 Each of MDL, a Shipper and a Welded Party may provide more than one Monthly Invoice or MDL Invoice (as the case may be) in respect of the above.
- 21.6 Subject to sections 21.2, 21.11 and 21.13, each Shipper and Welded Party shall pay to MDL the aggregate amount stated in the Monthly Invoice by direct credit to MDL's Nominated Bank Account or the Incentives Pool Account, as specified, not later than the 20th Day of each Month or on the succeeding Business Day if the 20th Day of the Month is not a Business Day. In the event that the Monthly Invoice is not received by the Invoiced Party until after the 10th Day of the Month, then payment shall be made within 10 Days of receipt of such Invoice. Each Shipper and Welded Party shall:
- (a) ensure that payment is credited to MDL's Nominated Bank Account or the Incentives Pool Account, as specified, or made in such other manner as may be mutually agreed in writing between the Parties from time to time; and
  - (b) immediately give notice to MDL (or in the case of MDL, to the Welded Party) of the Monthly Invoice numbers and the respective amounts to which the payment relates.
- 21.7 Subject to sections 21.3, 21.11 and 21.13, MDL shall pay the aggregate amount stated in each MDL Invoice to the relevant Invoicing Party by direct credit to the relevant Invoicing Party's bank account (as advised in writing from time to time) not later than the 20th Day of each Month or on the succeeding Business Day if the 20th Day of the Month is not a Business Day. In the event that the MDL Invoice is not received by the Invoiced Party until after the 10th Day of the Month, then payment shall be made within 10 Days of receipt of such Invoice. MDL shall immediately give notice to the Invoicing Party of the MDL Invoice numbers and the respective amounts to which the payment relates.
- 21.8 In addition to any payments specified or determined pursuant to the provisions of this Operating Code (including but not limited to payments under this section 21) each Invoiced Party shall pay to the Invoicing Party the GST Amount. The GST Amount shall be due and payable at the same time as the payment on which it is levied is due pursuant to sections 21.6 or 21.7, as appropriate. Invoices provided to Shippers and Welded Parties as referred to in this section 21 shall specify the GST Amount and shall comply with the Goods and Services Tax Act 1985.

- 21.9 In addition to the fees, charges and GST payable pursuant to section 19 and this section 21, the Invoiced Party shall pay to the Invoicing Party an amount equal to any tax, duty, impost, levy or other charge (but excluding income tax and rates) imposed by the Government or other regulatory authority from time to time on, or incurred by the Invoicing Party in respect of, any services or Gas provided pursuant to this Operating Code (including without limitation, any increase of any such tax, duty, impost, levy or other charge, but excluding any increase in income tax or rates). The Invoicing Party agrees that any decrease of any such tax, duty, impost, levy or other charge (but excluding income tax and rates) shall be passed on to each of MDL, Shipper and/or Welded Party, as appropriate. Notwithstanding anything in this section 21.9 to the contrary, in no circumstances shall the Welded Party be liable to pay MDL any amount attributable to any carbon tax that may be imposed by the Government or other regulatory authority for any service or Gas provided pursuant to this Operating Code, except where required to do so by law.
- 21.10 In the event that the Invoicing Party requires an Invoiced Party to pay any new or increased tax, duty, impost, levy or other charge pursuant to section 21.9 then the Invoicing Party shall provide to that Invoiced Party a certificate from the Invoicing Party's auditor confirming the amount is properly payable by the Invoicing Party, verifying the accuracy of the amount charged by the Invoicing Party and, where the amount is payable by the Invoicing Party in respect of all or some of its customers, confirming that the proportion payable by that Invoiced Party has been determined on an appropriate and reasonable basis taking into account the quantity of Transmission Services or Gas, if any, purchased by the Invoiced Party, in comparison to all Transmission Services or Gas purchased from the Invoicing Party and any other factor relevant to the new or increased tax, duty, import, levy or other charge. The Invoicing Party shall notify that Invoiced Party of the corresponding revision in the Charges payable by that Invoiced Party under this Operating Code.

### **Dispute**

- 21.11 If an Invoiced Party disputes any invoiced amount (whether a payment by or to MDL or the Incentives Pool Trustee) then that Invoiced Party shall, within 15 Business Days from the date it received the Invoice, notify the Invoicing Party in writing identifying the amount in dispute and giving full reasons for the dispute. The Invoiced Party shall pay the undisputed portion of any Invoice which is in dispute. If the dispute has not been resolved by negotiation in accordance with section 23.2, within 15 Business Days of such notice, then either Party may refer the dispute to an Expert for determination in accordance with section 23.4.
- 21.12 Where either Party has to pay money to the other as a result of any Expert determination, then in addition to such payment, interest shall be payable and calculated on a Daily basis (compounded monthly):
- (a) in the case of a payment of an Invoice that is found to be payable and has not previously been paid, from the due date for payment of the Invoice until actual payment at a rate equal to the Interest Rate; and
  - (b) in the case of a payment where an Invoice has previously been paid and is found not to be payable, from the actual date of payment of the Invoice until the date of repayment at a rate equal to the Interest Rate.

- 21.13 If it is found that an Invoiced Party has been overcharged or undercharged in any form whatsoever under the provisions of this Operating Code and that Invoiced Party has paid the Invoice containing such overcharge or undercharge, then, within 30 Days after such error has been discovered and the amount has been agreed to by the Parties or determined by an Expert pursuant to section 23.4, the Invoicing Party shall refund to the Invoiced Party the amount of any such overcharge or the Invoiced Party shall pay to the Invoicing Party the amount of any such undercharge, in both cases together with interest on the overcharged or undercharged amount at the Interest Rate calculated from the due date for payment of the appropriate Invoice to the date of actual payment of the overcharged or undercharged amount, provided that there shall be no right to re-open an Invoice if more than 24 Months has elapsed since the date of that Invoice, or in the case of a TP Welded Party, 25 Months.
- 21.14 If any Party defaults, without lawful excuse, in the payment of any money payable under this Operating Code on the due date for payment (or, where money is payable upon demand, upon demand being made) then interest shall be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the Default Rate, calculated on a Daily basis.

## 22. TERMINATION

22.1 In cases where:

- (a) MDL, a Shipper or a Welded Party defaults in the performance of any material covenants or obligations imposed upon it by this Operating Code ("**30 Day Default**"); or
- (b) a resolution is passed or an order made by a court for the liquidation of MDL, a Shipper or Welded Party except for the purposes of solvent reconstruction or amalgamation; or
- (c) MDL, a Shipper or a Welded Party makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of MDL's, that Shipper's, or that Welded Party's creditors, respectively; or
- (d) a Force Majeure Event continues for a period not less than 6 Months,

then the Party, not in default, or who is seeking to terminate its ICA or TSA due to the Force Majeure Event described in section 22.1(d) ("the **Non-defaulting Party**"), may at its option give notice to the other Party ("the **Defaulting Party**") to terminate its ICA or TSA with the Defaulting Party in accordance with sections 22.2 to 22.5 below.

22.2 The Non-defaulting Party shall be entitled to give written notice of termination and any such notice served on the Defaulting Party must state specifically the cause for terminating an ICA or TSA and declare it to be the Non-defaulting Party's intention to terminate the same.

22.3 If, following receipt of a notice of termination under section 22.2, the Defaulting Party disputes that a 30 Day Default has occurred, the Defaulting Party must give the Non-defaulting Party a Dispute Notice within 20 Days of receipt of the default notice. Until such Dispute in such Dispute Notice is resolved or determined, the ICA or TSA shall continue in full force and effect.

22.4 Where the notice is given in respect of a 30 Day Default, the Defaulting Party shall have 30 Days after the service of that notice in which to remedy or remove the cause or causes stated in the notice of termination. In respect of a default under sections 22.1(b) or 22.1(c), no such 30 Day period shall apply and termination can be effected immediately upon delivery of the notice.

22.5 In respect of a 30 Day Default, if within 30 Days of the service of the notice under section 22.2 the Defaulting Party does remove and remedy the cause or causes, then such notice of default shall be deemed to be withdrawn and the relevant ICA or TSA shall continue in full force and effect.

22.6 If the Defaulting Party does not so remedy and remove the cause or causes to the Non-defaulting Party's satisfaction, within 30 Days of the service of the notice under section 22.2, then unless the Non-defaulting Party has withdrawn the notice of default in writing, the ICA or TSA will terminate at the expiry of that 30 Day period.

22.7 Notwithstanding sections 22.9 and 22.10, a TP Welded Party shall be entitled to terminate its ICA or TSA, as the case may be, if one or other agreement is terminated, such termination to take effect from the date of the termination of the first agreement.

22.8 Termination or expiry of an ICA or TSA will not prejudice any rights or obligations of a Party that exist prior to termination.

22.9 A Welded Party may terminate an ICA on 90 Days' notice.

22.10 A Shipper may terminate a TSA that has an AQ Volume of zero on 30 Days' notice.

- 22.11 Neither Party may terminate a TSA that has:
- (a) an AQ Volume greater than zero; and
  - (b) a discount for such AQ agreed in accordance with section 7.5, before the AQ Expiry Date.
- 22.12 Either Party may terminate a TSA that has:
- (a) an AQ Volume greater than zero; and
  - (b) no discount agreed in accordance with section 7.5, prior to the AQ Expiry Date by giving the agreed period of written notice set out in that TSA (which shall not be less than 2 years).
- 22.13 MDL may suspend the ICA of a Notional Point Welded Party by giving the Notional Point Welded Party 30 Days' notice. During any such suspension Shippers shall not be able to submit Nominated Quantities in respect of the affected Trading Hub Delivery Point(s) or the affected Trading Hub Receipt Point(s). MDL may reinstate the ICA of a Notional Point Welded Party that has been suspended by giving the Notional Point Welded Party 7 Days' notice.
- 22.14 Either Party may terminate an ICA or TSA at any time with the other Party's agreement.

## 23. DISPUTE RESOLUTION

23.1 If a Dispute arises between MDL and another Party then it shall be referred to negotiation in accordance with section 23.2 by either Party giving a Dispute Notice in writing to the other Party stating the subject matter and details of the Dispute.

23.2 **Negotiation:** The Party that issues the Dispute Notice ("**Issuing Party**") shall notify the other Party ("**Receiving Party**"), within 5 Business Days of giving the Dispute Notice, of the names of the Issuing Party's representatives to conduct the negotiation. The Receiving Party shall notify the Issuing Party of the Receiving Party's representatives to conduct the negotiation within 5 Business Days of receiving the Dispute Notice. Each representative must have authority to settle the Dispute. As soon as possible after the Parties have been advised of each other's representatives, the Parties' representatives must enter into negotiations to try to resolve the Dispute.

### 23.3 Alternative Dispute Resolution

(a) If the Dispute is not resolved by negotiation within 15 Business Days of the Parties being advised of each other's representatives under section 23.2, then, subject to section 23.4, the Parties shall, within a further 5 Business Days, either:

(i) initiate any available standard industry dispute resolution procedure if such a procedure has been agreed to by the Parties in writing with respect to the Dispute; or

(ii) if section 23.3(a)(i) does not apply, attempt to agree on a process for resolving the Dispute, such as further negotiations, mediation, or independent expert determination, but not arbitration or litigation and, if no such process is agreed within 15 Business Days, either Party may refer the Dispute to a court of competent jurisdiction .

(b) The Parties shall maintain the confidentiality of any documents or other information made available to, or coming to the knowledge of, any Party in the course of negotiations or other dispute resolution process established under this section 23.3. The Parties may use such information in settling the Dispute, but not for any other purpose. The Parties may not rely on, or introduce as evidence in any arbitral, judicial or other proceeding:

(i) views expressed or suggestions made by any Party or a third party on a possible settlement of the Dispute;

(ii) any admission or concession made by a Party or a third party in the course of negotiations or any other agreed process to resolve the Dispute;

(iii) proposals made or views expressed by a neutral person employed, pursuant to this section 23.3, by the Parties; or

(iv) the fact that any Party had or had not indicated a willingness to accept a proposal for settlement.

(c) Where a time limit is set for doing something the Parties' representative may agree to extend that time limit.

### 23.4 Expert Dispute

(a) Notwithstanding sections 23.1 to 23.3 but subject to sections 21.11 to 21.14, a Dispute on any of the following matters shall be determined by an Expert in accordance with this section 23.4:

(i) quantum of any invoices rendered to the extent that resolution of such a Dispute involves matters of fact only, and not interpretation of this Operating Code;

- (ii) Metering and establishing the quantities of Gas measured by such Metering;
  - (iii) compliance with Schedule 1;
  - (iv) whether or not certain information is Confidential Information for the purposes of paragraph (c) of the definition of that term;
  - (v) matters arising in relation to compliance or non-compliance with the Gas Specification; and
  - (vi) any other matters that the Parties may agree to in writing.
- (b) If the Expert Dispute is not resolved by negotiations within 10 Business Days of both Parties being advised of each other's representatives under section 23.2, then the Expert Dispute shall be referred to an Expert.
- (c) The procedure for appointing the Expert shall be as follows:
- (i) the Parties shall attempt to agree on the appointment of a single Expert to settle the Expert Dispute;
  - (ii) if, within 15 Business Days from the date the Dispute Notice was given, the Parties have been unable to agree on the choice of an Expert, then the matter shall be referred to the nominee of the President for the time being of the Institute of Professional Engineers New Zealand, who shall then become the Expert, for determination.
- (d) The determination of the Expert will be conclusive and binding on the Parties and will be deemed to have been given by an expert and not an arbitrator.
- (e) Any and all communications between the Parties and the Expert shall be made or confirmed in writing and a copy of such communications shall be provided simultaneously to the other Party. No meeting between the Expert and any Party shall take place unless all the Parties have been given a reasonable opportunity to attend.
- (f) The costs of the Expert will be borne equally by the Parties. For the avoidance of doubt, the provisions of the Arbitration Act 1996 shall not apply to any determination of the Expert.
- 23.5 Pending the resolution of any Dispute or Expert Dispute, the Parties shall continue to perform their respective obligations pursuant to the provisions of this Operating Code.
- 23.6 Nothing in this section 23 shall prevent any Party from commencing court proceedings in relation to any Dispute or Expert Dispute at any time where that Party seeks urgent equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.

## 24. CONFIDENTIALITY

### Ring-fencing

- 24.1 MDL shall ensure and undertakes that the management of the Maui Pipeline is kept at arm's length and separate from MDL's businesses (other than MDL's management of the Maui Pipeline) and its shareholders' businesses. Without limiting this section 24.1, MDL will ensure that:
- (a) scheduling functions for the Maui Pipeline are contracted to a System Operator;
  - (b) technical functions for the Maui Pipeline are contracted to a Technical Operator;
  - (c) commercial functions for the Maui Pipeline, including the formation and management of Balancing Gas and Fuel Gas contracts, are managed by a Commercial Operator and Balancing Agent separate from MDL's businesses (other than MDL's management of the Maui Pipeline) and its shareholders' businesses;
  - (d) the Commercial Operator, System Operator, Technical Operator, Balancing Agent and Incentives Pool Trustee operate at arm's length and separate from the Maui Mining Companies in accordance with the provisions set out in paragraph 8 of Schedule 4; and
  - (e) it, the System Operator, Technical Operator, Balancing Agent, Incentives Pool Trustee and the Commercial Operator each comply with the provisions set out in Schedule 4.

### Disclosure

- 24.2 Confidential Information shall not be disclosed in whole or in part by an Information Recipient to any other person (including MDL's shareholders) unless the Information Recipient obtains the prior written consent of the Disclosing Party, except that the Information Recipient may, without obtaining such written consent, disclose all or any of such information:
- (a) where disclosure is, in MDL's opinion, acting as a Reasonable and Prudent Operator, reasonably required to:
    - (i) give effect to the relevant TSA or ICA; or
    - (ii) deal with Contingency Events or Force Majeure Events;
  - (b) where disclosure is in the TP Welded Party's opinion, acting as a Reasonable and Prudent Operator, reasonably required to give effect to its transmission services agreement or interconnection agreements or to deal with a Transmission Pipeline Contingency Event;
  - (c) to a gas transfer agent in accordance with section 10.3;
  - (d) where disclosure is necessary to maintain the safety and reliability of the Maui Pipeline or a Transmission Pipeline or the wider New Zealand gas pipeline system;
  - (e) to the Welded Parties at the Welded Points nominated in the relevant Nominated Quantities or changes to Approved Nominations, for the sole purposes of confirming those Nominated Quantities or changes to Approved Nominations. For the avoidance of doubt such information shall not be disclosed by the Welded Party or used by them for any other purpose;
  - (f) to a professional advisor of, or a consultant to, the Information Recipient;
  - (g) to any bona fide intended transferee or assignee of the whole or a significant part of the issued share capital, or assets, of the Information Recipient or of the Information Recipient's interest under or related to the Code or an ICA or TSA;

- (h) to any bank or financial institution from whom the Information Recipient is seeking or obtaining finance;
- (i) where the Information Recipient is the Notional Point Welded Party, to its agent, nominee or assignee for the purposes of operating and balancing the Trading Hub Receipt Point and Trading Hub Delivery Point;
- (j) to the extent required by law or the regulations of a recognised stock exchange;
- (k) to the extent required by the order of any court having competent jurisdiction over the Information Recipient; or
- (l) to any person appointed as Expert pursuant to this Operating Code to the extent reasonably necessary for the performance of his duties.

24.3 The Information Recipient shall, with respect to disclosure of information according to section 24.2, keep the disclosure of such information to the minimum necessary for the purpose for which it is disclosed.

24.4 Where disclosure is made to any third party (including an Expert) appropriate safeguards shall be made as a pre-requisite to such disclosure by the Information Recipient to prevent that third party from making any further disclosure of such information without the consent of both the Disclosing Party and the Information Recipient, including without limitation, such third party entering into confidentiality undertakings reflecting, mutatis mutandis, the provisions of this section 24. For the avoidance of doubt, this section 24.4 shall apply to any Shipper's Nominated Quantity or change to an Approved Nomination disclosed by MDL to a Welded Party for the purpose of confirming that nomination.

### **Exceptions**

24.5 Section 24.2 shall not apply to use or disclosure of information that:

- (a) at the time of disclosure or at any time thereafter becomes part of the public domain other than by reason of a breach of this Operating Code;
- (b) is known by the Information Recipient at the time of its receipt or acquisition without being in breach of this Operating Code;
- (c) is subsequently lawfully acquired by the Information Recipient from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality;
- (d) that the Disclosing Party has previously consented be disclosed by the Information Recipient; or
- (e) is specifically provided for under this Operating Code.

### **Audit**

24.6 A Shipper or Welded Party may appoint a reputable international firm of auditors, independent of both that Shipper, Welded Party and MDL to carry out an independent audit of MDL's operating procedures if it reasonably believes that MDL has used Confidential Information for any unauthorised purpose in breach of this section 24, and MDL will allow the Confidentiality Auditor access to MDL's records for this purpose, provided that:

- (a) prior to conducting the audit, the Confidentiality Auditor shall sign a confidentiality undertaking in a form reasonably acceptable to MDL; and
- (b) the Party appointing the Confidentiality Auditor shall meet all costs of the audit.

24.7 Results of any audit carried out pursuant to section 24.6 shall be made available to the Party that has appointed the Confidentiality Auditor and to MDL as soon as reasonably practicable, and MDL shall make those results public.

24.8 MDL, acting as a Reasonable and Prudent Operator, shall follow any recommendations made by a Confidentiality Auditor appointed pursuant to this section 24.

## **25. RECORDS AND INFORMATION**

- 25.1 Subject to section 25.2, for the avoidance of doubt, operational quality Metering data, as opposed to billing quality Metering data, will normally be sufficient for the purposes of, in particular, calculating an Operational Imbalance and, in general, operating this Operating Code from day to day. Billing quality data shall always be used for making the final determination of any Operational Imbalance as well as any consequences resulting from any Operational Imbalance.
- 25.2 Each Party shall prepare and maintain proper books, records, test results, monitoring data and inventories of all matters pertaining to this Operating Code and, subject always to the right of each Party to withhold Confidential Information under section 24 or information not related to the performance of an ICA or TSA, each Party shall have the right to examine at any reasonable time, the books, records and documents of the other to the extent necessary to carry out an audit for the purposes of verifying any statement, computation or claim made under the provisions of this Operating Code or in relation to its ICA or TSA, provided however, that the other Party may require that such examination be conducted instead by an independent third party, who shall be obliged to give the result, but not the detail, of any such examination to the first Party.

## 26. ACCESS RIGHTS

- 26.1 Each Welded Party shall allow MDL to have access to that Welded Party's Stations, and MDL shall allow each Welded Party, to have access to MDL's Stations:
- (a) for the purpose of witnessing testing to verify the accuracy of Metering at one Party's Station at any time that the other Party is conducting such testing, either in accordance with Part Three of Schedule 1, or pursuant to any request by a Party for un-scheduled testing of such Metering under section 16.6; and
  - (b) to inspect, check, calibrate, repair, replace, modify, upgrade or remove any equipment that one Party owns or controls, including remote-monitoring equipment as described in Part One of Schedule 1, which is located at the other Party's Station; and
  - (c) to operate any isolation valve, or other means of isolating facilities or Pipelines, as referred to in paragraph 1.7(d) of Schedule 1, that one Party owns or controls but which is located at the other Party's Station; and
  - (d) on reasonable notice, to exercise its rights to inspect Metering in accordance with this Operating Code.
- 26.2 MDL or a Welded Party, as appropriate, shall, and shall take all reasonable steps to ensure that its officers, agents, and employees who enter the premises of the other shall, cause as little inconvenience to the other as reasonably practicable and comply at all times with the reasonable health, safety, environmental and security procedures of the other.

## 27. FORCE MAJEURE

- 27.1 Notwithstanding any other provision of the relevant ICA or TSA but subject to section 27.2, a Party shall be relieved from liability under the relevant ICA or TSA to the extent that a Force Majeure Event results in or causes a failure by that Party in the performance of any obligations imposed on it by the relevant ICA or TSA.
- 27.2 A Force Majeure Event shall not relieve a Party from:
- (a) liability to pay money already due and owing but unpaid under the relevant ICA or TSA; or
  - (b) a Shipper's obligation to correct or settle any Mismatch; or
  - (c) a Welded Party's obligations ~~to correct or settle any Running Operational Imbalances.:~~
    - (i) [buy or sell a Cash-Out Quantity and \(if the buyer\) to pay for it;](#)
    - (ii) [settle a Running Operational Imbalance under section 12.13 and \(if the buyer\) to pay for the corresponding quantity of Gas.](#)
- 27.3 If a Party seeks relief under section 27.1, that Party shall, upon the occurrence of any such failure due to a Force Majeure Event:
- (a) give notice that it is invoking this section 27 as soon as reasonably practicable but in any event within two (2) Days of becoming aware of the Force Majeure Event;
  - (b) as soon as reasonably practicable but in any event within twenty one (21) Days of the occurrence of the Force Majeure Event, such Party shall supply the other Party with a detailed report as to the place of (and reason for such event so far as such information is reasonably available) the Force Majeure Event, together with such other information as the other Party may reasonably request provided that any relevant information which cannot be made available within such twenty one (21) Day period will be supplied as soon as it is available, and that the Party seeking relief under section 27.1 will not be prevented from using such information in support of its claim for relief. Such report shall also contain an estimate of the period of time required to remedy such failure;
  - (c) render the other Party reasonable opportunity and assistance to examine and investigate the event or circumstance and the matters which caused the event or circumstance and failure;
  - (d) as quickly as reasonably practicable, use due diligence and take all reasonable steps which may be necessary to rectify, remedy, shorten or mitigate the circumstances giving rise to Force Majeure Event, so as to minimise any loss, damage, expense or other effects of the suspension of obligations suffered or incurred, or likely to be suffered or incurred by the Party or, in respect of a TP Welded Party, that Party's welded parties or shippers (and the other Party shall use reasonable endeavours to assist the Party affected by the Force Majeure Event to do so, provided the other Party incurs no direct or indirect cost in doing so); and
  - (e) resume the performance of its obligations as soon as reasonably practicable but in any event within 48 hours after the removal of the cause(s) of the failure, and shall give notice to the other Party prior to resumption.
- 27.4 Operational information in respect of the management of any purported Force Majeure Event will be posted on the MDL IX in accordance with section 4 or, if the MDL IX is unavailable, notified by other means to the relevant Party.

## 28. LIABILITIES AND INDEMNITIES

### Exclusion from a Party's Liability

- 28.1 Subject to any further limitations contained in this section 28, a Party ("**Liable Party**") will not be liable (in contract, tort or generally at common law, equity or otherwise) to the other Party ("**Other Party**") except to the extent that any Loss:
- (a) was caused by an act or omission of the Liable Party that constituted a failure by it to comply with a provision of the relevant ICA or TSA to the standard of a Reasonable and Prudent Operator; and
  - (b) was not caused or contributed to (in whole or in part) by any default of that Other Party of its obligations under the relevant ICA or TSA including, without limitation, the Other Party's failure to take steps to prevent, or to mitigate, its Loss to the standard of a Reasonable and Prudent Operator.

### Limitation of a Party's Liability

- 28.2 If the Liable Party is liable to the Other Party (whether in contract, tort, equity or otherwise) by virtue of this section 28, other than for payment of amounts due pursuant to section 19, the Liable Party will only be liable for direct Loss suffered or incurred by the Other Party excluding:
- (a) any loss of use, revenue, profit or savings by the Other Party;
  - (b) except where the Liable Party is liable for a breach of sections 17.2(a), 17.3(a) or for payment under sections 17.22 or 17.23, the amount of any damages awarded against the Other Party in favour of a third party; and
  - (c) except where the Liable Party is liable for a breach of sections 17.2(a), 17.3(a) or for payment under sections 17.22 or 17.23, the amount of any money paid by the Other Party by way of settlement to a third party.
- 28.3 The Liable Party shall in no circumstances be liable for any indirect or consequential Loss arising directly or indirectly from any breach of its (or any of the other Party's) obligations under the relevant ICA or TSA, whether or not the Loss was, or ought to have been, known by the Liable Party.

### Capped Liability

- 28.4 The maximum liability of the Liable Party to the Other Party and all other Parties arising under this section 28 out of or in relation to an ICA or TSA (excluding liability, if any, that arises under sections 12 and 13) will be:
- (a) in relation to any single event or series of related events, \$10,000,000 (ten million dollars); and
  - (b) in any 12 Month period, \$30,000,000 (thirty million dollars), irrespective of the number of events in such period;
- (and for this purpose, an event is part of a series of related events only if they are factually part of the same continuous chain of events arising from the same cause), provided that:
- (c) where MDL is the Liable Party under more than one ICA or TSA arising out of or in relation to the same event or circumstance, but its liability is caused by a breach of more than one different ICA and/or TSA where the Liable Party in each such different agreement is not MDL, and MDL recovers from those other Parties an aggregate amount in excess of the maximum amount in section 28.4(a), then MDL's liability as the Liable Party for such event or circumstance shall be limited to the aggregate amount so recovered and section 28.4(b) shall not apply to that liability; and

- (d) the amounts in sections 28.4(a) and 28.4(b) shall be adjusted (calculated by MDL) on 1 March of each Year beginning on 1 March 2006 by multiplying each amount in sections 28.4(a) and 28.4(b) by "X", where:

$$X = PPI_n \div PPI_1$$

and

X is calculated to two decimal places

$PPI_n$  is the most recently published PPI for the year to 31 December in the then previous year

$PPI_1$  is the most recently published PPI for the year to 31 December 2004.

For the purposes of this section 28.4 "PPI" means the *Producer Prices Index (Inputs All Industries excluding administration, health and education)* published by Statistics New Zealand or, if that index ceases to be published or in the opinion of the Government Statistician (or his/her replacement as the case may be) the bases for its calculation change significantly, such other index (or adjusted formula) as MDL, acting reasonably, considers most closely approximates the purpose and composition of PPI and the date from which that substitute index shall apply. Any substitute index (or adjusted formula) and the date for its application will, to the extent reasonably possible, have the same economic effect as would have been the case had PPI continued to be published on the basis it was published for the quarter ending 30 June 2005. MDL shall post a notice of any change of liability cap or index on the MDL IX promptly upon such change occurring.

- 28.5 If MDL is the Liable Party to Other Parties under more than one ICA and/or TSA arising out of or in relation to the same event or circumstance (excluding where MDL's liability is caused by a breach of a different ICA or TSA where the Liable Party in each such different agreement is not MDL) and the sum of MDL's liability to those Other Parties is greater than the relevant amount set out in section 28.4(a), MDL shall divide that amount among those Other Parties in the proportion that MDL's liability to each such Other Party bears to the sum of MDL's liability to all such Other Parties.
- 28.6 If MDL is the Liable Party to the Other Party under more than one ICA and/or TSA arising out of or in relation to the same event or circumstance where MDL's liability is caused by a breach of a different ICA or TSA where the Liable Party in each such different agreement is not MDL, then MDL's liability to the Other Party under the relevant ICA or TSA shall be limited to the amount recovered from that other Liable Party for that breach (and MDL shall use reasonable endeavours to recover such amounts as soon as reasonably practicable), provided that where the amount so recovered is less than the sum of:
- (a) the other Liable Party's liability to MDL (excluding Loss described in section 28.6(b)); and
  - (b) MDL's liability to pay those Other Parties,
- (for the purpose of this section 28.6, MDL under section 28.6(a) and the Other Party under section 28.6(b) each being a "**Loss-bearing Party**") MDL shall divide the amount so recovered among each Loss-bearing Party in the proportion that the relevant liability bears to the sum of all such liabilities.

28.7 If a TP Welded Party is the Liable Party under an ICA and/or TSA in an event or circumstance where its liability is due to a breach of its interconnection agreement and/or transmission agreement by the other party to such agreement (the **"Third Party"**), then that TP Welded Party's liability under its relevant ICA or TSA shall be limited to the amount recovered from that Third Party for such breach (and that TP Welded Party shall use reasonable endeavours to recover such amount as soon as reasonably practicable), provided that where the amount so recovered is less than the sum of:

- (a) the Loss suffered by that TP Welded Party (excluding loss of profits, revenue or savings, any indirect and consequential Loss and Loss described in section 28.7(b) below); and
- (b) that TP Welded Party's liability to pay other parties in relation to the same event or circumstances,

(for the purposes of section 28.7, the TP Welded Party in section 28.7(a) and other parties in section 28.7(b) each being a **"Loss-bearing Party"**) the TP Welded Party shall divide the amount so recovered among the Loss-bearing Parties in the proportion that each Loss-bearing Party's Loss under section 28.7(a) or liability under section 28.7(b) bears to the sum of all Loss-bearing Parties' Loss and liabilities.

### **Non-Specification Gas**

28.8 A Welded Party shall not be liable to MDL for injecting Non-Specification Gas into the Maui Pipeline to the extent that such gas was first injected into that Welded Party's Pipeline from the Maui Pipeline.

28.9 MDL shall not be liable to a Welded Party for injecting Non-Specification Gas into that Welded Party's Pipeline to the extent that such gas was first injected into the Maui Pipeline from that Welded Party's Pipeline.

28.10 MDL, and each Welded Party who injects gas into the Maui Pipeline, shall ensure that, where gas flows into its Pipeline which then flows, or will flow, into another Pipeline, the person who first injected the gas into its Pipeline shall have at least the same amount of liability to MDL or the Welded Party, whoever's Pipeline the gas was first injected into, as if such gas had been injected directly from a Welded Party's (but not a TP Welded Party's) Pipeline into the Maui Pipeline under this Operating Code, provided however, that this section 28.10 shall not apply to any agreement that was entered into before 1 January 2005.

### **General**

28.11 Each limitation or exclusion of this section 28 and each protection given to a Party or its respective officers, employees, or agents by any provision of this section 28 is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances and is intended to be for the benefit of and enforceable by each of the Party's officers, employees, and agents.

28.12 Nothing in this section 28 shall limit the right of a Party to enforce the terms of an ICA or TSA by seeking equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.

28.13 If MDL is the subject of a claim by a Claimant and the claim is caused by a purported breach of an ICA or TSA, by a Defending Party, the following procedure shall apply:

- (a) MDL shall immediately give notice of the claim to the Defending Party;
- (b) MDL will not make any payment or admission of liability in respect of the claim without the prior written consent of the Defending Party. The Defending Party will not unreasonably withhold its consent under this section 28.13(b);

- (c) the Defending Party (and its legal representatives) may elect to defend in the name of MDL any third party claim involving any litigation. The Defending Party must notify MDL of its election within 14 Business Days of receiving notice of the claim. MDL shall provide or procure to be provided such assistance as the Defending Party may reasonably require if:
  - (i) the Defending Party first agrees that it has an obligation to indemnify MDL against any liabilities resulting, from such claim and/or its defence; and
  - (ii) the Defending Party agrees that it will pay reasonable costs of MDL in providing assistance in defending the claim,provided that MDL shall not be required to render any assistance to the Defending Party pursuant to this section 28.13(c) (other than allowing a defence in MDL's name) in circumstances where MDL reasonably believes that its reputation could be damaged or impaired by such assistance;
- (d) if the Defending Party elects to defend a claim under section 28.13(c) then it may choose its own counsel for such defence. The costs of that counsel will be met by the Defending Party;
- (e) MDL will not take any active steps which would or could directly and inevitably result in the occurrence of an indemnifiable event; and
- (f) the Defending Party shall not be required to make any payment in respect of any claim under this section 28.13 based on a contingent liability until the contingent liability becomes an actual liability and is due and payable.

28.14 A Welded Party or Shipper shall not make any claim, demand or commence proceedings directly against another Welded Party or Shipper in relation to that other Welded Party's or other Shipper's breach of its ICA or TSA or negligence in relation to any matter pertaining to or dealt with in that ICA or TSA. A Welded Party or a Shipper shall not make any claims, demands or commence proceedings against MDL, and vice versa, in relation to any matter dealt with by an ICA or TSA (including a claim that MDL has been negligent in relation to any matter pertaining to or dealt with in that ICA or TSA) except in accordance with that ICA or TSA. For the avoidance of doubt, nothing shall prevent a TP Welded Party from exercising its rights and remedies under its transmission services agreement with a shipper of Gas on that TP Welded Party's Transmission Pipeline or under its interconnection agreement with a welded party connected to its Transmission Pipeline.

28.15 Prior to MDL making any Claim against a Welded Party, Shipper or third party, it shall first consult with each affected party and provide an opportunity for such affected party to have its Loss included in MDL's Claim.

## 29. MODIFICATIONS TO THIS OPERATING CODE

- 29.1 MDL may change the variables listed in section 4 from time to time in accordance with that section.
- 29.2 Notwithstanding any provision of this Operating Code, MDL may, immediately and without consultation or prior notice, make any changes to this Operating Code that are required by law, including any applicable regulation or the order of a Court of competent jurisdiction.
- 29.3 To the extent that a change to this Operating Code is required by law or an applicable regulation and there is sufficient time for the process in section 29.4 to be followed before that law takes effect, then such change may be treated as a Change Request under section 29.4.
- 29.4 This Operating Code and each affected TSA and ICA shall be amended by MDL not less than 30 Days after receiving a Party's written request for amendment (a "**Change Request**") that has satisfied the following conditions:
- (a) the GIC (or any entity granted formal jurisdiction) has made a written recommendation, following appropriate Gas industry consultation, supporting the Change Request; and
  - (b) MDL has given its written consent to the Change Request, such consent not to be unreasonably withheld or delayed, acting as a Reasonable and Prudent Operator, provided that MDL, in its sole discretion, may withhold its consent where the Change Request would:
    - (i) require MDL to incur capital expenditure; or
    - (ii) require MDL to incur operating expenses or costs that can not be recovered; or
    - (iii) materially adversely affect:
      - (aa) MDL's Maui Pipeline business or tariffs; or
      - (bb) a TP Welded Party's Transmission Pipeline business, except that this section 29.4(b)(iii)(bb) will not apply where the withholding of such consent would breach the Commerce Act 1986; or
    - (iv) materially adversely affect the compatibility of MDL's and a TP Welded Party's open access regimes.

### **30. NOTICES**

- 30.1 Each Party shall provide written notification to the other Party at the earliest time reasonably practicable of any factor, event or impending event known to it which may affect its ability to meet the requirements of an ICA or TSA.
- 30.2 For the avoidance of doubt, sections 30.3 and 30.4 shall not apply in respect of operational notifications given using the MDL IX under the provisions of this Operating Code, except where MDL, acting as a Reasonable and Prudent Operator, may declare that the MDL IX is not operational in whole or in part.
- 30.3 All other notices, demands, consents and requests required or permitted to be given or made to either Party pursuant to this Operating Code or an ICA or TSA, including notices contemplated by section 30.2 above in circumstances where the MDL IX (in whole or in part) is declared not operational by MDL pursuant to section 30.1 shall be in writing and shall be deemed to be sufficiently given or made if personally delivered, if sent by registered mail, or email addressed to the address supplied by a Party for the purpose of notices, or facsimile addressed to the address for notices set out in the relevant Shipper or Welded Party Agreement Form or such other addresses as notified from time to time.
- 30.4 A notice personally delivered shall be deemed served when left at the specified address of the recipient. A notice sent by registered mail shall be deemed served on the date of receipt. If sent by facsimile transmission or email transmission the notice shall, if sent prior to 4.00 p.m. on any Business Day, be deemed served on that Business Day provided the sender has evidence of a successful and complete transmission to the recipient's address. If any notice (whether personally delivered or faxed or emailed) is sent after 4.00 p.m. on any Business Day, it shall be deemed served on the next Business Day.

## **31. WAIVER**

- 31.1 Any failure or delay by either Party in exercising any of its rights under this Operating Code or an ICA or TSA shall not operate as a waiver of its rights and shall not prevent such Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of that ICA or TSA.

## **32. ENTIRE AGREEMENT**

- 32.1 Each ICA and TSA (incorporating the provisions of this Operating Code) constitutes the entire agreement between the Parties from the Commencement Date on the subject matter of that ICA or TSA and supersedes all prior negotiations, representations and agreements between the Parties (including previous versions of this Operating Code).

### **33. SEVERABILITY**

- 33.1 If any section or provision of the relevant TSA or ICA shall be held illegal or unenforceable by any judgment of any Court or tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions of the relevant TSA or ICA, which shall remain in full force and effect as if such section or provision held to be illegal or unenforceable had not been included in the relevant TSA or ICA, but only if such severance does not materially affect the purpose of, or frustrate, the relevant TSA or ICA, in which case, the Parties shall negotiate with the intention of agreeing a replacement for the severed section which is legal and enforceable and reflects the economic and operational effect of the severed section to the maximum extent practicable.

### **34. GOVERNING LAW**

- 34.1 This Operating Code and each ICA and TSA shall be construed and interpreted in accordance with the law of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## **35. EXCLUSION OF IMPLIED TERMS**

- 35.1 All terms and conditions relating to an ICA or TSA that are implied by law or custom are excluded to the maximum extent permitted by law.

## 36. ASSIGNMENT

- 36.1 No Party may assign or otherwise dispose of any or all of its benefits or obligations under an ICA or TSA without MDL's prior written consent, such consent not to be unreasonably withheld.
- 36.2 MDL may only assign its interest and transfer its obligations in its TSAs or ICAs provided that it:
- (a) assigns and transfers all of its TSAs and ICAs to the same person;
  - (b) ensures that the assignee, in MDL's reasonable opinion, is capable of providing the Transmission Services in accordance with the provisions of this Operating Code and all of the relevant TSAs and ICAs, and of any agreements entered into by MDL under this Operating Code which are the subject of the assignment; and
  - (c) obtains from the assignee a covenant enforceable by Shippers and Welded Parties under their TSAs and ICAs in similar terms to this section 36.2.
- 36.3 Prior to any sale, assignment or transfer by any party of its benefits or obligations under the relevant TSA or ICA and, as a condition precedent to such assignment, the party wishing to make such sale, assignment or transfer shall obtain the execution by its assignee of a deed of covenant whereby that assignee shall bind itself to observe and perform all obligations and agreements of the assigning party under the relevant TSA or ICA and include a covenant whereby that assignee shall further covenant that, should that assignee in turn wish to assign its rights and duties under the relevant TSA or ICA (which assignment shall, if required, be subject to the prior consent of MDL as provided for in section 36.1), that assignee will obtain the execution by its assignee of a like Deed of Covenant with each Welded Party and Shipper and so on with every succeeding sale, assignment or transfer.

## **37. SURVIVAL OF PROVISIONS**

- 37.1 The provisions of sections 24, and 28 and any other provisions that by their nature are clearly intended to survive termination or expiry of an ICA or TSA shall continue to bind each Shipper and Welded Party notwithstanding the termination or expiry of an ICA or TSA.

## **38. PRIVACY OF CONTRACT**

- 38.1 The provisions of this Operating Code shall not and are not intended to confer any benefit on, or create any obligation enforceable at the suit of, any person not party to an ICA or TSA, as appropriate.
- 38.2 Any amendment to a TSA or ICA made in accordance with section 29 shall not require the agreement of the Maui Mining Companies or any third party.

### **39. CONSUMER GUARANTEES ACT EXCLUSION**

- 39.1 Nothing in the Consumer Guarantees Act 1993 is to apply to the purchase of any Gas or services under this Operating Code and each ICA and TSA. Each Party represents and warrants that the purchase of any Gas or services under this Operating Code and each ICA and TSA is solely for business purposes.

## **SCHEDULE 1 TECHNICAL REQUIREMENTS FOR PHYSICAL WELDED POINTS AND STATIONS**

In this Schedule 1:

**"Accurate"** means a state wherein the Uncertainty of any gas measurement device falls within the limits defining accuracy of such gas measurement device, as set out in Part Three of this Schedule 1.

**"Calibration Standard"** means:

- (a) any facility or testing device with traceability to a primary standard; or
- (b) a testing laboratory or facility having accreditation recognised by IANZ (International Accreditation New Zealand) or a comparable overseas accreditation authority recognised by the Pipeline Owners,

provided that any Calibration Standard shall be at least as accurate and have equal or better resolution than any gas measurement device for which it is the Calibration Standard.

**"Inaccurate"** means not Accurate.

**"Uncertainty"** means the difference between the output reading or signal of any gas measurement device and that of a verification device, or Calibration Standard as the case may be, expressed as a percentage.

A reference in this schedule to a Welded Point is to a Physical Welded Point and a reference in this schedule to a Welded Party is to a Physical Point Welded Party.

References to paragraphs are to paragraphs of this Schedule 1.

### **1. PART ONE: GENERAL REQUIREMENTS**

1.1 Design, construction, operation and maintenance of Welded Points and Stations shall conform with good gas industry engineering practice and shall comply with the requirements of all current and relevant enactments, including but not limited to:

- (a) Gas Act 1992 and the Gas Regulations
- (b) AS/NZS 2885.1: 1997 Pipelines - Gas and Liquid Petroleum, Part 1: Design and Construction
- (c) Health and Safety in Employment Act 1992
- (d) Health and Safety in Employment (Pipelines) Regulations
- (e) Resource Management Act 1991
- (f) New Zealand Electricity Regulations
- (g) Mandatory Codes of Practice and Standards associated with any of the above.

1.2 Except where specified to the contrary, it is the responsibility of the relevant Welded Party or Station Owner to ensure that:

- (a) full details of the design and location of any proposed Welded Point or Station and/or material modification to an existing Welded Point or Station are submitted to the relevant Pipeline Owner(s) prior to any work being carried out at the site; and
- (b) that all reasonable comments or queries put forward by the Pipeline Owner(s) in relation to such proposal, are resolved to the satisfaction of the Pipeline Owner(s) acting reasonably prior to the start of construction or commissioning of the Station (whichever occurs first).

- 1.3 Unless agreed otherwise by the Parties or where a specific exception is noted in this Schedule 1, the design, construction, maintenance and operation of each new or modified Welded Point or Station, including all financing, shall be wholly the responsibility of the Welded Party or Station Owner.
- 1.4 Where a Welded Party proposes that any new Station shall be owned or operated by a party other than the Welded Party, that Welded Party shall obtain MDL's prior approval before naming the Station Owner or Operator.
- 1.5 The Welded Party shall act as a Reasonable and Prudent Operator or, where the Welded Party is not a Station Owner, it shall procure that the Station Owner acts as a Reasonable and Prudent Operator, to engage competent personnel to design, construct, maintain, and operate each Welded Point or Station.
- 1.6 All gas that flows through a Welded Point shall be measured at that Welded Point or, with MDL's agreement, at an alternative location, using Metering in accordance with this Schedule 1, such Metering to be located within a Station.
- 1.7 The Welded Party, or where MDL is the owner of the Welded Point or Station, MDL, shall ensure that:
- (a) each Welded Point or Station shall have:
    - (i) appropriate security fencing; and
    - (ii) adequate means of access and egress for all traffic; and
    - (iii) adequate space to accommodate all equipment and structures, and to safely operate and maintain the facilities; and
    - (iv) a secure, weather-proof and vermin-proof, and adequately ventilated shelter to house all equipment requiring such protection;
  - (b) all areas classified as Hazardous Areas, or within which health, security, technical integrity or safety related restrictions on access or activities apply, shall be clearly and prominently indicated, supplemented by secure barriers where required;
  - (c) all electrical equipment shall comply with the NZ Electricity Act and Regulations;
  - (d) suitable valves, electrical panels, and other necessary equipment shall be readily accessible to enable each Party to separately, securely and safely isolate their respective facilities and/or pipelines from the other Party's. A Welded Party shall consult MDL as early as practicable to determine whether MDL requires its own isolation valve and whether it requires this to be installed at the Maui Pipeline tie-in location, or at the inlet of the Welded Party's facilities or Station. Where each Party requires its own isolation valve, a vent valve shall be installed to allow the isolated section of piping between each Party's isolation valves to be de-pressurised when both valves are closed;
  - (e) a Welded Point or Station is operated solely for the injection of gas into, or the offtake of gas from the Maui Pipeline, unless specifically designed to function in both circumstances;
  - (f) in relation to a Welded Point or Station designed for offtake of gas from the Maui Pipeline, reverse flow of gas is not possible and a suitable non-return valve is installed. MDL shall be consulted as early as practicable to determine whether it requires such non-return valve to be installed at the Maui Pipeline tie-in location, or at the inlet of the Welded Party's facilities;

- (g) in relation to any new Welded Point, a full risk assessment is carried out and submitted to the Certifying Authority for the Maui Pipeline as required under paragraph 1.1(d). Such risk assessment shall cover matters including, but not necessarily limited to:
  - (i) the design of the proposed connection to the Maui Pipeline and the preservation of the physical integrity of the Maui Pipeline; and
  - (ii) the possibility of corrosion arising from the introduction of new gas into the Maui Pipeline (in the case of injection points); and
  - (iii) means to prevent over-pressurisation of the Maui Pipeline (in the case of injection points) or the Welded Party's infrastructure (in the case of offtake points); and
  - (iv) an assessment of the consequences of excess flow out of, or into the Maui Pipeline (as the case may be) and any measures necessary to prevent such consequences; and
  - (v) any other matters that the Certifying Authority for the Maui Pipeline may specify.
- (h) before construction of a relevant Welded Point or Station commences:
  - (i) all issues and concerns that the Certifying Authority for the Maui Pipeline may have in relation to the proposed Welded Point or Station are resolved; and
  - (ii) a modified certificate of compliance for the Maui Pipeline, allowing for the proposed Welded Point or Station, is both obtained from the Certifying Authority for the Maui Pipeline and provided to MDL.
- (i) in relation to paragraph 1.7(g)(iii), any over-pressure protection system required shall include, as a minimum:
  - (i) a primary means of pressure regulation; and
  - (ii) an independent means of over-pressure protection which shall operate in the event that the primary means of pressure regulation fails.
- (j) at Welded Points where gas is injected into the Maui Pipeline, gas must be able to enter the Maui Pipeline at all times (without causing over pressurisation) whenever the pressure in the Maui Pipeline is within the range of pressures that has been agreed by the Parties.
- (k) all equipment, piping and structures that are not owned by MDL shall be suitably electrically isolated from the Maui Pipeline. Surge diverter(s) approved by MDL shall be installed across the isolating device(s).
- (l) above ground piping and associated metallic structures within a Welded Point or Station shall be suitably bonded so as to be electrically continuous and connected to a suitable earth bed.
- (m) at each Welded Point or Station there shall be suitable equipment located upstream of meters or other sensitive equipment, sufficient to prevent any contaminants that may be carried by the gas, such as solid matter, compressor oil or other liquids from affecting or damaging such equipment. Where Metering is selected that is not sensitive to the presence of such contaminants, and the upstream Pipeline Owner's facilities are designed to prevent the production and/or carryover of such contaminants, the requirement for this equipment may be waived subject to the approval of the Metering Owner.

- 1.8 Subject to paragraphs 1.11 and 1.12, MDL (or its Technical Operator) shall have the right to remotely monitor Metering and other equipment at any Welded Point or Station where MDL, acting reasonably, considers that to be necessary for the safe and reliable operation of the Maui Pipeline.
- 1.9 Subject to paragraph 1.10, where MDL, wishes to exercise its right pursuant to paragraph 1.8 to remotely monitor a Welded Point or Station, it shall advise the Welded Party thereof as soon as practicable. MDL shall then procure the installation at the Welded Point or Station of such SCADA Remote Terminal Unit ("RTU") and/or other equipment, and shall procure a suitable communications link to such equipment, as may be required to enable it to receive the data set out in paragraph 1.12 at the Welded Point or Station and re-transmit such data to its control centre (or that of the Technical Operator).

The Welded Party shall be obliged to provide, at its cost:

- (a) the data set out in paragraph 1.12 to MDL's RTU or other equipment at the Welded Point or Station, in the form of signals of the type required by that equipment; and
- (b) accommodation for MDL's equipment consistent with paragraph 1.7(a)(iv); and
- (c) a suitable electrical power supply for MDL's equipment including an uninterruptible power supply consistent with paragraph 1.13.

The Welded Party shall also be obliged to pay to MDL the cost of:

- (d) MDL's remote-monitoring equipment installed at the Welded Point or Station, such payment to be, at the Welded Party's election, either a lump sum (calculated as the sum of the capital cost of the equipment and the installation cost of the equipment multiplied by 1.10) or an annual fee (calculated as MDL's current required rate of return on capital multiplied by the sum of the capital cost of the equipment and the installation cost of the equipment); and
- (e) MDL's reasonable costs to operate and maintain its remote-monitoring equipment via an annual fee; and
- (f) operating and maintaining any communications link to MDL's remote-monitoring equipment at the Welded Point or Station payable by MDL to any service provider in respect of such communications link (for example, Telecom) via an annual fee.

The Welded Party shall not be liable for any costs MDL may incur arising from equipment or systems required at its control centre (or that of the Technical Operator) in order to receive, process or further disseminate the data signals transmitted from the Welded Point or Station.

When installing, operating or maintaining its remote-monitoring equipment at the Welded Point or Station, MDL shall observe the requirements set out in section 26.2.

- 1.10 Where the Welded Party itself already monitors (or, in the case of a new Welded Point or Station, intends to monitor) a Welded Point or Station using its own SCADA or other remote-monitoring system, it will be relieved of its obligations to MDL under paragraph 1.9 if it provides MDL with the data set out in paragraph 1.12 on an Hourly update basis in a form reasonably acceptable to MDL.
- 1.11 MDL agrees that, with the exception of the Frankley Rd, Pokuru, Pirongia and Rotowaro Welded Points, MDL does not consider it necessary to remotely monitor any NGC Welded Point existing as at 01 January 2005.
- 1.12 In relation to any Welded Point or Station, MDL (or the Technical Operator) shall be entitled to receive such of the following data as MDL (or the Technical Operator) shall specify:
- (a) uncorrected and corrected volume flow rates

- (b) energy flow rate;
- (c) Welded Point or Station inlet and outlet pressure and temperature;
- (d) the pressure and temperature at any meter;
- (e) Hourly and Daily uncorrected volume, corrected volume and energy totals;
- (f) gas composition and/or properties used in the determination of energy;
- (g) gas Gross Calorific Value, Base Density or Specific Gravity and Wobbe Index;
- (h) gas quality data, for example moisture content, where such data is available;
- (i) equipment status indicators for Metering,

provided that where Metering is located at a Station removed from the Welded Point, MDL's entitlement to the above data shall also apply at such Station.

- 1.13 The Station Owner shall ensure that at each Station there is a continuous supply of electrical power of the required capacity to any Metering (subject to paragraph 1.14), SCADA or other remote monitoring equipment. This shall comprise a supply from the local electricity distribution network ("the mains supply") plus an un-interruptible power supply ("UPS"). The UPS shall incorporate back-up batteries with a capacity equivalent to not less than 4 hours running time, to maintain continuous electrical power to any Metering, SCADA or other remote-monitoring equipment and any critical instrumentation in the event that the mains supply fails.
- 1.14 Metering at a Small Station need not be provided with a mains supply if the Metering Owner considers, acting reasonably, that an alternative source of electrical power, such as batteries and/or solar power would be sufficient. However if remote-monitoring of such a Small Station is undertaken and the means of remote-monitoring requires a mains supply, the Metering Owner shall ensure that Metering is connected to the mains supply also.
- 1.15 At any Large Station, MDL may require a means of flow control, remotely operable from the Technical Operator's control centre. MDL shall meet the full cost of any such facility.
- 1.16 As noted elsewhere in this Code, a Welded Point need not necessarily be located within a Station. An example of such a Welded Point would include a buried connection to the Maui Pipeline, whether by a hot-tap or a cut-in connection. The requirements of this Part One shall apply, as appropriate, to any such Welded Point.

## **2. PART TWO: METERING**

- 2.1 Each Metering Owner shall, or where the Metering Owner is not a Party to an ICA, MDL shall procure the Metering Owner to, ensure that its Metering complies with the requirements of this Part Two, provided that, as noted in sections 16.2 and 16.5, this Part Two does not apply to Metering owned by Methanex, at various locations, used to determine offtake from the Maui Pipeline at the Bertrand Rd Welded Point.
- 2.2 The design, installation, operation, testing and maintenance of Metering shall comply with the requirements of this Part Two, the appropriate operating regulations and, where air transfer testing is employed, the relevant sections of NZS 5259:2004.
- 2.3 At Small Stations, where only a single "primary" meter is installed, there should be space for a second meter to be installed, at least temporarily, in series with the primary meter for verification testing as set out in Part Three.
- 2.4 At Large Stations, subject to paragraph 2.6, a verification meter shall be installed, which can readily be brought into service in series with any primary meter for verification testing as set out in Part Three.

- 2.5 At any Station where multiple primary meters are installed, all such primary meters shall be capable of achieving the same accuracy, resolution and repeatability.
- 2.6 Any meter used as a verification meter shall be capable of achieving accuracy at least equal to that of the relevant primary meter(s).
- 2.7 Where applicable to the type of meter, each meter shall be fitted with a mechanical index to display the total quantity of gas (in cubic metres at flowing conditions) that has passed through the meter.
- 2.8 A meter installed as a back-up for one or more primary meters may be used as a verification meter provided that it has not been used, or has only been used infrequently, during any period since its own accuracy was last verified. Where dual ultrasonic meters are installed it is permissible to operate both meters simultaneously in series during normal operation as long as the difference between the meters' outputs is monitored and alarmed.
- 2.9 Subject to paragraph 2.10, a primary meter must operate between the minimum and maximum flow ratings ("Qmin" and "Qmax", respectively) specified by the manufacturer at all times. If the expected in-service flow range is too wide for a single primary meter to comfortably encompass, more than one primary meter shall be installed. At any Large Station where there is more than one primary meter, an automatic meter switching system shall be installed, unless the Metering Owner can demonstrate that manual meter switching will not adversely impact the Pipeline Owners' operations.
- 2.10 Subject to paragraph 2.11, during start up or shut down of gas flow or, where there is more than one primary meter, when a meter is being switched into or out of service, it shall be permissible for a primary meter to operate briefly below Qmin or above Qmax.
- 2.11 A flow restriction device shall be installed to ensure that no meter is exposed to a flow rate high enough to damage it. In the absence of any better information from the meter's manufacturer, any such flow restriction device shall be designed to limit the flow through the meter to 1.20 x the meter's Qmax.
- 2.12 Subject to paragraph 2.21, Metering at Large Stations shall, at all times, use the composition and properties of gas determined using an analyser, pursuant to paragraph 2.13, to calculate standard volume and energy quantities of gas.
- 2.13 Unless the Pipeline Owners otherwise agree, the analyser used to determine the composition and properties of gas, for use by metering, shall be a gas chromatograph. Any analyser used by Metering must be located at the same Station as the Metering unless the Pipeline Owners agree that an analyser located nearby, which measures the same gas at almost the same time, may be used. Any analyser must calculate both spot values (i.e. values for the last gas sample analysed) and Daily average values of:
  - (a) all significant constituents of the gas (expressed as concentrations in mole %), including, but not necessarily limited to:
    - (i) Carbon dioxide
    - (ii) Nitrogen
    - (iii) Methane
    - (iv) Ethane
    - (v) Propane
    - (vi) Iso-Butane
    - (vii) Normal Butane
    - (viii) Iso-Pentane

- (ix) Neo-Pentane
  - (x) Normal Pentane
  - (xi) Hexanes and heavier components (either separately or as a combined Hexanes-plus fraction); and
- (b) Gross Calorific Value (expressed in Megajoules per standard cubic metre on a dry gas basis); and
  - (c) Nett Calorific Value (expressed in megajoules per standard cubic metre on a dry gas basis)
  - (d) Base Density or Specific Gravity; and
  - (e) Wobbe Index.
- 2.14 For Small Stations, it will not be necessary for Metering to calculate standard volume and energy and hence it will not be necessary either to install an analyser at a Small Station or connect Metering at any Small Station to an analyser elsewhere. For Small Stations the Metering Owner may calculate standard volume and energy quantities of gas off site. In any such calculations the Metering Owner will use Daily average gas properties from an analyser elsewhere measuring the same gas, such location to be agreed by the Pipeline Owners.
- 2.15 All Metering shall:
- (a) measure the uncorrected volume of gas (i.e. volume at flowing conditions);
  - (b) measure the temperature and pressure of the uncorrected volume of gas;
  - (c) calculate the pressure-and-temperature corrected volume of gas; and
  - (d) electronically store values of the parameters referred to in (a), (b) and (c) at least Hourly.
- 2.16 At Large Stations, in addition to the requirements set out in paragraph 2.15, Metering shall:
- (a) compute gas compressibility using gas properties obtained as described in paragraph 2.13;
  - (b) compute standard volumes of gas;
  - (c) compute energy quantities of gas using gas properties obtained as described in paragraph 2.13;
  - (d) electronically store values of the parameters referred to in paragraph (a), (b) and (c) at least Hourly; and
  - (e) make available all measured and calculated parameters for remote monitoring via SCADA or other system.
- 2.17 Where Metering comprises more than one meter, the requirements of paragraphs 2.15 and 2.16 apply to each meter separately.
- 2.18 The method of determining gas compressibility referred to in paragraph 2.16(a) shall be selected from one of the following, as agreed by the Pipeline Owners:
- (a) AGA Report No 8 - Detailed Method
  - (b) AGA Report No 8 - Short Method (several options available)
  - (c) ISO 12213-2:1997(E)
  - (d) AGA NX 19
  - (e) ISO 12213-3: 1997 (E).

- 2.19 At Large Stations, failure or malfunction of any gas measurement device forming part of Metering shall cause an alarm signal to be automatically transmitted to the Metering Owner and to the control centre of the Technical Operator.
- 2.20 At all Stations, where the Metering Owner becomes aware that Metering or any gas measurement device forming part of Metering has failed, malfunctioned or is Inaccurate, the Metering Owner shall immediately notify the Pipeline Owners. The Metering Owner shall then investigate the fault and repair or replace any faulty equipment as soon as practicable.
- 2.21 Every flow computer forming part of Metering that normally uses the output of an analyser to calculate gas quantities shall be programmed to use "fall-back" gas properties in the event that such analyser fails or becomes Inaccurate. Any gas quantities calculated using such fall-back gas properties shall be flagged accordingly. As soon as practicable after becoming aware that an analyser has failed or has become Inaccurate and that Metering is using fall-back gas properties, the Metering Owner shall:
- (a) advise the Pipeline Owners thereof; and
  - (b) repair or replace the analyser as soon as practicable; and
  - (c) calculate revised gas quantities for the period the analyser was out of service or operating inaccurately, where required, in accordance with Part Four of this Schedule 1.
- 2.22 The Metering Owner shall compile a "Metering Operations Manual" and provide a copy to the Pipeline Owners for approval prior to commissioning any Metering. The Metering Operations Manual shall include as a minimum:
- (a) design specifications for all devices and systems forming part of Metering as well as for the Metering as a whole;
  - (b) manufacturers' data for all devices forming part of Metering, including both the recommended and permissible operating ranges of such devices;
  - (c) pre-installation test records and calibration certificates for meters and other devices forming part of Metering;
  - (d) maintenance plans in relation to Metering;
  - (e) details of meter verification plans including the type and frequency of testing;
  - (f) details of fault detection and alarm systems; and
  - (g) details of how and when the Metering Owner will respond to alarms, breakdowns, malfunctions and the like.

The Metering Owner shall keep such Metering Operations Manual up to date and shall re-issue it as required to the Pipeline Owners.

### **3. PART THREE: TESTING OF METERING**

- 3.1 A Metering Owner shall, or where the Metering Owner is not a Party to an ICA, the Pipeline Owners shall procure that the Metering Owner shall, regularly test its Metering, in accordance with this Part Three, to verify and, where necessary, re-establish that such Metering is Accurate.
- 3.2 Volumetric Flow Measuring Devices ("meters")
- (a) Prior to the installation of any primary meter, the Metering Owner shall procure that:

- (i) subject to paragraph 3.2(d), every primary meter is tested by the manufacturer, using air at atmospheric pressure, and a calibration "air curve" (namely a graph of Uncertainty versus flow rate) generated. Any such testing using air at atmospheric pressure shall be undertaken in a manner not inconsistent with NZS 5259:2004;
  - (ii) every primary meter for a Large Station is tested by the manufacturer using natural gas at the meter's expected operating pressure, or as close to it as any testing facility available to the manufacturer allows. If the meter will operate over a pressure range, the meter shall be calibrated using natural gas at two or more pressures within the expected range. A calibration "natural gas curve" (namely a graph of Uncertainty versus flow rate) shall be generated for each test pressure and kept on record by the Metering Owner;
  - (iii) where required, a primary meter is adjusted and re-tested until it complies with the manufacturer's normal accuracy requirements for the type of meter and also the requirements of paragraph 3.2(i); and
  - (iv) all records of such pre-installation calibration testing of primary meters referred to in paragraphs 3.2(a)(i) and 3.2(a)(ii) are retained by the Metering Owner for the service life of the meter.
- (b) Provided that the difference in Uncertainty between the air curve and the natural gas curve(s) referred to in paragraphs 3.2(a)(i) and 3.2(a)(ii) is minor across the operating range of the primary meter, the air curve shall be deemed to provide an adequate accuracy benchmark in any future re-calibration testing of a primary meter undertaken pursuant to paragraph 3.2(h).
  - (c) Each calibration test referred to in paragraphs 3.2(a)(i) and 3.2(a)(ii) shall include testing the meter at flow rates corresponding to:  $Q_{min}$  (or  $0.05 \times Q_{max}$  if no  $Q_{min}$  is specified),  $Q_{max}$  and at least 3 flow rates in between.
  - (d) In the case of a primary meter type such as an ultrasonic, for which a pre-installation low-pressure air test as referred to in paragraph 3.2(a)(i) is not feasible, regular re-validation testing at the meter's normal operating pressure shall be undertaken. The Metering Owner shall consult a suitable standard regarding re-validation testing, such as AGA 9, which provides guidance on re-validation testing of ultrasonic meters.
  - (e) At 3-monthly intervals for Large Stations, and 12-monthly for Small Stations, each primary meter shall be operated in series with a verification meter for at least one continuous hour at normal flow conditions. Prior to such test, the pressure and temperature transducers associated with the verification meter shall be calibrated in accordance with paragraph 3.3.
  - (f) If, as a result of testing carried out under paragraph 3.2(e), a primary meter is found to have an Uncertainty with respect to the verification meter of more than +/- 1.5% if installed at a Large Station, or +/- 2.0% if installed at a Small Station, then the primary meter's pressure and temperature transducers shall be calibrated in accordance with paragraph 3.3 and the verification test repeated. If, following the repeat test, the primary meter's Uncertainty is still outside the above limits, then that primary meter shall be removed from service for re-calibration testing as described under paragraph 3.2(g) or paragraph 3.2(h).

- (g) Subject to paragraph 3.2(h), re-calibration testing of a primary meter removed from service shall be done using natural gas at the meter's normal operating pressure and in accordance with the manufacturer's recommended procedures. The meter shall be adjusted and tested until the Uncertainty across its operating range is as close as practicable to the Uncertainty shown on its pre-installation natural gas curve referred to in paragraph 3.2(a)(ii) and within the limits set out in paragraph 3.2(i).
- (h) Where:
  - (i) a high-pressure natural gas meter testing facility is not available in New Zealand; or
  - (ii) the meter is a turbine meter or a rotary meter; or
  - (iii) the meter was installed at a Small Station,
 then, subject to paragraphs 3.2(a)(iv) and 3.2(b), re-calibration testing of a primary meter removed from service may be done using air at atmospheric pressure. The meter shall be adjusted and tested until the Uncertainty across its operating range is as close as practicable to the Uncertainty shown on the pre-installation air curve referred to in paragraph 3.2(a)(i) and within the limits set out in paragraph 3.2(i).
- (i) A meter shall be deemed to be Accurate if its Uncertainty, when tested against an approved Calibration Standard, is:
  - (i) No more than +/- 0.8% for Large Stations
  - (ii) No more than +/- 1.5% for Small Stations
- (j) Where applicable to the type of meter, a primary meter's pulse outputs (high and/or low frequency) shall be tested to ensure that the uncorrected volume measured by the meter matches the uncorrected volume recorded by the flow computer, at intervals of not more than 3 months for Large Stations and 12 months for Small Stations.

### 3.3 Pressure, Temperature and Density Transducers

- (a) All transducers used in Metering shall be tested and if necessary re-calibrated at intervals of not longer than 3 months for Large Stations and 12 months for Small Stations.
- (b) Testing of any transducer shall be carried out at its normal in-service operating condition, or, where applicable, at suitable representative points over its normal operating range. In the latter case the Uncertainty shall be an average across the range.
- (c) A transducer shall be deemed to be Accurate if its Uncertainty, when tested against an approved Calibration Standard, is no more than the following:
  - (i) Pressure transducer: +/- 0.1 bar
  - (ii) Temperature transducer: +/- 0.4 °C
  - (iii) Density, Base Density and Specific Gravity: +/- 0.05 kg/m<sup>3</sup>

### 3.4 Analyser

- (a) The minimum frequency of gas chromatograph or other analyser calibration shall be weekly for self-calibration and monthly for manual calibration. The manufacturer's recommended calibration procedures shall apply. Instrument grade or better Helium shall be used as carrier gas.

- (b) Only certified "Alpha" standard calibration gas traceable to a certified testing laboratory shall be used. The composition of calibration gas shall be representative of the normal composition of gas passing through the metering system. The calibration gas composition programmed into the analyser shall be checked at regular intervals.
- (c) The analyser shall be deemed to be Accurate if:
  - (i) the difference between the Gross Calorific Value determined by the analyser for the calibration gas and the certified Gross Calorific Value of the calibration gas is less than 0.1%;
  - (ii) the difference between the Nett Calorific Value determined by the analyser for the calibration gas and the certified Nett Calorific Value of the calibration gas is less than 0.1%;
  - (iii) the un-normalised total of all components is within the range 98% to 102% for sample gas and 99% to 101% for calibration gas; and
  - (iv) The difference between the Base Density determined by the analyser for the calibration gas and the certified Base Density of the calibration gas (or calculated Base Density of the calibration gas where Base Density is not certified) is less than 0.1%.

### 3.5 Flow Computer

- (a) A "BVI" check shall be carried out, at intervals not exceeding one month for Large Stations and 6 months for Small Stations, to test that the flow computer is functioning correctly. The BVI check shall consist of applying independently-calculated factors (for pressure, temperature, compressibility and any other relevant parameters) to the uncorrected volume measured by each primary meter, over an appropriate period of time, and comparing the as-calculated corrected volume with the corrected volume(s) determined by the flow computer over the same period of time.
- (b) Inputs and outputs shall be tested at intervals not exceeding 6 months to verify the integrity of data flows and that the flow computer is able to receive, process and transmit data accurately.
- (c) Internal programming shall be verified for accuracy at intervals not exceeding 12 months. This shall include down-loading a copy of the program and comparing it with a master copy kept in secure storage off site.
- (d) Fall-back values of gas composition and properties for use if the analyser fails (applicable to Large Stations only, refer to paragraph 2.21) shall be reviewed at reasonable intervals and updated if necessary.

3.6 Testing as a "loop" shall be required to detect and eliminate errors due to signal transmission and conversion (for example, analog to digital) within Metering. For example, this would involve applying a calibration signal to the field device and reading the measured value at the flow computer.

3.7 If a gas measurement device forming part of Metering is found by testing to be Accurate it will be deemed to have been Accurate throughout the period since the previous test that found it to be Accurate. To the extent that the Uncertainty of such gas measurement device is not zero it shall be adjusted immediately such that its Uncertainty is as close as practicable to zero. However no correction to gas quantities computed by the Metering on account of the as-found Uncertainty of the gas measurement device shall be made.

- 3.8 Following completion of any testing on Metering, the Metering Owner shall, if the testing was scheduled maintenance as defined in the Metering Operations Manual (as described in paragraph 2.22 of this Schedule 1), advise the Pipeline Owners that such scheduled maintenance was carried out, otherwise the Metering Owner shall notify the Pipeline Owners as to what was tested and whether the testing found the Metering or any gas measurement device forming part of the Metering to be Accurate or Inaccurate.
- 3.9 The Metering Owner shall retain records of all testing for not less than 5 years and provide the Pipeline Owners with copies on request.

#### **4. PART FOUR: CORRECTING FOR INACCURATE METERING**

- 4.1 A Metering Owner shall, or where the Metering Owner is not a Party to an ICA, the Pipeline Owners shall procure that the Metering Owner shall, correct for the effects of Inaccurate Metering in accordance with this Part Four.
- 4.2 If a gas measurement device used in Metering is found by testing (or other valid means) to be Inaccurate, the Metering Owner shall immediately notify the Pipeline Owners. Subject to the balance of this Part Four, the Metering Owner shall then calculate revised gas quantities (Hourly and Daily) to correct for the effect of the Inaccurate gas measurement device. The Pipeline Owners shall promptly provide the Metering Owner with such relevant data and information as the Metering Owner may reasonably request to assist in this process.
- 4.3 Revised gas quantities shall be calculated for:
- (a) such time period within which the gas measurement device can reasonably be determined to have been Inaccurate; or
  - (b) half the period since the previous test that showed the gas measurement device to be Accurate, such period not to exceed 60 days, where the time period within which the gas measurement device was Inaccurate cannot reasonably be determined.
- 4.4 Any revised gas quantities calculated to correct for an Inaccurate gas measurement device shall be based on the difference between the as-found measurement, reading or output of such device and the value of the measurement, reading or output had the device been operating with zero Uncertainty.
- 4.5 In calculating revised gas quantities the Metering Owner shall:
- (a) use the best information available to it; and
  - (b) advise the Pipeline Owners of the revised gas quantities and details of the methodology used to calculate them as soon as practicable, but in any event not later than the end of the Month following the Month in which the gas measurement device was found to be Inaccurate.
- 4.6 A meter shall be considered capable of measuring accurately down to the  $Q_{min}$  specified by the manufacturer. Revised gas quantities for any meter found to be Inaccurate shall only be calculated for periods when a meter was operating below its  $Q_{min}$ :
- (a) with the agreement of each of the relevant Pipeline Owners; and
  - (b) when reliable data from a source other than the meter in question is available,
- provided that such revised gas quantities shall not be calculated at all where the Metering Owner can reasonably show that the volumes of gas passing through such meter during periods when the meter operates below  $Q_{min}$  are negligible compared to the volumes of gas that pass through the meter at other times.

- 4.7 Subject to paragraph 4.8, revised metered volumes shall be based on the Uncertainty found by re-calibration testing to apply to the normal operating flow range (determined by reference to recorded flow data) of the meter. The Metering Owner shall calculate the revised metered volumes using the most practical (as reasonably determined by the Metering Owner) of the following methods:
- (a) the arithmetic average Uncertainty of the meter for its normal operating flow range; or
  - (b) the volume-weighted Uncertainty of the meter for its normal operating flow range; or
  - (c) the Uncertainty-versus-flow relationship established for the normal operating flow rate range of the meter.
- 4.8 Where for any reason the normal operating flow range of a meter found to be Inaccurate is not known, revised metered volumes shall be based on the arithmetic average Uncertainty found from re-calibration testing at the following flow rates:  $Q_{min}$ , 20% of  $Q_{max}$ , 50% of  $Q_{max}$  and  $Q_{max}$ .
- 4.9 Where a meter has failed completely, the Metering Owner shall calculate the revised gas quantities:
- (a) using data from a meter operating in series with the failed meter that is capable of achieving accuracy at least equal to the failed meter; or
  - (b) where the failed meter was operating in parallel with another meter, using the relationship between flow data measured by the two meters from a corresponding period when both meters were operating normally; or
  - (c) using historical data for corresponding periods of time.
- 4.10 Subject to paragraph 4.13, where a flow computer, or a transducer used by a flow computer fails completely, the Metering Owner shall calculate revised gas quantities for the affected meter from uncorrected volumes measured by that meter, by applying:
- (a) appropriate correction factors from periods when the flow computer or transducer was functioning properly; or
  - (b) independent corrections for pressure, temperature, compressibility and any other applicable factors
- and multiplying the Hourly corrected volumes resulting from (a) or (b) by the Hourly average Gross Calorific Value from the analyser used by the Metering or, where such data is unavailable, from the most appropriate alternative analyser.
- 4.11 Where a gas analyser fails or becomes Inaccurate, any flow computer using the output of such analyser will use fall-back gas composition values to calculate gas quantities as described in paragraph 2.21 of Part Two of Schedule 1. The Metering Owner shall determine, acting as a Reasonable and Prudent Operator, whether it is necessary to calculate revised gas quantities for the period that the analyser was out of service, having regard to:
- (a) the materiality of any differences between the properties of the gas which actually passed through the Metering during the period the analyser was out of service (as indicated by an analyser elsewhere or other means) and the fall-back values in the flow computer; and
  - (b) the availability and applicability of alternative gas composition information; and
  - (c) any other relevant factors,
- provided that:

- (d) the Metering Owner will only be required to correct for differences in the Gross Calorific Value, unless the Metering Owner determines that it is practical to correct for other factors affected by gas composition, including gas compressibility; and
- (e) to correct for Gross Calorific Value, it shall be sufficient for the Metering Owner to apply correct Hourly average Gross Calorific Values.

4.12 Subject to paragraph 4.13, where the electronic data storage device associated with a meter normally used to store gas quantities (e.g. the electronic data storage facility of a flow computer) fails, and such data is not available for a period of time, the Metering Owner shall determine revised gas quantities for the affected meter:

- (a) using data from the electronic data storage device associated with a meter operating in series with the affected meter, where such meter is capable of achieving accuracy at least equal to the affected meter;
- (b) using readings from a non-resetting totaliser unaffected by the failed electronic data storage device, where available for a period of time reasonably corresponding to the period in which the electronic data storage device was out of service. The Metering Owner shall calculate the total energy quantity for the period between each reading (i.e. initial and final readings), the method of such calculation to depend on the type of readings available, for example uncorrected volume, corrected volume or energy. The Metering Owner shall then break down the total energy quantity into both Hourly and Daily quantities, including for the period of time in which the electronic data storage device was out of service, using a flow profile reasonably corresponding to that from a period of time in which the Metering was functioning normally; or
- (c) using historical data for corresponding periods of time.

4.13 In the circumstances described in 4.10 or 4.12, where there is an alternative meter capable of achieving accuracy at least equal to the affected meter, operating either in series or parallel with the affected meter, the Metering Owner shall calculate revised gas quantities for the affected meter in accordance with paragraph 4.9.

**SCHEDULE 2 SHIPPER AGREEMENT FORM**

**AGREEMENT FOR THE TRANSPORTATION OF GAS THROUGH THE MAUI GAS PIPELINE**

Dated: / /

**PARTIES:**

- A. MAUI DEVELOPMENT LIMITED ("**MDL**")
- B. [Name of shipper] ("**Shipper**")

**AGREEMENT**

- 1. MDL agrees to provide and the Shipper agrees to accept transmission services in respect of the transport of the Shipper's Gas through the Maui Pipeline on the terms and conditions set out in the "Maui Pipeline Operating Code" (as published by MDL, and as amended from time to time) ("**Operating Code**").
- 2. The parties agree to comply with and be bound by the terms and conditions of the Operating Code as if they were set out in full in this Agreement. All terms used in this Agreement that are defined in the Operating Code shall have the same meaning where used in this Agreement.
- 3. This Agreement commences on [specify commencement date] and [(i), unless terminated earlier in accordance with the Operating Code, expires on (specify expiry date)]/[(ii) continues until terminated in accordance with the Operating Code].
- 4. The Shipper's prudential requirements for the purposes of the Operating Code are:

--

- 5. The AQ for the purposes of this Agreement is:

	<b>AQ Volume</b>	<b>AQ Expiry Date</b>
AQ Zone South of Mokau	GJ	
AQ Zone North of Mokau	GJ	
Agreed discount for the purposes of section 19.1		%

- 6. The address for notices for the Shipper (for the purposes of the Operating Code) is:

Physical address:	
Postal Address:	
Phone No:	
Facsimile No:	
Email Address:	
Contact Person:	

**SIGNED BY**

**MAUI DEVELOPMENT LIMITED** by:

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Signature of authorised signatory

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Name of authorised signatory

**[SHIPPER]** by:

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Signature of authorised signatory

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Name of authorised signatory

**SCHEDULE 3 WELDED PARTY AGREEMENT FORM**

**AGREEMENT FOR INTERCONNECTION WITH THE MAUI GAS PIPELINE**

Dated: / /

**PARTIES:**

- A. MAUI DEVELOPMENT LIMITED (“MDL”)
- B. [Name of welded party] (“Welded Party”)

**AGREEMENT**

- 1. MDL and the Welded Party agree to [connect the Welded Party’s Pipeline and the Maui Pipeline at the Welded Points] [create the Notional Welded Points] set out in clause 4 and to transfer Gas [into and out of their respective Pipelines] [through the Maui Pipeline and the Notional Welded Points] on the terms and conditions set out in the "Maui Pipeline Operating Code" (as published by MDL, and as amended from time to time) (“**Operating Code**”).
- 2. The parties agree to comply with and be bound by the terms and conditions of the Operating Code as if they were set out in full in this Agreement. All terms used in this Agreement that are defined in the Operating Code shall have the same meaning where used in this Agreement.
- 3. This Agreement commences on [specify commencement date] and [(i), unless terminated earlier in accordance with the Operating Code, expires on (specify expiry date)]/[(ii) continues until terminated in accordance with the Operating Code].
- 4. The Welded Point(s) to which this Agreement applies [is/are] [set out details of relevant Welded Points].

PHYSICAL WELDED POINT NAME	PHYSICAL POINT WELDED PARTY	SMALL OR LARGE STATION	METERING FOR PHYSICAL WELDED POINT:			
			LOCATION(S)	STATION NUMBER	STATION NZMS 260 REFERENCE	METERING OWNER

[OR]

NOTIONAL WELDED POINT NAME	NOTIONAL POINT WELDED PARTY	DEEMED LOCATION

- 5. The Welded Party’s prudential requirements for the purposes of the Operating Code are:

6. The address for notices for the Welded Party (for the purposes of the Operating Code) is:

Physical address:	
Postal Address:	
Phone No:	
Facsimile No:	
Email Address:	
Contact Person:	

**SIGNED BY**

**MAUI DEVELOPMENT LIMITED** by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

**[WELDED PARTY]** by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

## SCHEDULE 4 CONFIDENTIALITY PROTOCOLS

### 1. INTRODUCTION

- 1.1 This is the MDL Confidentiality Protocol.
- 1.2 It contains procedures, controls and accountabilities designed to support the values set out in paragraph 3 of this Schedule and to protect the Confidential Information of Shippers and Welded Parties.

### 2. DEFINITIONS

- 2.1 In the MDL Confidentiality Protocol:

**"Confidential Information"** has the meaning set out in the Operating Code excluding any information that may be used or disclosed pursuant to sections 24.2 or 24.5 of the Operating Code.

**"Open Access Personnel"** means the System Operator, Incentives Pool Trustee, Balancing Agent, Technical Operator and the Commercial Operator as defined in the Operating Code.

**"Non-Open Access Personnel"** means any person other than Open Access Personnel.

### 3. VALUES

- 3.1 MDL will:
  - (a) provide arm's length access to the Maui Pipeline in a manner consistent with the Operating Code; and
  - (b) ensure that Confidential Information is kept confidential.

### 4. SCOPE

- 4.1 MDL and its employees shall act in accordance with this Confidentiality Protocol in order to ensure that Confidential Information provided to it in its capacity as the contracting party for TSAs and ICAs on the terms of the Operating Code is not:
  - (a) disclosed to the Maui Mining Companies; and
  - (b) used by MDL for any purpose other than is necessary for carrying out its obligations pursuant to this Operating Code.
- 4.2 The extent to which the Maui Mining Companies provide and receive Confidential Information in relation to this Operating Code shall be limited to their joint role as the party that has appointed an agent as a Welded Party at the Oaonui Welded Point and the party that has appointed an agent as a Shipper on behalf of the Maui Mining Companies. The Pohokura Mining Companies shall be subject to the same restriction when the Pohokura field is connected to the Maui Pipeline.

### 5. CONTROLS

- 5.1 MDL will ensure:
  - (a) Open Access Personnel:
    - (i) do not share Confidential Information with Non-Open Access Personnel;
    - (ii) do not discuss Confidential Information with Non-Open Access Personnel;
    - (iii) do not discuss Confidential Information where it can be overheard by Non-Open Access Personnel;
    - (iv) do not leave Confidential Information where it can be accessed by Non-Open Access Personnel;

- (v) store, secure and maintain hard copy and electronic files containing Confidential Information separate from, and in a manner and place inaccessible to, Non-Open Access Personnel;
  - (vi) maintain and monitor security of computers and systems, including access codes and password protection procedures; and
  - (vii) are trained in this Confidentiality Protocol;
- (b) Non-Open Access Personnel do not enter areas designated as "Maui Pipeline open access areas" without the permission of Open Access Personnel;
  - (c) contractors and consultants engaged by Open Access Personnel in relation to the open access regime on the Maui Pipeline, comply with this Confidentiality Protocol;
  - (d) the IT system running the daily operation of the Maui Pipeline shall have appropriate access restrictions so that the Maui Mining Companies and/or their agents can only access information as a Welded Party or Shipper in accordance with this Operating Code;
  - (e) systems for general communications to Open Access Personnel, for example, faxes, telephones, mail and deliveries, shall be separate from the Maui Mining Companies' respective systems; and
  - (f) when Confidential Information is disclosed to the MDL Board of Directors, the information is to be marked or described as confidential and the MDL Board of Directors is not to use that information other than for the purpose it was disclosed to them.

## **6. COMPLAINTS AND BREACH PROCEDURE**

- 6.1 Upon receiving a complaint or suspecting a breach of the confidentiality obligations set out in the Operating Code, a member of the Open Access Personnel must:
  - (a) report the suspected breach or complaint to MDL; and
  - (b) where relevant, take all reasonable steps to mitigate the effect of the disclosure of Confidential Information.
- 6.2 Where MDL receives a report of a suspected breach or complaint MDL at its cost, will appoint an independent auditor to investigate the suspected breach or complaint. As a result of its investigation, an independent auditor may make recommendations to MDL in order to prevent a re-occurrence of such breaches or complaints.
- 6.3 In accordance with section 24.8 of the Operating Code but subject to paragraph 6.5 of this Schedule, MDL, acting as a Reasonable and Prudent Operator, shall use its best endeavours to follow any recommendations made by an independent auditor pursuant to paragraph 6.2 of this Schedule.
- 6.4 MDL will ensure that the outcome of any investigation undertaken by an independent auditor pursuant to paragraph 6.2 of this Schedule is communicated to the relevant Welded Party or Shipper.
- 6.5 In the event of a breach of this Confidentiality Protocol:
  - (a) MDL will procure the independent auditor to make appropriate and practicable recommendations designed to prevent any recurrence;
  - (b) the MDL Board of Directors or its appointee will implement the recommendations made by the independent auditor;

- (c) the MDL Board of Directors or its appointee will ensure the complaint or “breach investigation and close out procedure” as set out in this Schedule are followed, progressed promptly and reported back to the complainant within a reasonable timeframe; and
- (d) the MDL Board of Directors or its appointee will ensure that the investigation report and recommendations are included in the Confidentiality Protocol Register and the Annual Confidentiality Protocol Report and disclosed on the MDL IX.

## **7. COMPLIANCE**

- 7.1 MDL will appoint an independent auditor to report to all Shippers and Welded Parties as to MDL’s compliance with the Confidentiality Protocol on an annual basis.
- 7.2 A Shipper or Welded Party may appoint a Confidentiality Auditor to carry out an independent audit of MDL’s operating procedures in accordance with section 24.6 of the Operating Code.
- 7.3 The MDL Board of Directors will sign a “Statement of Compliance” each financial year which provides that:
  - (a) MDL is not aware of any breach of any of the obligations listed in the Confidentiality Protocol other than that specified in the Annual Confidentiality Protocol Report for year ending 31 March XXXX;
  - (b) MDL has maintained a compliance program during the relevant period that ensures:
    - (i) appropriate internal procedures are established and maintained to ensure compliance with the Confidentiality Protocol;
    - (ii) an independent auditor is appointed to assess that procedures are satisfactory and that the Confidentiality Protocol is complied with;
    - (iii) the Chairman of the MDL Board of Directors is made aware of any breaches of the Confidentiality Protocol;
    - (iv) remedial action is taken as soon as possible to rectify breaches of the Confidentiality Protocol and that completion of this action is reported to the MDL Board; and
    - (v) the compliance program is reviewed regularly and as necessary; and
  - (c) the MDL Board of Directors has approved the Annual Confidentiality Protocol Report for year ending 31 March XXXX.

## **8. ARM’S LENGTH OPERATIONS**

- 8.1 MDL shall ensure that the System Operator, the Technical Operator and Commercial Operator, in operating at arm’s length and separately from MDL, shall, without limiting the ordinary meaning of section 24.1(d), in all of their dealings, relationships and transactions with MDL, or relating to the Maui Pipeline:
  - (a) not prefer or give any priority to any particular Shipper or Welded Party (including but not limited to any Maui Mining Company) over other users of the Maui Pipeline except as expressly provided in the Operating Code; and
  - (b) not enter into any transactions, agreements, understandings or arrangements of any kind (whether in writing or not) which have the purpose or effect, or likely effect, of giving rise to, or maintaining, any preference or priority of the type prohibited under paragraph 8.1(a).

- 8.2 Without limiting paragraph 8.1 of this Schedule 4, MDL shall ensure that the objectives in section 24.1(d) and this paragraph 8 are met and in doing so shall ensure that:
- (a) no manager of the System Operator, the Technical Operator or the Commercial Operator when exercising powers or performing duties in connection with the Maui Pipeline or the Operating Code, acts in a manner which the manager knows or ought reasonably to know would give rise to, or facilitate, a preference or priority of the type prohibited under paragraph 8.1(a); and
  - (b) all practical arrangements for the System Operator, the Technical Operator and the Commercial Operator (such as use of accommodation, facilities, computer and other systems and networks, equipment and services), do not contravene the requirements of this paragraph 8.

## SCHEDULE 5 THE MDL IX – IT REQUIREMENTS

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### TECHNICAL CONFIGURATION REQUIREMENTS

The following is the minimum configuration for accessing the MDL IX. This list does not constitute an endorsement for any of the specific products listed. Other products meeting the minimum technical characteristics described may be used.

#### PC HARDWARE

CPU: Pentium4 level processor (or equivalent)

Memory (RAM): 256MB or greater

#### OPERATING SYSTEM

Windows 2000 or XP

Display Resolution of 1024 x 768

#### SOFTWARE

MS Excel 2000 or 2003

WinZip 6 or above

Internet Explorer 6.0 with current level service pack applied

Adobe Reader 7.0

#### CONNECTION

256kbs or greater per connection (available bandwidth)

Cookies enabled

IE scripting enabled

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### CONDITIONS OF ACCESS AND USE OF MDL IX

#### Acceptance of Terms

By signing your TSA or ICA, you confirm that you have understood these terms and conditions of access and use ("**Terms**") and agree to be bound by the Terms when using the MDL IX ("**the Site**").

#### Ownership of Content

The materials displayed on the Site (including without limitation, all real time or other information, notices, data, text, materials, graphics, software, tools, results, names, logos and trade marks on the Site) ("**Content**") are protected by copyright, trade mark and other intellectual property laws unless expressly indicated otherwise on the Site. All rights, title and interest in and to the Content are owned by MDL or MDL's licensor(s). If the owner of any material published on the Site is not MDL, your rights in respect of that material will be as defined by the copyright owner of the material concerned.

#### Access to and use of Content

You may use the Site only if you have logged-in using the relevant username given to you by MDL and your password. If you have been appointed as an agent, or granted an authorisation, pursuant to section 8.4 of the Maui Pipeline Operating Code ("**Operating Code**") ("**Authorisation**"), you must log onto the Site using the username and password applicable to that Authorisation on each occasion you exercise that Authorisation. You must not use that user name and password when using the Site for purposes other than exercising the Authorisation.

You may only use the Site for your own business use and information or that of the person who has given you an Authorisation, except for any disclosure permitted under section 24 of the Operating Code. MDL grants you a non-exclusive licence to view and print the Content and make such copies as are reasonably necessary for you to obtain and retain information about your gas transportation arrangements. Any copies of the Content that you make must retain all applicable copyright and other notices on the Site. Except as provided above, you may not copy, store (either in hard copy or in an electronic retrieval system), use, modify, transmit, publish, reproduce, post, distribute, sell, license, or otherwise transfer any Content to a third party.

You must not use the Site or the Content in any manner or for any purpose, which is unlawful or in any manner which violates any right of MDL or the owner of any Content.

### **Disclaimer**

MDL and its directors, officers, agents, employees or contractors do not warrant that any of the functions contained in the Site or your access to the Site will be uninterrupted or error-free, and MDL will have no liability arising therefrom.

### **Liability**

You acknowledge that metering data, the Premium Fuel Value Fee (as defined in the Operating Code), information received from a party other than MDL, and any information derived from any of the above may not be accurate or complete. MDL will use reasonable endeavours to rectify any material error in any of the above information as soon as reasonably practicable upon being notified that such information is materially inaccurate or incomplete.

### **Linking to and from this Site**

The Site may from time to time contain links to third party web sites ("**Other Websites**"). Other Websites may not be under the control of MDL, and MDL takes no responsibility under these Terms for the content of Other Websites. The inclusion of any link on the Site does not imply any endorsement by MDL of Other Websites.

### **Cookies**

A cookie is a small text file, which MDL may put on your computer's hard disk in order to recognise your computer at a later time. A cookie cannot read your hard drive or perform any commands on your computer and does not contain your name, address, telephone number, or email address. You may configure your web browser to not accept cookies, however you may experience a loss of functionality as a result. Amongst other things, MDL may use the information collected by cookies to track Site usage patterns or display Content more relevant to you based on information we collect when you visit the Site.

### **Warranties**

In using the Site, you warrant to MDL that your use of the Site will not introduce any virus, trojan horse or computer programming code which would have the effect of disrupting, impairing, disabling or otherwise adversely affecting, shutting down or denying access to any user of the Site.

### **Violations of the Terms**

MDL reserves the right to seek all remedies available at law for violations of the Terms, including, without limitation, the right to block access from a particular internet address to the Site.

### **Governing Law**

By accessing the Site, you and MDL agree that all matters relating to your access to, or use of, the Site shall be governed by, construed and enforced in accordance with the laws of New Zealand, without regard to conflicts of law principles. Any dispute arising from or in connection with these Terms are subject to the exclusive jurisdiction of the courts of New Zealand.

## SCHEDULE 6 MAUI PIPELINE PRESSURE LIMITS

The maximum operating pressures (MAOP) applicable to different segments of the Maui Pipeline are set out in the Table below. The MAOP for each of these laterals are set out in the respective 'Pipeline Authorisations' issued by the Minister of Energy prior to construction, and are the legal operating pressure limits in each case. Additionally, the MAOP is a condition of the pipeline certificate of fitness, issued in accordance with the HSE (Pipelines) Regulations 1999, and may be restricted due to pipeline damage or degradation.

### Pipeline Segment Pressures

Segment	Diameter (mm OD)	MAOP (bar g)	Comment
Oaonui to Frankley Road	864	72.4 (49.6 effective)	Effective maximum operating pressure is limited by the pressure ratings on pipe work at the Maui Production Station, which is protected by relief valves set at 55 bar (g), and by the un-regulated connection to the New Plymouth Power Station lateral which has an MAOP of 49.6 bar (g). There is a pig launching facility at Oaonui and main pipeline block valves at Okato and at the inlet section to the Frankley Road Offtake Station, where there is also a pig receiver.
New Plymouth Power Station Lateral	508	49.6	This lateral pipeline begins at the Frankley Road Offtake Station and ends at the Port of Taranaki.
Frankley Road to Mokau Compressor	762	72.4	There is a pig launcher at the outlet of the Frankley Road Offtake Station, followed by a pipeline block valve. Downstream, pipeline block valves are located at Tikorangi, Pukearuhe and at the inlet to the Mokau compressor station, where there is also a pig receiver. There is a major un-metered offtake at Bertrand Rd for the Methanex-owned pipeline which supplies Gas to the methanol plants at Waitara Valley and Motunui.
Mokau Compressor to Huntly Offtake	762	72.4	On the discharge side of the Mokau Compressor Station there is a pig launcher and a pipeline block valve. At Mahoenui and Tihiroa there are pig receivers and launchers as well as incoming and outgoing main line block valves. Pipeline block valves are also located at Awakau, Mairoa, Te Kuiti, Tihiroa South, Pirongia, Te Kowhai, Ngaruawahia, and at the inlet to the Huntly offtake station.
Huntly Power Station Lateral	406	49.6	This lateral pipeline begins at the Huntly Off-take Station where there is a pressure control facility, a pig launcher, and a main line block valve and ends at the Huntly Power Station Delivery Point. The pressure control facility isolates and protects the Huntly lateral from the (normally) higher operating pressure in the main Maui Pipeline. At the Huntly Power Station Delivery Point there is an incoming block valve and pig receiver, followed by two filter separator units and Metering.

## SCHEDULE 7 MINIMUM TOLERANCES

### Peaking Limits

Welded Point (Large Stations only)	Peaking Tolerance (% of HSQ)	Peaking Limit (GJ)
Oaonui Meter Station	150%	0
Frankley Road	125%	3,000
Bertrand Road (Waitara Valley)	125%	1,500
Faull Road	125%	1,500
Tikorangi Mixing Station	150%	0
Tikorangi #2	150%	0
Kowhai Mixing Station	150%	0
Ngatimaru Road (Receipt)	150%	0
Ngatimaru Road (Delivery)	125%	3,500
Tikorangi #3 (Receipt)	150%	0
Tikorangi #3 (Delivery)	125%	3,500
Turangi Mixing Station	150%	0
Mokau Compressor Station	125%	500
Pokuru	125%	1,000
Pirongia	125%	500
Rotowaro	125%	6,500
Huntly Power Station	125%	3,500

### Daily and Running Operational Imbalance Limits

Welded Point (Large Stations only)	DOIL (% of SQ)	DOIL (GJ)	ROIL (% of SQ)	ROIL (GJ)
Oaonui Meter Station	3%	3,000	1%	1,000
Frankley Road	7.5%	5,000	1%	1,000
Bertrand Road (Waitara Valley)	3%	<del>1,53,000</del>	1%	1,000
Faull Road	3%	<del>1,53,000</del>	1%	1,000
Tikorangi Mixing Station	3%	3,000	1%	1,000
Tikorangi #2	3%	3,000	1%	1,000
Kowhai Mixing Station	3%	3,000	1%	1,000
Ngatimaru Road (Receipt)	3%	3,000	1%	1,000
Ngatimaru Road (Delivery)	3%	3,000	1%	1,000
Tikorangi #3 (Receipt)	3%	3,000	1%	1,000
Tikorangi #3 (Delivery)	3%	3,000	1%	1,000
Turangi Mixing Station	3%	3,000	1%	1,000
Mokau Compressor Station	10%	1,000	1%	1,000
Pokuru	10%	10,000	1%	1,000
Pirongia	3%	combined	1%	1,000
Rotowaro	6.5%		1%	1,000
Huntly Power Station	3%	3,000	1%	1,000

Note: in this table SQ is an abbreviation for Scheduled Quantity; DOIL and ROIL are abbreviations for Daily Operational Imbalance Limit and Running Operational Imbalance Limit respectively.

## SCHEDULE 8 PHYSICAL WELDED POINTS

WELDED POINT NAME	WELDED PARTY	SMALL OR LARGE STATION	METERING FOR WELDED POINT:			
			LOCATION(S)	STATION NUMBER	STATION NZ Topo50 MAP REFERENCE	METERING OWNER
Oaonui Meter Station	MMCs	Large Station	Maui Production Station	4000000	BJ28 703 383	MDL
Opunake Delivery Point	Vector Gas Limited	Small Station	Opunake Delivery Point	4000001	BJ28 705 383	Vector Gas Limited
Pungarehu Offtake	Vector Gas Limited	Small Station	Pungarehu No.1 Delivery Point	4000132	BJ28 747 504	note 1
			Pungarehu No.2 Delivery Point	4010054	BJ28 697 517	Vector Gas Limited
Okato Delivery Point	Vector Gas Limited	Small Station	Okato Delivery Point	4000231	BH28 776 594	Vector Gas Limited
Oakura Offtake	Vector Gas Limited	Small Station	Oakura Delivery Point	4130001	BH28 833 682	Vector Gas Limited
Frankley Rd	Vector Gas Limited	Large Station	Frankley Rd Offtake	4000439	BH29 911 686	Vector Gas Limited
Bertrand Road (Waitara Valley)	Methanex	Large Station	Waitara Valley No 1 Delivery Point	0300027	BH30 083 795	Methanex
			McKee Production Station	0500000	BH30 153 729	Todd
			Motunui Delivery Point	0320049	BH30 098 831	Methanex
Faull Road	Methanex	Large Station	Faull Road Mixing Station	0300021	BH30 087 793	Methanex
Tikorangi Mixing Station	Todd Taranaki Limited	Large Station	Tikorangi Mixing Station	4000668	BH30 087 793	Todd Taranaki Limited
Tikorangi #2	Todd Pohokura Limited	Large Station	Pohokura Metering Station in Motunui	5500000	BH30 106 835	Todd Pohokura Limited
Kowhai Mixing Station	Greymouth Gas New Zealand Limited	Large Station	Kowhai Meter Station	4000666	BH30 108 776	Greymouth Gas New Zealand Limited

WELDED POINT NAME	WELDED PARTY	SMALL OR LARGE STATION	METERING FOR WELDED POINT:			
			LOCATION(S)	STATION NUMBER	STATION NZ Topo50 MAP REFERENCE	METERING OWNER
Ngatimaru Road (Receipt)	Shell Exploration NZ Limited (see note 2)	Large Station	Pohokura Production Station	0320086	BH30 106 834	Shell Exploration NZ Limited (see note 3)
Ngatimaru Road (Delivery)	Shell Exploration NZ Limited (see note 2)	Large Station	Pohokura Production Station	0320086	BH30 106 834	Shell Exploration NZ Limited (see note 2)
Tikorangi #3 (Receipt)	Todd Energy Limited	Large Station	Tikorangi #3 Metering Station	7160057	BH30 134 769	Todd Energy Limited
Tikorangi #3 (Delivery)	Todd Energy Limited	Large Station	Tikorangi #3 Metering Station	7160057	BH30 134 769	Todd Energy Limited
Turangi Mixing Station	Greymouth Gas New Zealand Limited	Large Station	Turangi Production Station	7660000	BH30 142 798	Greymouth Gas New Zealand Limited
Mokau Compressor Station	MDL	Large Station	Mokau	4001143	BG31 390 066	MDL
Te Kuiti South Offtake	Vector Gas Limited	Small Station	Te Kuiti South Delivery Point	4120083	BF33 907 537	Vector Gas Limited
Te Kuiti North Offtake	Vector Gas Limited	Small Station	Te Kuiti North Delivery Point	4060016	BF33 872 567	Vector Gas Limited
Otorohanga Delivery Point	Vector Gas Limited	Small Station	Otorohanga Delivery Point	4002135	BE33 919 721	Vector Gas Limited
Pokuru Offtake	Vector Gas Limited	Large Station	Pokuru Offtake Station	4002308	BE33 938 871	Vector Gas Limited
Pirongia Offtake	Vector Gas Limited	Large Station	Pirongia Delivery Point	4220004	BE33 944 899	Vector Gas Limited
			Te Awamutu Cogeneration Delivery Point	4210102	BE33 029 915	Vector Gas Limited
			Te Awamutu North Delivery Point	4210102	BE33 029 915	Vector Gas Limited
Ngaruawahia Offtake	Vector Gas Limited	Small Station	Ngaruawahia Delivery Point	4160001	BD33 888 295	Vector Gas Limited

WELDED POINT NAME	WELDED PARTY	SMALL OR LARGE STATION	METERING FOR WELDED POINT:			
			LOCATION(S)	STATION NUMBER	STATION NZ Topo50 MAP REFERENCE	METERING OWNER
Rotowaro Offtake	Vector Gas Limited	Large Station	Rotowaro Compressor Station	4002907	BC33 825 410	Vector Gas Limited
Huntly Town Offtake Station	Vector Gas Limited	Small Station	Huntly Town Delivery Point	4200001	BC33 899 425	Vector Gas Limited
Huntly Power Station Delivery Point	Genesis	Large Station	Huntly Power Station	4030087	BC33 899 425	MDL
<i>Te Kowhai MLV (not used)</i>	<i>Vector Gas Limited</i>	<i>Large Station</i>	<i>Te Kowhai Delivery Point</i>	<i>2080001</i>	<i>BD33 905 201</i>	<i>Vector Gas Limited</i>

Note 1: There is no Metering at the Pungarehu No.1 Delivery Point. NGCT is advised of delivery quantities by its shippers at the end of each Month.

Note 2: As agent for Energy Infrastructure Limited and Petroleum Infrastructure Limited.

## **SCHEDULE 9 TP WELDED PARTY SHIPPER PRINCIPLES**

The principles referred to in section 2.14 are:

- daily balancing of Gas;
- recovery by the TP Welded Party of costs, expenses and liabilities incurred on account of shippers' Gas, and associated indemnification of the TP Welded Party;
- consequential amendments to title warranty, invoicing, payments and other provisions;
- agreement by shippers not to trade Gas other than with a shipper or other person who is a party to the requisite transmission services agreement with the TP Welded Party;
- ability to give shippers operational notices and information via the internet and to post on the internet information as to who has the requisite transmission services agreement with the TP Welded Party;
- agreement to abide by the Gas Transfer Code and as to ability to trade mismatches;
- any direct financial benefits associated with the Daily Operational Imbalance Limits or Peaking Limits and any costs incurred by the TP Welded Party associated with a take of gas in excess of either of these limits for a Welded Point with the Transmission Pipeline will be allocated by the relevant TP Welded Party in a fair, equitable and transparent manner, as determined by that TP Welded Party (acting as a Reasonable and Prudent Operator), amongst its customers who have, and in accordance with, the requisite transmission services agreement.

## SCHEDULE 10 TARIFF PRINCIPLES

MDL will set the Transmission Charges in accordance with the standard practice adopted by utilities businesses in New Zealand.

Accordingly, MDL will recover the cost and return of capital as follows. MDL will

- (a) calculate the Maui Pipeline's Optimised Deprival Value or Optimised Depreciated Replacement Cost and multiply this value by a nominal WACC, and then subtract any revaluation gains/losses on the asset ("Required Return");
- (b) calculate the return of capital based on the useful life of the asset ("Depreciation");
- (c) aggregate the Required Return and Depreciation to derive the "Required Revenue";
- (d) derive a GJ.km tariff ("Tariff 1"); and
- (e) apply Tariff 1 across the Maui Pipeline Shippers on the basis of quantity of Gigajoules of Gas transported multiplied by the distance of Gigajoules of Gas transported.

In any given year, in the event that MDL's total revenues are more or less than its required revenue then Tariff 1 may be adjusted for the following years in a manner that endeavours to reduce pricing volatility for Shippers.

The approach adopted by MDL to recover operating expenditure is to:

- (a) aggregate the Maui Pipeline's operating costs ("Operational Expenditure");
- (b) allocate Operational Expenditure across every Gigajoule of Gas delivered from the Maui Pipeline.

In any given year, in the event that MDL's total Operational Expenditure recovery is more or less than its required recovery then Tariff 2 may be adjusted for the following years in a manner that endeavours to reduce pricing volatility for Shippers.