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# Gas Transportation Agreement

## Part B – Standard Terms and Conditions

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Version Date: [insert] 2023

***[Note: This is a proforma GTA. The Service Provider(s) reserve the right to require amendments to this document and/or special conditions.]***

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# Gas Transportation Agreement

## Part B – Standard Terms and Conditions

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# Standard Terms and Conditions

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

The following definitions apply in this document unless the context requires otherwise.

**Actual Delivered Quantity** means the actual quantity of Gas, as allocated and determined by the Service Providers, made available and delivered or deemed to be delivered by the Service Providers to or on behalf of the Shipper in respect of a Path under the Service at a relevant Delivery Point for a Day.

**Actual Received Quantity** means the actual quantity of Gas, as allocated and determined by the Service Providers, made available and received or deemed to be received by the Service Providers from or on behalf of the Shipper in respect of a Path under the Service at a relevant Receipt Point for a Day.

**Adequate Assurance** has the meaning given in clause 20.3(a).

**AEMO** means the Australian Energy Market Operator Limited (ACN 072 010 327), being the corporation responsible for administering and operating the wholesale gas markets, and includes any company, person or authority from time to time undertaking those roles.

**Authorised Person** means in respect of a party, the person designated by name as an authorised person by that party in the Instrument of Agreement as amended in accordance with clause 32.4.

**Business Day** means any Day that is not a Saturday or Sunday or public holiday in Melbourne, Sydney and Brisbane.

**Capacity** means the quantity of Gas that can be stored in the Pipeline or transported in the Pipeline between specified points (as the case may be), as the Pipeline is configured between those points at the relevant time.

**Capital Cost Charge** means the charge imposed by the Service Providers to recover capital costs in respect of the Pipeline as referred to in clause 21.4.

**Carbon Charge** means any cost, loss, fee, expense, penalty, fine, royalty, tax, rate, duty, levy or charge imposed, levied or incurred whether directly or indirectly and including on an accrual basis in respect of any Greenhouse Gas emissions, or in respect of any existing or new trading mechanism or scheme, or any other existing or new mechanism, that has as one of its objectives a reduction in or modification of behaviour in respect of Greenhouse Gas emissions, including any direct or indirect cost of acquiring or failure to surrender any permit, credit or licence which is required in connection with the emission of Greenhouse Gas or any unit (however called) which relates to the amounts of emissions of Greenhouse Gas, and any direct or indirect cost of any relevant activities undertaken for the purposes of reducing or offsetting such emissions.

**Change of Control** of an entity occurs if a person who did not previously do so acquires or holds, directly or indirectly:

- (a) securities conferring 50% or more of the voting or economic interests in the entity;
- (b) the power to control the appointment or dismissal of the majority of the entity's directors; or

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- (c) the capacity to control the financial or operating policies or management of the entity.

**Charge** means any existing or new fee, impost, royalty (whether based on value, profit or otherwise), excise, levy or charge imposed by any Government Body, whatsoever it is called, and whatever the reason for imposing it, excluding a Carbon Charge.

**Claim** means, in relation to any person or corporation, a claim, action, proceeding, damage, loss, expense, cost or liability incurred by or to be made or recovered by or against the person or corporation, however arising or whether present, unascertained, immediate, future or contingent and includes, without limitation, a claim for compensation.

**Commencement Date** means the date on which the Instrument of Agreement is executed by all of the parties to it.

**Confidential Information** means the terms and conditions of this document, and all information, documents or other material provided pursuant to or acquired in accordance with this document or the negotiation of this document, including information in respect of the business and operations of a party to this document and, to the extent disclosed to the Shipper, any information in respect of the business and operations of an Other Shipper.

**Confirmed Delivery Nomination** means the amount of Gas that the Service Providers confirm, in accordance with clause 4.5 will be scheduled for delivery to a Delivery Point in respect of the Service, taking into account and, if the Service Providers consider appropriate, inclusive of the quantity of any Gas for correcting Imbalances.

**Confirmed Nomination** has the meaning given in clause 4.5(a)(ii).

**Confirmed Receipt Nomination** means the amount of Gas that the Service Providers confirm, in accordance with clause 4.5 will be scheduled for receipt at a Receipt Point in respect of the Service, taking into account and, if the Service Providers consider appropriate, inclusive of the quantity of any Gas for correcting Imbalances and System Use Gas.

**Consequential Loss** means any consequential, indirect or special Loss which does not arise naturally according to the usual course of things, but does not include any Direct Loss.

**Contractual MDQ** means, in respect of a Path under the Service, the fixed maximum quantity of Gas (in GJ), as specified in the Instrument of Agreement, that the Service Providers are obliged to reserve in respect of that Path under this document for the account of the Shipper each Day, inclusive of System Use Gas and any Gas for correcting Imbalances. The Contractual MDQ for any Day other than twenty-four (24) hours in length will be the proportion of that amount that the length of the day bears to twenty-four (24) hours.

**Control Room** means the Service Providers' central control room as at the Commencement Date, which manages and controls the flow of gas on the Pipeline, which location may be changed from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** means the consumer price index published by the Australian Bureau of Statistics in Catalogue 6401.0-Table 1, Consumer Price Index - All Groups - Weighted Average of Eight Capital Cities or if that index is suspended or discontinued, the index substituted for it by the Australian Bureau of Statistics.

**Cumulative Imbalance** has the meaning given in clause 8.2(a).



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**Curtailement** means a reduction (including to zero) in the provision of the Service in accordance with clause 19, and **Curtail** and **Curtailed** have corresponding meanings.

**Daily Nomination** has the meaning given to it in clause 4.5(a)(i).

**Daily Shipper Schedule** has the meaning given in clause 5.2(a).

**Day** means the 24 hour period starting at 06:00 hours on a day and ending at 05:59 hours on the following day.

**Deed** has the meaning given in clause 8.7(a).

**Default Notice** has the meaning given in clause 25.2.

**Delivery Point** means, in respect of the Service, a point on the Pipeline at which Gas is delivered or deemed to be delivered under this document from the Pipeline to or for the account of a Shipper.

**Direct Loss** means the actual direct and foreseeable Losses incurred by a party which arise naturally according to the usual course of things.

**Dispute** means a dispute, controversy or Claim arising out of or in relation to this document or any of the Services or other obligations to be performed under this document (including, without limitation, any dispute, controversy or Claim regarding the interpretation of any provision of this document).

**Dispute Notice** has the meaning given in clause 25.2.

**End Date** means the date specified in the Instrument of Agreement.

**Event of Default** has the meaning given in clause 25.1.

**Expert** means:

- (a) in the case of a Technical Dispute, a Technical Expert as agreed upon between the disputing parties; and
- (b) in the case of a Financial Dispute, a Financial Expert as agreed upon between the disputing parties,

or if the disputing parties fail to agree, as otherwise determined under clause 31.3(d).

**Financial Dispute** means any dispute relating only to matters involving financial calculations or payments which is capable of determination by audit or reference to applicable accounting procedures.

**Financial Expert** means an Independent person who is a chartered accountant and has at least ten years' experience in the field to which the Financial Dispute relates.

**Forward Haulage Service** means a gas transportation Service in the Pipeline in the forward direction from the Receipt Point to the Delivery Point, subject to Curtailment.

**Force Majeure Event** means:

- (a) subject to paragraph (c) of this definition, a delay or failure of a party in the performance of its obligations under documents to the extent that:
  - (i) that party's performance of its obligations under this document is prevented, impeded, curtailed or delayed by an act, event or circumstance; and

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- (ii) such act, event or circumstance is not within the reasonable control of that party and which could not be avoided or prevented by that party taking steps which might reasonably have been taken by a reasonable and prudent person;
- (b) to the extent they satisfy the requirements set out in paragraph (a) of this definition, Force Majeure Events include the occurrence of the following acts, events or circumstances (either separately or together):
- (i) any acts of God, including landslides, lightning, earthquakes, cyclones, fires, storms, floods and washouts;
  - (ii) strikes, boycotts, lockouts or other industrial disturbances;
  - (iii) acts of war (declared and undeclared), blockades, insurrections, riots or other civil disturbances;
  - (iv) restraints of government (either federal, state, civil or military);
  - (v) refusal or delay in obtaining any necessary consents, approvals, permits, licences, authorisations, declarations, filings or registrations with any Government Body;
  - (vi) explosions;
  - (vii) in the case where the Service Providers are the affected parties, shutdowns or interruptions on the Pipeline due to breakdowns of or damage or accident to plant, equipment, machinery or facilities including the Measuring Equipment or lines of pipe necessary for the operation of the Pipeline;
  - (viii) act of vandalism;
  - (ix) nuclear accidents;
  - (x) shortages of equipment labour or essential materials;
  - (xi) reasonable failure to secure contractors or delays of contractors;
  - (xii) law, orders, rules, regulations or acts of any court or Government Body; and
  - (xiii) in the case where the Service Providers are the affected parties, shutdowns or interruptions required to conform to design or regulatory limits in pipeline facilities, including environmental limits or restrictions; and
- (c) the occurrence of the following acts, events or circumstances will not constitute a Force Majeure Event:
- (i) loss of customers, loss of market share or reduction in demand for gas;
  - (ii) changes in market structure, operations or conditions for the transportation, purchase or sale of gas;
  - (iii) any breach of contract by, or an event of force majeure affecting a person contracting with, the affected party (**Third Party Contractor**), except that a breach of contract by, or an event of force majeure affecting a Third Party Contractor will be a Force Majeure Event if:

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- (A) the affected party has taken all necessary, reasonable and practical action as a matter of urgency to obtain performance of the Third Party Contractor's relevant obligation, whether by the Third Party Contractor or another person; and
  - (B) such breach of contract by, or event of force majeure affecting the Third Party Contractor prevents, impedes, curtails or delays the affected party's performance of its obligations under this document;
- (iv) the failure or inability of Shipper or a person supplying or providing gas at or upstream of the Receipt Point to obtain a supply of gas or to provide gas at a Receipt Point for transportation under this document;
  - (v) the inability of Shipper or a person taking or consuming the gas at or downstream of the Delivery Point to take or consume gas; or
  - (vi) lack of or inability to borrow funds or the inability to use funds.

**Gas** means a substance that, is mostly methane, is in a natural gaseous state at standard temperature and pressure, consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, is suitable for utilisation, and transmission through pipelines, and meets the Gas Specifications.

**Gas Laws** means, as appropriate for the State in which the Pipeline is situated:

- (a) if in Victoria, then:
  - (i) the *National Gas (Victoria) Act 2008* (Vic) (**Victorian Gas Act**), including the National Gas Law set out in the schedule to the *National Gas (South Australia) Act 2008* (SA) as in force under the Victorian Gas Act;
  - (ii) the National Gas Rules 2008;
  - (iii) regulations made under Part 3 of the South Australian Gas Act as in force under the Victorian Gas Act; and
  - (iv) regulations made under the Victorian Gas Act; and
- (a) if in Queensland, then:
  - (i) the National Gas (Queensland) Act 2008 (Qld) (**Queensland Gas Act**), including the National Gas Law set out in the schedule to the National Gas (South Australia) Act 2008 (SA) as in force under the Queensland Gas Act;
  - (ii) the National Gas Rules 2008;
  - (iii) regulations made under Part 3 of the South Australian Gas Act as in force under the Queensland Gas Act; and
  - (iv) regulations made under the Queensland Gas Act,

as amended from time to time and any other applicable Laws in existence at the date of this document, to the extent that any of the foregoing relates to the operation or maintenance of, or access to, or the transportation of natural gas on the Pipeline.

**Gas Specifications** has the meaning given in clause 12.1(a), as may be varied in accordance with clause 12.1(b).

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**Gas Transportation Agreement** means any gas transportation agreement (including any OTSA) entered into between the Service Providers and the Shipper or any other shipper.

**GJ** means gigajoule.

**Government Body** means any government, governmental or semi-governmental or judicial entity, ministry, inspectorate, official, public or statutory person or other statutory, administrative, supervisory or regulatory entity, federal, state or local.

**Greenhouse Gas** means a greenhouse gas as defined by the *National Greenhouse and Energy Reporting Act 2007* (Cth), as in force from time to time.

**Guarantor** has the meaning given in clause 20.3(a).

**Imbalance** has the meaning given in clause 8.1(a).

**Imbalance Charge** has the meaning given in clause 8.6(a).

**Imbalance Settlement Charge** means the charge set out in clause 8.8(c).

**Independent** means:

- (a) in respect of a natural person, a person who has not at any time in the previous six years been an employee or director of any party or any of their respective Related Bodies Corporate and who does (and, in the previous two years, did) not:
  - (i) directly hold any significant financial interest in; or
  - (ii) have any agreement or arrangement with significant financial value with, any party or any of their respective Related Bodies Corporate; and
- (b) in respect of any other entity (including a partnership), an entity whose senior personnel directly engaged in the relevant role for purposes of this document are persons of the type described in paragraph (a).

**Initial Start Date** means, in respect of the Service, the date of the first agreement between the Service Providers and the Shipper for the provision of that Service specified in the Instrument of Agreement.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent or otherwise becoming incapable of managing its own affairs for any reason, the taking of any step that could result in the person becoming 'insolvent under administration' (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors (other than to carry out a reconstruction or amalgamation while solvent), or any analogous event.

**Instrument of Agreement** means the Part A Instrument of Agreement referring to this Part B (Standard Terms and Conditions), which is to be read together with this Part B (Standard Terms and Conditions).

**Law** means any legally binding law, legislation, statute, act, rule, order or regulation which is enacted, issued or promulgated by the State in which the Pipeline is situated, the Commonwealth of Australia or any relevant local authority.

**Letter of Credit Collateral** has the meaning given in clause 20.3(a)(iv).

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**Line Pack** means the quantity of Gas in the Pipeline, which is necessary for the physical operation of the Pipeline, excluding System Use Gas.

**Line Pack Cost** means, in respect of the State in which the Pipeline is situated, the beginning of day spot price as published by AEMO or its successor expressed in Australian dollars per GJ, applicable on the Day Gas is purchased by or on behalf of the Service Providers.

**Loss** means any liability, cost, expense, loss or damage (including any cost or expense incurred in connection with a Claim).

**MAOP** means the maximum allowable operating pressure of the Pipeline as determined by the Service Providers in accordance with good engineering and operating practice.

**Maximum Pressure** means the maximum pressure specified in the Instrument of Agreement.

**Measuring Equipment** means all equipment used to measure any combination of the physical quantity and quality of Gas entering the Pipeline at the Receipt Point or exiting the Pipeline at the Delivery Point and all ancillary equipment required to compute derived variables and to produce reports at the Receipt Point or Delivery Point and to test and maintain the reliability and calibration accuracy of that equipment (including any measurement facilities or equipment that are or could be used for proving, testing and calibration of the equipment).

**Measurement Manual** is the document of that name as published on the Service Providers' website from time to time which includes the information specified in 15.5(b), or such other procedures as determined by the Service Providers for use from time to time.

**MHQ** means the Operational MDQ divided by 24.

**Minimum Pressure** means the minimum pressure specified in the Instrument of Agreement.

**Month** means a calendar month starting at 06:30 hours on the first Day of the month and ending at 06:29 hours on the first Day of the following month.

**Monthly Nomination** has the meaning given in clause 4.3(a).

**Multi-Shipper Agreement** has the meaning given in clause 8.7(a).

**National Gas Law** means the schedule to the National Gas (South Australia) Act 2008 (SA) as in force in the State in which the Pipeline is situated.

**National Gas Rules** has the meaning given to it in the National Gas Law.

**Nomination** has the meaning given in clause 4.2(a).

**Notice of Change to Procedure** has the meaning given in clause 4.8(a).

**Notice of Receipt of Monthly Nomination** has the meaning given in clause 4.3(c).

**OFO Shortfall Amount** has the meaning given in clause 8.8(c).

**Operational Flow Order** has the meaning given in clause 9(a).

**Operational MDQ** means, in respect of a Path under the Service, for each Day the Contractual MDQ. The Operational MDQ for any Day other than twenty-four (24) hours in length will be the proportion of that amount that the length of the day bears to twenty-four (24) hours.

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**Operations Manual** has the meaning given in clause 3.6(a).

**Other Shipper** means any person that is a party to a Gas Transportation Agreement, other than the Shipper or the Service Providers.

**OTSA** means any operational transportation services agreement entered into between the Service Providers and the Shipper.

**Out-of-Specification Gas** means gas which does not comply with the Gas Specifications.

**Out-of-Specification Notice** means the notice set out in clause 12.3(b).

**Overrun Gas** has the meaning given in clause 7.1.

**Overrun Charge** is calculated in accordance with clauses 7.2.

**Path** means the sections of the Pipeline between a single Receipt Point and a single Delivery Point through which Gas transported or stored for the Shipper under this document actually or nominally passes.

**Period of Supply** has the meaning given in clause 2.2.

**Pipeline** means the Pipeline specified in the Instrument of Agreement.

**Power Station** means the Power Station specified in the Instrument of Agreement.

**Prospective Shipper** means a person who seeks to enter into or whom the Service Providers consider is reasonably likely to enter into a Gas Transportation Agreement, or amend an existing Gas Transportation Agreement with the Service Providers.

**Receipt Point** means, in respect of the Service, the Receipt Point specified in the Instrument of Agreement, at which the Service Providers receive Gas onto the Pipeline on account of the Shipper.

**Rectification Period** has the meaning given in clause 25.3(a) or 25.3(b).

**Reference Tariff** means the then current tariff for the relevant Service, which is published on the Service Providers' website from time to time or, if no such tariff is published, the equivalent tariff payable under this document.

**Related Body Corporate** has the meaning given in the Corporations Act, and where it applies to the Service Providers, includes any Related Body Corporate of any Service Provider.

**Review Date** means each calendar anniversary of the Start Date.

**Service** means a type of service listed in clause 3.1.

**Service Charges** means all of the charges payable by the Shipper under this document (including as specified in the Instrument of Agreement).

**Service Provider(s)** means the parties listed as such in the Instrument of Agreement.

**Shipper** means the party listed as such in the Instrument of Agreement.

**Specification** means, as appropriate for the State in which the Pipeline is situated:

- (a) if in Victoria, then the standard gas quality specifications referred to in Part 19 of the National Gas Rules; and

- 
- (b) if in Queensland, then the specification for 'processed natural gas' set out in the *Petroleum and Gas (Production and Safety) Act 2004 (Qld)* and any additional parameters lawfully required by the APA Group for delivery of gas from the Pipeline into the Roma to Brisbane Pipeline.

**Standardisation Cost Charge** means the charge (if any) imposed by the Service Providers to recover standardisation costs pursuant to rule 634 of the National Gas Rules, as set out and calculated in accordance with the schedule published on the Service Providers' website from time to time and as referred to in clause 21.3.

**Start Date** means the date set out in the Instrument of Agreement.

**Suspension Period** has the meaning given in clause 18.1(b).

**System Use Gas** means the quantity of Gas used in the provision of Services on the Pipeline, including:

- (a) gas fuel used for compressors and other equipment;
- (b) Gas otherwise lost or not accounted for in connection with the operation of the Pipeline; and
- (c) Gas recorded as lost or gained due to metering error,

but does not include:

- (d) Line Pack; or
- (e) Gas lost through the Service Providers' negligence or wilful misconduct.

**Tax** means an existing or new tax, levy, duty, tariff or surcharge, however imposed or levied from time to time and by whatever name, but does not include tax payable on either party's income or a Carbon Charge.

**Technical Dispute** means a dispute involving only issues of a technical nature which is capable of determination by reference to engineering or scientific knowledge or practice.

**Technical Expert** means an Independent person who has at least ten years' experience in the field to which the Technical Dispute relates.

**Term** means the period referred to in clause 2.1.

**Week** means a period of seven (7) consecutive Days commencing at 06:00 hours on a Saturday.

**Weekly Nomination** has the meaning given in clause 4.4(a).

**Year** means each consecutive period of 12 Months during the Term starting on the Initial Start Date.

## 1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- 
- (a) A reference to:
    - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
    - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
    - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
    - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
    - (v) anything (including a right, obligation or concept) includes each part of it.
  - (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word is defined, another part of speech has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (g) A reference to this document includes the agreement recorded by this document and the Instrument of Agreement, and includes any schedules or annexures.
  - (h) The words subsidiary and holding company have the same meanings as in the Corporations Act.
  - (i) A reference to "dollars" or "\$" is to an amount in Australian currency.
  - (j) Any reference in this document to a particular time, is to Australian eastern standard time.
  - (k) Unless specified otherwise, reference to a quantity of gas is a reference to that quantity of gas measured in GJ.

### **1.3 Business Days**

If the Day on or by which a person must do something is expressed in this document to be calculated in Business Days and falls on a Day which is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

### **1.4 Multiple Parties**

- (a) If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:



- 
- (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held by each of them severally; and
  - (iii) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.
- (b) If the Service Providers comprise only one person, all references to the defined term of Service Providers in this document shall be construed accordingly. A reference to the Service Provider shall also be construed accordingly.
- (c) If the Shipper comprises two or more people, all references to the defined term of Shipper in this document shall be construed accordingly.

## **1.5 Standards**

Terminology used to describe units will, unless otherwise stated, be in accordance with Australian Standard AS ISO 1000 - 1998 "The International System of Units (SI) and its Application", the *National Measurement Act 1960* (Cth) and the regulations under that Act, Australian/New Zealand Standard AS/NZS 1376:1996 "Conversion Factors" and the Australian Gas Association publication "Metric Units and Conversion Factors for Use in the Australian Gas Industry".

## **1.6 Inconsistency**

In respect of the Service, if there is any ambiguity, inconsistency, or conflict between the provisions of the main body of this document and the provisions in an Instrument of Agreement, then the provisions of the Instrument of Agreement will prevail to the extent of the ambiguity, inconsistency or conflict (as the case may be).

## **2. COMMENCEMENT AND TERM**

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### **2.1 Term**

This document will commence on the Commencement Date and end on the End Date unless terminated earlier in accordance with the provisions in this document.

### **2.2 Period of Supply**

The provision of Services by the Service Providers will commence at 06:30 hours on the Start Date and end at 06:29 hours on the day following the End Date (**Period of Supply**).

## **3. SERVICE**

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### **3.1 Types of gas transportation service**

The only Service provided under this document is Forward Haulage Service and all references to the defined term Service in this document shall be construed accordingly.

### **3.2 Provision of Service**

Subject to the provisions of this clause 3, the Service Providers will provide the Forward Haulage Service to the Shipper and the Shipper agrees to receive the Service from the Service Providers.

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### 3.3 Service subject to receipt of Gas

The Service Providers' obligation to provide the Service at each Delivery Point is subject to receipt at each Receipt Point of a quantity of Gas from the Shipper equal to the quantity of Gas required to be delivered at the Delivery Point plus any additional quantity of Gas required to correct Imbalances or for System Use Gas.

### 3.4 Shipper's obligation to deliver and receive Gas

During the Period of Supply and subject to clause 4.1, the Shipper will on each Day in respect of the Service:

- (a) supply at the Receipt Point a quantity of Gas nominated by the Shipper for that Day up to the Shipper's Confirmed Receipt Nomination for each Day including any gas for correcting Imbalances and System Use Gas required to be supplied by the Shipper on that Day in accordance with this document; and
- (b) accept and take delivery of all Gas up to the Shipper's Confirmed Delivery Nomination for each Day delivered by the Service Providers to the Shipper at the Delivery Point on that Day in accordance with this document.

### 3.5 Suspension of Service

- (a) If the Service Providers suspend (wholly or partially) provision of the Service to the Shipper in accordance with this document, they must give notice to the Shipper.
- (b) Unless otherwise provided in this document, the Shipper's obligations to pay the Service Charges under this document continue, and are not suspended for the duration of the suspended Service (whether wholly or partially suspended).

### 3.6 Operations Manual

- (a) The Service Providers may, from time to time, develop, maintain and publish or notify the Shipper of, a Pipeline operations manual consistent with the terms and conditions of this document, setting out the administrative procedures and forms necessary or convenient for the conduct of the parties (**Operations Manual**).
- (b) In the event of any inconsistencies between the Operations Manual and this document, this document will prevail.

## 4. NOMINATIONS

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### 4.1 Suspension of nomination and scheduling provisions

- (a) Subject to clause 4.1(b):
  - (i) the Shipper is not obliged to provide any nominations or forecasts to the Service Providers under clause 4;
  - (ii) the Service Providers are not obliged to provide any confirmations, schedule the receipt or delivery of Gas or otherwise comply with clause 4 (other than this clause 4.1) or clause 5;
  - (iii) the Shipper may utilise the Service on a no-notice basis:
    - (A) each day up to the Operational MDQ; and
    - (B) each hour up to the MHQ,

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by injecting Gas at the Receipt Point and taking an equivalent quantity of Gas at the Delivery Point (within such Operational MDQ and MHQ), subject to Curtailment or interruption in accordance with this agreement; and

- (iv) the balance of this document shall be read and construed accordingly.
- (b) Clause 4.1(a) applies unless and until the Service Providers give notice to the Shipper that it shall cease to apply, in which case the parties will be required to comply with the nomination, forecasting and scheduling provisions of this document from such date as reasonably specified in such notice. The Service Providers may subsequently disable and/or re-enable such provisions on reasonable notice to the Shipper from time to time.

#### **4.2 Nominations, confirmations and notices**

- (a) Nominations are the Shipper's notifications to the Service Providers of the quantities of Gas the Shipper requests to be delivered at each Delivery Point and received at each Receipt Point, on the Shipper's account in respect of the Service on each Day under this document (**Nominations**). Nominations can cover a period of one month, one week or one Day or.
- (b) A Nomination under this clause 4 and all other communications relating to Nominations must be submitted to the Service Providers in the form and in the way reasonably determined by the Service Providers and notified to the Shipper from time to time.

#### **4.3 Monthly Nominations**

- (a) No later than 10 Days before the start of each Month, the Shipper must provide to the Service Providers a notice setting out, for each Day in the following Month, the quantity of Gas that the Shipper requires the Service Providers:
  - (i) to deliver to the Shipper at the Delivery Point; and
  - (ii) to receive at each Receipt Point,**(Monthly Nomination)**.
- (b) Where the Shipper is not the supplier of the Gas, the Shipper must supply similar information to its supplier.
- (c) The Service Providers will provide to the Shipper a notice, confirming receipt of the Shipper's Monthly Nomination (**Notice of Receipt of Monthly Nomination**) before the end of the relevant Month. The Notice of Receipt of Monthly Nomination must set out whether, in the Service Providers' opinion there will be enough Capacity available to meet the Nomination.

#### **4.4 Weekly Nominations**

- (a) No later than 12:00 hours on each Friday, the Shipper must, in respect of the Service, provide to the Service Providers a Nomination setting out, for each Day in the Week commencing at 06:00 hours on the next Saturday the quantity of Gas that the Shipper requires the Service Providers:
  - (i) to deliver to the Shipper at each Delivery Point; and
  - (ii) to receive at each Receipt Point,**(Weekly Nomination)**.

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- (b) During the Week the Shipper must revise the Weekly Nomination, if required, to ensure the Weekly Nomination always represents a good faith forecast by the Shipper as to its expected receipts and deliveries of Gas on each of the next 3 Days during that Week, or the remaining Days in that Week, as the case requires.
  - (c) The Service Providers are not required to respond to the Shipper's Weekly Nomination or any revision to the Weekly Nomination.

#### 4.5 Daily Nominations

- (a) The procedure set out in this clause 4.5(a) applies in respect of Daily Nominations:
  - (i) No later than 15:00 hours on the Day before the Service Providers are to provide the Service to the Shipper, the Shipper may, by notice to the Service Providers, request a change to the Shipper's relevant Weekly Nomination (**Daily Nomination**). If the Shipper does not request a change in respect of any Day covered by the Weekly Nomination or does not revise its Weekly Nomination in accordance with clause 4.4(b) by 15:00 hours on the Day before that Day, the Shippers' Daily Nomination for that Day will be deemed to be as set out in the last revised Weekly Nomination for that Day.
  - (ii) The Service Providers must, by 16:30 hours or as soon as possible thereafter on the Day before the Day on which the Service Providers are required to provide the Service to the Shipper, provide a notice to the Shipper containing the Shipper's:
    - (A) Confirmed Receipt Nomination; and
    - (B) Confirmed Delivery Nomination,for the Service (together, a **Confirmed Nomination**). Any estimate provided in the Confirmed Nomination is not binding upon the Service Providers unless that estimate is confirmed pursuant to clause 4.5(a)(iii).
  - (iii) If there is a Curtailment as a result of renominations under any Gas Transportation Agreements that are accepted by the Service Providers and this results in a change to the Shipper's Confirmed Nomination, the Service Providers must, by 22:00 hours or as soon as possible thereafter on the Day before the Day on which the Service Providers are required to provide the Service to the Shipper, provide a revised Confirmed Nomination to the Shipper containing the Shipper's:
    - (A) revised Confirmed Receipt Nomination; and
    - (B) revised Confirmed Delivery Nomination,for the Service (together, a **Revised Confirmed Nomination**). If the Service Providers do not provide a Revised Confirmed Nomination by 22:00 hours or as soon as possible thereafter to the Shipper, the estimates set out in the Confirmed Nomination will become binding as the Confirmed Delivery Nomination and Confirmed Receipt Nominations.
  - (iv) The Service Providers are not under any obligation to accept any Daily Nomination submitted after 15:00 hours on the Day before the Service Providers are required to provide that Service to the Shipper.
  - (v) In making a decision regarding whether to accept a Daily Nomination, the Service Providers, acting reasonably, will consider (without limitation):

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- (A) operational matters;
  - (B) the provisions of this document, including any Instrument of Agreement; and
  - (C) whether sufficient capacity is available,

and the Service Providers' decision regarding a Daily Nomination is final.

- (vi) Unless otherwise set out in the Confirmed Nomination or unless the Confirmed Nomination as it relates to the Service is amended by the Revised Confirmed Nomination, the Confirmed Nomination is final with respect to the Service and has immediate effect upon receipt by the Shipper.
- (vii) The Revised Confirmed Nomination is final with respect to the Service and has immediate effect upon receipt by the Shipper.

#### **4.6 Nomination changes are not retrospective**

Changes to Nominations cannot be made retrospectively, that is, after the Service Providers have provided the Service to the Shipper. Nominations and changes to Nominations may only be made for the Service that has not been delivered by the Service Providers.

#### **4.7 Compatible Nominations**

The Shipper must ensure that all Nominations the Shipper provides to the Service Providers are compatible with similar forecasts provided under service agreements with operators of facilities upstream of the Receipt Points.

#### **4.8 Changes to Nominations procedure**

- (a) Subject to clause 4.8(b), the Service Providers may by notice in writing to the Shipper change the procedures set out in this clause 4 (**Notice of Change to Procedure**).
- (b) The Service Providers may provide a Notice of Change to Procedure to the Shipper if:
  - (i) the changes proposed in the Notice of Change to Procedure do not have a materially detrimental effect on the Shipper; or
  - (ii) without limiting clause 30, the changes are necessary in order for the Service Providers to comply with any Gas Laws.
- (c) The changes detailed in any Notice of Change to Procedure will take effect on the date specified in the Notice of Change to Procedure, such date not to be less than seven (7) Days from the date the Notice of Change to Procedure is given.

### **5. SCHEDULING**

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#### **5.1 Notices**

Notices, consents or other communications under this clause 5 and all other communications relating to notices, consents or other communications must be submitted to the Service Providers in the form and in the way reasonably determined by the Service

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Providers and notified to the Shipper at least six weeks prior to the Commencement Date, or such other form or way as may be notified by the Service Providers from time to time.

## **5.2 Service Providers' obligations**

- (a) The Service Providers will, at the time the Confirmed Nominations are issued to the Shipper, determine the flow rates (in GJ/Day) required to flow from each Receipt Point to each Delivery Point to meet the Shipper's Confirmed Nominations (**Daily Shipper Schedule**).
- (b) All quantities of Gas scheduled are to be received and/or delivered at an hourly rate not exceeding the MHQ.

## **5.3 Changes to scheduling**

- (a) The Service Providers may by notice to the Shipper change the scheduling procedure set out in this clause 5 if:
  - (i) any such changes are not to the material detriment of the Shipper; or
  - (ii) without limiting clause 30, the changes are necessary in order for the Service Providers to comply with any Gas Laws.
- (b) Any such changes take effect on the date specified in the notice given to the Shipper by the Service Providers under this clause 5.3, such date not to be less than seven (7) Days from the date such notice is given.

## **6. MAXIMUM DAILY QUANTITY**

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### **6.1 Receipts and deliveries**

In respect of a Path, the Service Providers are not obliged on any Day to:

- (a) receive at the Receipt Point (inclusive of any Gas for correcting Imbalances and System Use Gas); or
- (b) deliver at the Delivery Point,

a quantity of Gas that is greater than the Operational MDQ for that Path.

## **7. OVERRUN**

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### **7.1 Overrun Gas**

An overrun occurs when the Actual Delivered Quantity or Actual Received Quantity is in excess of the lesser of the Operational MDQ for that Path and the quantity specified in an Operational Flow Order for that Path (if any) (**Overrun Gas**).

### **7.2 Charges for Overrun**

The Service Providers will charge the Shipper an Overrun Charge per GJ for Overrun Gas delivered or received calculated as follows: 300% of the Forward Haulage Service Charge. This charge will apply unless otherwise agreed by the Services Providers prior to the Overrun Gas being transported.

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## 8. IMBALANCE

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### 8.1 Calculation of Imbalance for each Path under the Service

- (a) An Imbalance (which is calculated in respect of each Path under the Service) is calculated as follows:

$$Imbalance = ARQ - (ADQ + SUG)$$

where:

**ARQ** is the aggregate of the Actual Received Quantity for a Path under the Service;

**ADQ** is the aggregate of the Actual Delivered Quantity for that Path under the Service; and

**SUG** is the Shipper's System Use Gas allocation (as calculated under clause 16.2) for quantities of Gas transported on the Shipper's account under this document for the Service,

and an Imbalance may be a positive or a negative amount.

- (b) The Service Providers will calculate Imbalances daily for each Path under the Service.

### 8.2 Cumulative Imbalance

- (a) The Service Providers will monitor and record a running total of the Shipper's daily Imbalances, at the end of each Day, for each Path under the Service (**Cumulative Imbalance**).
- (b) A positive Cumulative Imbalance will occur in respect of a Path under the Service if during the relevant period the quantity of Gas delivered at the Delivery Point is less than the quantity of Gas received at the Receipt Point (net of System Use Gas) for that Path under that Service.
- (c) A negative Cumulative Imbalance will occur in respect of a Path under the Service if, during the relevant period, the quantity of Gas delivered at Delivery Points is more than the quantity of Gas received at the Receipt Point (net of System Use Gas) for that Path under that Service.

### 8.3 Shipper's Obligation to balance

- (a) The Shipper must control and, if necessary adjust receipts and deliveries of Gas to ensure that its Cumulative Imbalance for each Path under the Service under this document is minimised.
- (b) The Shipper must correct a Cumulative Imbalance within three (3) Days unless the Service Providers agree in writing to allow the Shipper a longer period for correction of that Cumulative Imbalance.
- (c) The Service Providers may offer an ancillary service to adjust scheduled flows in order to manage Imbalances or potential Imbalances on the Shipper's behalf.

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#### 8.4 Service Providers' rights to correct Shipper's Imbalance

The Service Providers may correct the Shipper's Cumulative Imbalance at a Receipt Point or Delivery Point (or both) by adjusting the Shipper's Nominations if, in the Service Providers' reasonable opinion:

- (a) the Shipper's Cumulative Imbalance is affecting the Service Providers' ability to perform their obligations to Other Shippers;
- (b) the Shipper's Cumulative Imbalance is affecting the Service Providers' ability to offer Services to Prospective Shippers; or
- (c) the Shipper is not taking reasonable steps to control its Cumulative Imbalance including by not correcting the Cumulative Imbalance within the timeframe set out in clause 8.3.

#### 8.5 Elimination of Cumulative Imbalances at the End of Period of Supply

- (a) Within seven (7) Days of the end of the Period of Supply in respect of the Service, any Cumulative Imbalance the Shipper may have in respect of that Service must be eliminated by the Shipper.
- (b) This clause 8 survives the end of this document and the Service Providers reserve the right at all times to apply the provisions of clauses 8.6 and 8.8.

#### 8.6 Charges for Imbalances

- (a) The charges for Imbalances for the Service on any Day are calculated in accordance with clauses (**Imbalance Charge**).
- (b) In respect of the Service (being Forward Haulage Service), the Imbalance Charge will be the greater of:
  - (i) if at the end of any Day the Shipper's Cumulative Imbalance (whether a positive or a negative, but expressed as an absolute value) has for that Day and the immediately preceding three (3) consecutive Days exceeded 10% of the sum of the Operational MDQs for each Path under that Service, the Shipper is required to pay to the Service Providers an Imbalance Charge calculated as 40% of the Reference Tariff for the Forward Haulage Service, applied for each GJ by which the Cumulative Imbalance is greater than 10% of the sum of the Operational MDQs for each Path under the Service for each Day until the Cumulative Imbalance is reduced to within 10% of the sum of the Operational MDQs for each Path under that Service; and
  - (ii) if at the end of any Day the Shipper's Cumulative Imbalance (whether a positive or a negative, but expressed as an absolute value) exceeds 15% of the sum of the Operational MDQs for each Path under that Service, the Shipper will pay to the Service Providers an Imbalance Charge calculated as 40% of the Reference Tariff for the Forward Haulage Service applied for each Day for each GJ by which the Cumulative Imbalance is greater than 15% of the sum of the Operational MDQs for each Path under that Service.

#### 8.7 Sharing arrangements and allocation

- (a) Where the Shipper shares a Receipt Point or a Delivery Point with Other Shippers, the Shipper must enter into formal arrangements, on terms acceptable to the



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Service Providers, with the Service Providers, the Other Shippers and the operators of interconnecting facilities in relation to:

- (i) Nominations and allocation of quantities of Gas delivered or received; and
- (ii) the communication of those allocations, for each Shipper at that shared Receipt Point or Delivery Point,

**(Multi-Shipper Agreement)** and the Service Providers costs of negotiating and entering into a Multi-Shipper Agreement will be shared equally between the Shipper and the Other Shippers who are originally parties to the Multi-Shipper Agreement. If an Other Shipper becomes party to that Multi-Shipper Agreement by way of deed of accession or other similar document (**Deed**) the Service Providers' costs of negotiating and entering into that Deed will be borne by that Other Shipper.

- (b) The quantities so allocated as being received or delivered on the Shipper's behalf under clause 8.7(a) will be applied for the purposes of determining relevant Charges or amounts, under this document.
- (c) If the Shipper has not entered into a Multi-Shipper Agreement with respect to any shared Receipt Point or Delivery Point, until such time as the Shipper enters into a Multi-Shipper Agreement with respect to that Receipt Point or Delivery Point, the Service Providers will determine the allocation of quantities of Gas delivered or received for each Path under the Service on each Day for the account of the Shipper and Other Shippers (including for the purposes of determining the matters set out in clause 8.7(b)) taking into account:
  - (i) the service purchased by each shipper; and
  - (ii) each shipper's confirmed nomination(s) at that Receipt Point or Delivery Point,

and the Shipper is deemed to have received or delivered (as the case may be) that allocation of Gas so determined by the Service Providers for that Day.

## **8.8 Settlement**

- (a) Notwithstanding clauses 8.3, 8.4 and 8.5 and without limiting the Service Provider's other rights under this document, the Service Providers may issue an Operational Flow Order that requires the Shipper to:
  - (i) cease or reduce deliveries or receipts of Gas under this document; or
  - (ii) receive or deliver quantities of Gas,to adjust the Shipper's Cumulative Imbalance.
- (b) The Shipper will incur an Overrun Charge in accordance with clause 7.2 for any quantities of Gas received into the Pipeline to the Shipper's account in excess of the limits imposed by the Service Providers under an Operational Flow Order.
- (c) If the quantity of Gas received by the Service Providers to the Shipper's account is less than the requirements imposed by the Service Providers under an Operational Flow Order (the difference between the quantity specified in the Operational Flow Order and the quantity received being the **OFO Shortfall Amount**), the Shipper will be charged an amount equal to 150% of the Line Pack Cost multiplied by the OFO Shortfall Amount (**Imbalance Settlement Charge**).

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## 9. OPERATIONAL FLOW ORDERS

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- (a) The Service Providers may issue an order to the Shipper to alter Gas receipts and deliveries (**Operational Flow Order**):
  - (i) when, in the Service Providers' reasonable opinion, expected receipts and deliveries:
    - (A) will cause adverse operating conditions in the Pipeline;
    - (B) will be at variance with Capacity limitations resulting from a Force Majeure Event or other events and circumstances that endanger the safety or integrity of the Pipeline, including the need to perform unscheduled maintenance or repairs;
    - (C) will prevent the Service Providers from meeting their commitments under their Gas Transportation Agreements with Other Shippers; or
    - (D) will adversely affect imbalances under their Gas Transportation Agreements with Other Shippers; or
  - (ii) in accordance with clause 8.8(a).
- (b) Each Operational Flow Order will contain:
  - (i) the time and date of issue of the Operational Flow Order;
  - (ii) the time that the Operational Flow Order is to become effective;
  - (iii) the duration of the Operational Flow Order (if not specified, the Operational Flow Order will remain in effect until further notice);
  - (iv) a description of the section of the Pipeline for which the Operational Flow Order is in effect;
  - (v) the specific actions required of the Shipper at the Receipt Points and Delivery Points in order to comply with the Operational Flow Order;
  - (vi) the reasons for issuing the Operational Flow Order; and
  - (vii) any other information relevant to the Operational Flow Order.
- (c) The Service Providers will use reasonable endeavours in first applying Operational Flow Orders to those shippers, if any, whose actions or omissions have resulted in the need for Operational Flow Orders.
- (d) In the event that an Operational Flow Order has been issued to the Shipper as a direct result of clearly identifiable acts or omissions of an Other Shipper, the Service Charges will be calculated on the basis of the quantities of Gas actually delivered to the Shipper on any Day, rather than on the basis of Operational MDQ.
- (e) In the event that the Service Providers have given an Operational Flow Order to the Shipper that limits the Shipper's access to a specified amended flow along a Path, the Shipper must pay the Service Providers an Overrun Charge in accordance with clause clauses 7.2.

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## 10. DAY AHEAD AUCTION EXEMPTION

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If:

- (a) the Shipper ceases to be the sole shipper on the Pipeline holding a Gas Transportation Agreement; or
- (b) a conditional exemption under rule 611 of the National Gas Rules ceases to be (or will cease to be) in effect in respect of the Pipeline,

the Service Providers may, by notice in writing to the Shipper, amend this document to include such provisions as the Service Providers consider necessary or desirable to comply with the National Gas Rules. Such provisions will take effect from the date notified and will be binding on both parties. Such provisions may be further amended by the Service Providers by written notice to the Shipper from time to time.

## 11. ASSIGNMENT RIGHTS

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Notwithstanding anything else contained in this document, the Shipper may not assign or trade any of its rights or obligations in relation to the Service.

## 12. GAS QUALITY

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### 12.1 Gas shall comply with Gas Specifications

- (a) All gas supplied by the Shipper at any Receipt Point and by the Service Providers at any Delivery Point must:
  - (i) meet the Specification; and
  - (ii) be free, by normal commercial standards, from objectionable odours and from sand, dust and other solid or liquid matters, crude oil, waxes, gums and gum forming constituents, aromatic hydrocarbons, fluorine, chlorine, glycols, methanol, trace metals including but not limited to sodium, potassium, calcium, lead, vanadium, magnesium, lithium, cadmium, bismuth, arsenic, antimony, phosphorus, boron, gallium, and indium and any other substance or thing,  
  
(together, the **Gas Specifications**).
- (b) If at any time during the Term, amendments to gas specifications for transmission pipelines are required by any Law to be applied by the Service Providers to the Pipeline or any standard, code or guideline applicable to the Pipeline, is amended, the Service Providers may amend the Gas Specifications to be consistent with any such Law, standard, code or guideline and if so, will provide written notice to the Shipper setting out the amended specification and requiring compliance with that amended specification effective from the date established in the relevant Law, standard, code or guideline.
- (c) If the Service Providers provide written notice under clause 12.1(b), the Shipper must comply with the amended Gas Specifications from the date of receipt of the notice.

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## 12.2 Measurement of Gas Specification

- (a) The Shipper must have, and the Service Providers may request evidence from time to time, of arrangements in place to prevent gas entering the Pipeline that does not meet the Gas Specifications.
- (b) The Service Providers may require the Shipper to have, at the Shipper's expense, facilities to enable the Service Providers to monitor the quality of gas entering at the Receipt Points.
- (c) The Shipper will, at its expense, ensure that the facilities referred to in 12.2(b) are maintained in accordance with the Measurement Manual.
- (d) The Service Providers must monitor the Shipper's quality of gas supplied in accordance with the Measurement Manual.

## 12.3 Notice

- (a) If any party becomes aware that, or has a reasonable belief that, any Out-of-Specification Gas is to enter or has entered the Pipeline, it must as soon as reasonably practical notify the other parties by telephone.
- (b) After notifying the respective parties by telephone, the party who has become aware that, or has a reasonable belief that, Out-of-Specification Gas is to enter or has entered the Pipeline, must as soon as reasonably practical, issue a written notice identifying:
  - (i) the way in which the Out-of-Specification Gas differs from the Gas Specifications;
  - (ii) the quantity of Out-of-Specification Gas that is to enter, or has entered the Pipeline; and
  - (iii) the expected duration of the receipt or delivery of the Out-of-Specification Gas,

**(Out-of-Specification Notice).**

## 12.4 Out-of-Specification Gas at a Receipt Point

- (a) If the Service Providers become aware that, or have a reasonable belief that, any Out-of-Specification Gas is to enter or has entered the Pipeline, the Service Providers may, but are not obliged to, take any of the following actions:
  - (i) suspend (wholly or partially) receipt of gas at that Receipt Point;
  - (ii) suspend (wholly or partially) delivery of an equivalent quantity of gas on the Shipper's account to the Delivery Points on Paths supplied from that Receipt Point under this document and any Instrument of Agreement; or
  - (iii) any combination of clauses 12.4(a)(i) and 12.4(a)(ii) above,with immediate effect or at such time as the Service Providers consider reasonable taking into account the timing of gas flow in the Pipeline, until the Service Providers are reasonably satisfied that gas supplied to any Receipt Point complies with the Gas Specifications.

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- (b) In determining whether to take action under clause 12.4(a), the Service Providers may (without limitation) take into account the following factors:
    - (i) the effect the Out-of-Specification Gas will have on Other Shippers;
    - (ii) the obligations of the Service Providers; and
    - (iii) the safety of the Pipeline.

### **12.5 Liability for Out-of-Specification Gas**

- (a) The Service Providers will not be responsible for, and the Shipper releases the Service Provider from any liability in respect of, any Loss (including Direct Loss and Consequential Loss) suffered or incurred by the Shipper arising out of the delivery or deemed delivery by the Service Providers of Out-of-Specification Gas.
- (b) If any Out-of-Specification Gas supplied by the Shipper enters the Pipeline, then the Shipper will be in breach of this document and, despite any other provision of this document and without prejudice to any other right or remedy which the Service Providers may have in respect of that breach, the Shipper indemnifies the Service Providers against all Losses (including Direct Loss and Consequential Loss) suffered or incurred by the Service Providers as a result of or in connection with the delivery of Out-of-Specification Gas, including, without limitation, any Loss incurred by the Service Providers:
  - (i) in respect of any claims made by third parties as a result of the delivery of Out-of-Specification Gas; or
  - (ii) arising out of or connected to the cleaning or rectifying of the Pipeline and related infrastructure.

## **13. GAS PRESSURE**

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### **13.1 Gas pressure at Receipt Points**

- (a) The Shipper will supply Gas at the Receipt Point at a minimum pressure specified by the Service Providers, or if not specified by the Service Providers, at a high enough pressure to allow the Gas to enter the Pipeline but not at a pressure higher than MAOP at the Receipt Point.
- (b) The Shipper must ensure that the operators of facilities upstream of the Receipt Points are capable of providing, in respect of a Day, quantities of Gas up to the applicable Operational MDQ or the Confirmed Receipt Nomination for the Service at pressures up to the MAOP of the Pipeline as advised by the Service Providers from time to time.

### **13.2 Gas pressure at the Delivery Points**

- (a) Subject to clause 13.3, the Service Providers will supply Gas at the Delivery Point at the Minimum Pressure up to the Maximum Pressure.
- (b) The Shipper will be responsible for the pressure regulation of Gas once it has been delivered to the Shipper at the Delivery Point.

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### **13.3 MAOP**

In the event that the MAOP of the Pipeline is increased (whether in accordance with revision of AS2885 or otherwise), the Service Providers will provide the Shipper with a minimum of three (3) Months' notice of its implementation of the increased MAOP.

## **14. OWNERSHIP OF GAS**

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### **14.1 Warranty of title**

The Shipper warrants that, at the time it supplies Gas to the Service Providers at the Receipt Point, the Shipper will have good title to the Gas, free and clear of all liens, encumbrances and claims of any nature inconsistent with the Service Providers' operation of the Pipeline.

### **14.2 Control, possession, responsibility and title of the Shipper**

- (a) The Shipper warrants that it is in control and constructive possession of Gas immediately prior to its supply at the Receipt Point and at all times after its delivery to the Shipper at the Delivery Point.
- (b) The Shipper will retain title to the Gas supplied by it or on its account to the Service Providers at the Receipt Point.
- (c) Subject to clause 16, the Service Providers will have no title to, or interest in, Gas received from the Shipper or on its account at the Shipper's Receipt Point.
- (d) The Service Provider is not a bailee of the Gas in the Pipeline.

### **14.3 Co-mingling of Gas**

The Service Providers will have the right to co-mingle the Gas supplied by the Shipper at the Receipt Point with other Gas in the Pipeline during transportation and is entitled to deliver different molecules to the Shipper at the Delivery Point. Nothing in this clause relieves the Shipper of the obligation to supply at the Receipt Point and the Service Providers of the obligation to supply at the Delivery Point Gas that meets the Gas Specification.

## **15. MEASUREMENT**

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### **15.1 Receipt and Delivery Point measurement**

- (a) Subject to clauses 15.2 and 15.3 and subject to satisfactory equipment being in operation at the relevant Receipt Point or Delivery Point at the Start Date, the Service Providers may supply, install, operate and maintain the Measuring Equipment at the Shipper's expense.
- (b) The Service Providers will reasonably apportion the cost of supplying, installing, operating and maintaining the Measuring Equipment between shippers that use the relevant Receipt Point or Delivery Point.
- (c) The Measuring Equipment will be owned by the Service Providers and must (unless the Service Providers determine otherwise):
  - (i) be designed and constructed in accordance with the Service Providers' requirements. Compliance with this specification will be determined by the Service Providers acting reasonably;

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- (ii) perform measurement of volumes, mass and energy to a level of accuracy acceptable to the Service Providers;
  - (iii) be verified and calibrated to procedures, and at intervals, as approved by the Service Providers; and
  - (iv) provide measurement data to the Service Providers' Control Room in a compatible format.

## **15.2 Delivery Point assumptions**

The Service Providers do not have to measure the parameters or quality of Gas at each Delivery Point, but may assume, for the purposes of this document, that the quality and heating value of the Gas delivered at one of the Shipper's Delivery Points is the same as the quality and heating value of the Gas delivered at another Delivery Point on the Pipeline, if it is reasonable to do so.

## **15.3 Alternative measuring arrangements**

If:

- (a) the Service Providers reasonably believe that the amounts of Gas to pass through a Receipt Point or Delivery Point do not justify the installation of the Measuring Equipment and that alternative measuring methods are available;
- (b) the Service Providers believe the determination of any relevant quality of the Gas does not require the installation of the Measuring Equipment; or
- (c) the Service Providers may determine alternative measuring techniques,

then the Service Providers may waive in writing some or all of the requirements in clauses 15.1 and 15.2.

## **15.4 Uniformity of flow**

The Shipper must provide or cause to be provided such pulsation dampening equipment as may be necessary upstream of any Receipt Point or downstream of any Delivery Point to ensure that any facilities do not cause interference with the accuracy of the Measuring Equipment due to non-uniform flow.

## **15.5 Measurement Manual**

- (a) The Service Providers may, from time to time, maintain an up to date version of a Measurement Manual on the Service Provider's website.
- (b) The Measurement Manual must specify:
  - (i) the technical requirements for Measuring Equipment;
  - (ii) calibration and accuracy verification procedures; and
  - (iii) re-calibration limits.
- (c) The technical requirements in the Measurement Manual must be:
  - (i) in accordance with good pipeline industry practice and conform to appropriate Australian and international standards and codes; and
  - (ii) modified where necessary to comply with Australian Standard AS 1000-1998.

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- (d) The Service Providers may amend the Measurement Manual at any time to reflect new technologies and standards consistent with the terms and conditions of this document.

#### **15.6 Calibration**

- (a) The Service Providers must give the Shipper prior notice of, and permit the Shipper to be present at, all routine cleaning, repairing, inspection, calibration or adjustment of the Measuring Equipment in accordance with the Measurement Manual.
- (b) If the Shipper reasonably believes that particular Measuring Equipment at any of the Receipt Points or Delivery Points are inaccurate, the Service Providers must act within a reasonable time upon the Shipper's written request to calibrate the Measuring Equipment.

#### **15.7 Payment for calibrations**

- (a) If the Measuring Equipment is accurate within the tolerances set out in the Measurement Manual, the responsibility for the cost of calibration under clause 15.6(b) will be held by the party that requests the calibration.
- (b) At all other times, the responsibility for the cost of calibration will be held by the Service Providers.

#### **15.8 Adjustments to invoice**

- (a) If, after calibration, Measuring Equipment is found to be in error:
  - (i) in excess of the tolerances set out in the Measurement Manual (if any); and
  - (ii) the total measurement error for a Receipt Point or Delivery Point is more than 1% of the total quantity of Gas measured at that point since the last calibration,

in the absence of a clearly identifiable event that has caused the calibration error, as determined by the Service Providers acting reasonably, the Service Providers must issue a correction to any invoices issued to the Shipper since the last calibration.
- (b) The correction will be equivalent to half the determined error applied to all quantities measured on the Shipper's account at the Receipt Point or Delivery Point, as the case may be, over the period since the Measuring Equipment was last calibrated.

### **16. SYSTEM USE GAS**

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#### **16.1 System Use Gas**

The Service Providers have title to, and control and possession of, all System Use Gas within the Pipeline during the Period of Supply.

#### **16.2 Shipper's supply obligation**

- (a) The Shipper must, at its expense, contribute System Use Gas requirements to the Pipeline. The Shipper's proportion of System Use Gas in relation to the Service is determined as the ratio of:



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- (i) its Actual Delivered Quantity under the Service for each Delivery Point; to
  - (ii) the total actual delivered quantity of Gas that is made available and delivered or deemed to be delivered by the Service Providers to or on behalf of all shippers under the Service for all delivery points on the Pipeline on the Day.
- (b) The Shipper's contribution to System Use Gas is calculated at the end of each Day and included in the calculation of its Imbalance for that Path under that Service in accordance with clause 8.1(a).

### **16.3 System Use Gas haulage charge**

There is no charge to Shippers by the Service Providers for the haulage of System Use Gas supplied in accordance with this clause 16.

## **17. LINE PACK**

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- (a) The Service Providers must acquire and maintain sufficient Line Pack for the efficient operation of the Pipeline.
- (b) The Service Providers own the Line Pack.

## **18. FORCE MAJEURE**

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### **18.1 Nature of relief**

- (a) Subject to clause 18.2, a party is excused from performance of, and is not liable for any failure in carrying out any of its obligations under this document, to the extent that it is prevented from doing so by a Force Majeure Event.
- (b) The affected obligation is suspended from the date the notice is given under clause 18.3(a)(i) until the affected party is able, making reasonable efforts, to perform the affected obligation (**Suspension Period**).

### **18.2 Exclusions from relief for Force Majeure Event**

The Shipper is not relieved of its obligation to pay the Service Charges or any other amount that becomes due and payable under this document by the occurrence of an event of a Force Majeure Event (whether the Force Majeure Event affects the Service Providers or the Shipper).

### **18.3 Notice**

- (a) If a party claims that it is prevented from performing any obligation under this document because of a Force Majeure Event, it must:
  - (i) notify the other party as soon as reasonably practicable after becoming aware of the occurrence of the Force Majeure Event; and
  - (ii) within seven (7) days of the notice referred to in clause 18.3(a)(i), provide to the other party (in writing) reasonable details regarding the nature and effects of the Force Majeure Event.
- (b) The party affected by the Force Majeure Event:

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- (i) shall keep the other party reasonably informed regarding the steps it is taking to overcome the effects of the Force Majeure Event and its current estimate as to when it will be able to resume performance of its affected obligations; and
  - (ii) must promptly give notice to the other party that it is able to resume performance of its affected obligations once the Force Majeure Event ceases.

#### **18.4 Remedy**

The party affected by the Force Majeure Event must use its best endeavours to:

- (a) remedy the consequences of the Force Majeure Event without delay; and
- (b) resume full performance of its obligations under this document as soon as reasonably practicable,

provided that the affected party will not be required to:

- (c) settle any labour disputes or industrial or public disturbance, except in such manner as it shall in its own judgement consider acceptable; or
- (d) incur any extraordinary costs or to act other than as a reasonable and prudent person for making investments, including investments in building additional pipelines or facilities.

#### **18.5 Termination for prolonged Force Majeure Event**

If the Suspension Period lasts for:

- (a) more than 12 consecutive Months; or
- (b) for an aggregate of 12 Months in any consecutive 24 Month period,

then:

- (c) either party, acting in good faith, may terminate the provision of the relevant Service in relation to any Path that is not able to be utilised as a result of the suspension; and
- (d) if that Path represents equal to or greater than 50% of the Operational MDQ for that Service, either party acting in good faith may, if the Suspension Period lasts for more than 12 consecutive Months or for an aggregate of 12 Months in any consecutive 24 Month period, terminate the provision of the whole of the relevant Service that is used to service that Path,

and if all or part of the Service is terminated under clauses 18.5(c) or 18.5(d) then the Shipper and the Service Providers must:

- (e) implement the changes to the Operational MDQs, Receipt Points and Delivery Points resulting from the termination of the provision of the relevant Service in relation to that Path;
- (f) implement the changes to the Service Charges applicable to Receipt Points and Delivery Points resulting from the termination of the provision of the relevant Service in relation to that Path; and

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- (g) unless the relevant Service has been terminated, execute a written agreement amending the Instrument of Agreement with respect to the remaining Services which reflect the changes described in clauses 18.5(e) and 18.5(f).

## **19. CURTAILMENT**

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### **19.1 Interruption of Services**

Notwithstanding any other provision of this document, the Service Providers may (in their sole and absolute discretion) Curtail (including on a permanent basis) the provision of Services without the Service Providers incurring any liability to the Shipper to the extent necessary or desirable to provide gas transportation services on the Pipeline to the Power Station, the Service Providers or any Related Body Corporate of any Service Provider (whether such gas transportation services are for the Power Station or otherwise, and whether provided pursuant to a Gas Transportation Agreement or otherwise).

### **19.2 Reasons for Curtailment**

The Service Providers may Curtail the provision of the Service to the Shipper without any liability to the Shipper:

- (a) in accordance with clause 19.1;
- (b) if a Force Majeure Event occurs that prevents the Service Providers from delivering the Operational MDQ or Confirmed Delivery Nomination, whichever is applicable, to the Delivery Points;
- (c) if the Shipper has requested the Service Providers to curtail as a result of a Force Majeure Event affecting the Shipper; or
- (d) if acting reasonably, the Service Providers believe it is necessary to do so:
  - (i) subject to clause 19.4, for maintenance, replacement, installation or repair of the Pipeline or associated facilities including, without limitation, Receipt Points and Delivery Points, interconnections, lateral pipelines and compressors whether planned or unplanned;
  - (ii) because, in their opinion, there is not enough Capacity in the Pipeline or at a Receipt Point or Delivery Point for the quantities of Gas nominated by the Shipper or scheduled by the Service Providers for the Shipper;
  - (iii) because of damage to, or an outage on, a segment of the Pipeline or associated facility used to provide the service to the Shipper; or
  - (iv) if it is required in the reasonable opinion of the Service Providers to meet their obligations to provide a service with a higher priority under another Gas Transportation Agreement.

### **19.3 Priority of Service for Curtailment**

- (a) Except where clause 19.1 applies, the Service Providers will Curtail the Services on a reasonable basis relative to all other shippers having the same level of service.
- (b) Notwithstanding clause 19.3(a), to the extent that the Service Providers are party to a Gas Transportation Agreement with a third party shipper in respect of the Pipeline on different terms to this document, the Service Providers may, in their sole discretion, determine priority of service in respect of the services to be

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provided under that Gas Transportation Agreement as compared to this document, including which shipper takes precedence (or whether the shippers are dealt with on an equal basis) in the event of Curtailment.

#### **19.4 Notice of planned alterations, maintenance and repairs**

The Service Providers must give the Shipper as much notice as is reasonably possible of any planned alterations, maintenance and repairs that will affect Capacity.

#### **19.5 Service Charges during Curtailment**

Service Charges are not affected by Curtailment except that in respect of Curtailment in accordance with clauses 19.2(a) or 19.2(d), the Forward Haulage Service Charge will be calculated on the basis of the quantities of Gas actually delivered in respect of the Service on any Day, rather than on the basis of the Shipper's Contractual MDQ.

### **20. CREDIT REQUIREMENTS**

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#### **20.1 Refusal of supply**

The Service Providers will not be required to supply the Service to the Shipper, and may suspend (completely or partially) provision of the Service to the Shipper without liability to the Shipper if:

- (a) an Insolvency Event occurs in respect of the Shipper; or
- (b) after the Service Providers' request, the Shipper fails within:
  - (i) 7 days of the Service Providers' request to establish or confirm the Shipper's creditworthiness in accordance with clause 20.2; or
  - (ii) 7 days of the Service Providers' request to provide Adequate Assurance in accordance with clause 20.3,

but the Shipper's obligation to pay money under this document is in no way thereby reduced.

#### **20.2 Creditworthiness**

- (a) At any time during the Term, the Service Providers may request in writing, and if so requested the Shipper must provide:
  - (i) its most recent audited financial statements (or if the Service Providers so requests, the Shipper will also provide its most recent unaudited financial statements);
  - (ii) evidence of either or both of debt ratings and corporate credit ratings; and
  - (iii) other information that the Service Providers request to establish or confirm the Shipper's creditworthiness.
- (b) All information the Shipper provides for credit evaluation purposes will be used by the Service Providers solely for this purpose and subject to clause 28.3, will be held in confidence.
- (c) The Service Providers will establish credit limits based on the level of requested Service and the Shipper's creditworthiness as established by the Service Providers' analysis of the Shipper's financial strength, taking into consideration (but in no way limited to) analysis of three (3) years of the Shipper's audited financial

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statements demonstrating adequate financial strength to justify the amount of the credit the Service Providers is to extend to the Shipper.

- (d) If in the opinion of the Service Provider the Shipper fails to establish or confirm the Shipper's creditworthiness for the Term within 7 days of the Service Providers' request, the Service Providers may require security in a form specified in clauses 20.3(a)(i), (ii), (iii), (iv) or (v), and the Shipper will promptly provide such security.

### 20.3 Adequate Assurance

- (a) If, in the Service Providers' opinion, one or more events have occurred that have caused or will cause a material adverse change in the Shipper's financial standing or creditworthiness (or, if the Shipper's net financial obligations under this document have been fully guaranteed or otherwise secured, one or more events have occurred that in the Service Providers' opinion have caused or will cause a material adverse change in the financial standing or creditworthiness of the guarantor or other party providing such security (each a **Guarantor**)) in a matter and to an extent that materially and adversely affects the Shipper's ability to perform its financial or other obligations under this document, the Service Providers may request in writing that the Shipper provide the Service Providers with one of the following (at the Service Providers' option):
- (i) an irrevocable and unconditional bank guarantee;
    - (A) in a form approved by the Service Providers;
    - (B) issued by a financial institution approved by the Service Providers;
    - (C) with a term expiring on a date determined by the Service Providers in their sole discretion; and
    - (D) having a face value equivalent to the Shipper's net financial obligations under this document;
  - (ii) cash in an amount equivalent to the Shipper's net financial obligations under this document;
  - (iii) an irrevocable guarantee of the Shipper's financial performance under this document issued by an entity acceptable to the Service Providers and in a form and substance satisfactory to the Service Providers;
  - (iv) a satisfactory irrevocable letter of credit in an amount equivalent to the Shipper's net financial obligations under this document, which letter of credit must be issued by a financial institution with a long term senior unsecured debt rating of at least A- by Standard & Poors, A3 by Moody's or B from Fitch ICBA (each a **Letter of Credit Collateral**); or
  - (v) other arrangements satisfactory to the Service Providers;
- (each, an **Adequate Assurance**).
- (b) If the Shipper does not provide the Service Providers with Adequate Assurance within 7 Days of the Service Providers' request, the Service Providers may suspend the performance of any and all of their obligations under this document until the Shipper has provided the requested Adequate Assurance.
- (c) The Service Providers may hold the Adequate Assurance for as long as it has a good faith belief that the Shipper's ability to perform its financial or other obligations under this document is materially impaired.

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## 21. CHARGES

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### 21.1 Service Charges

The Shipper must pay the Service Charges, calculated and escalated in accordance with this document and the Instrument of Agreement in the manner and at the times set out in this document.

### 21.2 Forward Haulage Service Charge

- (a) The Shipper must pay the Forward Haulage Service Charge specified in the Instrument of Agreement for each GJ of Contractual MDQ (as specified in the Instrument of Agreement) for each Day during the Term.
- (b) The Forward Haulage Service Charge is calculated based on Contractual MDQ (as specified in the Instrument of Agreement), reflecting the reservation of the corresponding capacity on the Pipeline, regardless of whether the Shipper uses the Contractual MDQ or not.
- (c) The Service Providers will invoice the Forward Haulage Service Charge alongside other charges in accordance with clause 22.

### 21.3 Standardisation Cost Charge

- (a) The Shipper must pay the Standardisation Cost Charge for each Gas Transportation Agreement held by the Shipper which will be calculated in accordance with the schedule published by the Service Providers on their website pursuant to Rule 634(4).
- (b) The Shipper acknowledges that the Standardisation Cost Charges are calculated on an annual basis based on costs the Service Providers have incurred and estimates of costs that will be incurred in the relevant year. The Service Providers will be entitled to complete a true-up at the end of each year which will affect the calculation of the Standardisation Cost Charges for the following year.
- (c) The Service Providers will invoice the Standardisation Cost Charges alongside other charges in accordance with clause 22.

### 21.4 Capital Cost Charge

- (a) If, following the date of this document, the Service Providers incur capital expenditure in respect of the Pipeline (including maintenance capital expenditure and capital expenditure associated with preserving or prolonging the life of the Pipeline) such capital expenditure shall constitute **Recoverable Capex**.
- (b) The Service Providers shall be entitled to pass through a reasonable proportion of the Recoverable Capex to the Shipper in accordance with this clause 21.4. The Service Providers shall notify the Shipper of the **Capital Cost Charge** to be paid by the Shipper in respect of the Recoverable Capex and when it shall be payable (which may be in a lump sum or spread across the remaining Term).
- (c) The Service Providers may adjust the Capital Cost Charge (including on a retrospective basis) to account for any difference between actual and anticipated Recoverable Capex.
- (d) The Service Providers will invoice the Capital Cost Charge alongside other charges in accordance with clause 22.

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## 21.5 Escalation

Each Service Charge which is expressed in dollar terms (rather than as a percentage of another Service Charge or amount) shall be escalated for CPI annually on each Review Date by multiplying it by a factor of  $\frac{CPI_b}{CPI_a}$ , where:

- (a)  $CPI_a$  is the CPI current at the last Review Date (and, in respect of the first Review Date,  $CPI_a$  is the CPI current as at the Start Date); and
- (b)  $CPI_b$  is the CPI current at the relevant Review Date,

provided that, if such factor is less than 1, then there will be no CPI escalation of the Service Charge in respect of the relevant Review Date.

## 22. INVOICING AND PAYMENT

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### 22.1 Monthly invoicing

On or before the fifth Day of each Month of the Term, the Service Providers must provide to the Shipper an invoice or invoices showing a detailed breakdown of the Service Charges for the previous Month.

### 22.2 Invoice error

- (a) If the Service Providers become aware of a potential invoicing error relevant to an invoice after sending it to the Shipper, the Service Providers will investigate the relevant information and, if necessary, adjust the invoice.
- (b) If the Shipper has paid the original invoice, the Service Providers will:
  - (i) provide an adjustment for the value of the incorrect invoice and reissue the invoice; or
  - (ii) provide an adjustment for the value of the incorrect invoice by adjusting the amounts payable by the Shipper in the next invoice.

### 22.3 Payment by Shipper

- (a) The Shipper must pay each invoice by electronic funds transfer to a bank account nominated by the Service Providers in the Instrument of Agreement relating to the Service or as otherwise notified to the Shipper from time to time, such payment to be made on or before the 20<sup>th</sup> Day of the following Month in respect to which the invoice is issued, or 15 Days after the Shipper receives the invoice, whichever is later.
- (b) The Shipper must pay the whole amount as stated on the invoice, without any set-off, deduction or withholding.
- (c) A payment is made when the Service Providers receive it, not when the Shipper sends it.
- (d) Unless otherwise agreed between the parties, all payments will be in Australian Dollars.
- (e) If a cheque or similar instrument the Shipper uses to pay is dishonoured, the payment will be taken to have never been made.

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- (f) A payment due on a day that is not a Business Day is to be made on the Business Day immediately preceding the due date.
  - (g) Subject to clause 22.4(a)(ii), a payment made pursuant to this clause 22 will not be a waiver of any right to dispute that payment.

#### **22.4 Shipper's Dispute**

- (a) If the Shipper disputes part or all of an invoice:
  - (i) the Shipper must pay the amount shown on each invoice as the amount it owes, even if the Shipper disagrees with it. The Shipper may only withhold payment of an amount in the case of manifest error and must pay the remaining balance; and
  - (ii) the Shipper must notify the Service Providers in writing within 12 Months after receipt of the invoice, specifying the amount in dispute and the reasons for the dispute.
- (b) Upon receipt of a notice under clause 22.4(a)(ii), the Service Providers must investigate the invoice as soon as possible and if applicable make an adjustment on a subsequent invoice (including any interest paid in accordance with clause 22.5), or where there is no subsequent invoice, issue a cheque to the Shipper of the adjustment amount.
- (c) Clauses 22.4(a) and 22.4(b) survive the end of this document.
- (d) Either party may refer the Dispute for determination in accordance with clause 31.

#### **22.5 Default interest**

- (a) If the Shipper fails, without lawful excuse, to pay any amount that is due under the terms of this document to the Service Providers, then the Shipper will pay interest on the overdue amount, calculated at a rate of 2% above the Australian Dollar 30 Bank Bill rate quoted by the Westpac Banking Corporation or other Australian bank nominated by the Service Providers, calculated on daily balances and capitalised Monthly.
- (b) The date for the commencement of calculation of interest is the date that the original amount became due and payable, even if there is a court judgment against the Shipper for what the Shipper owes under the document.

#### **22.6 Suspension of Service**

The Service Providers may suspend the provision of Service (wholly or partially) to the Shipper if, subject to the Shipper's rights under clause 22.4, the Shipper does not pay the invoice within 30 Days after the payment is due, until the Shipper pays the amount shown on the invoice.

### **23. TAXES, CHARGES AND CARBON CHARGES**

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#### **23.1 Taxes, Charges and Carbon Charges**

- (a) If during the term of this document a Tax or Charge is imposed or levied on the Service Providers (including any Tax or Charge imposed or levied after the date of this document), the Shipper must pay to the Service Providers, as an additional charge, the amount of the Tax or Charge which has a connection to the Services.



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- (b) If during the term of this document, or in connection with Services provided during the term of this document, a Carbon Charge is incurred or will be incurred by the Service Providers or any Related Body Corporate of the Service Providers, the Shipper must pay, as an additional charge, the amount of the Carbon Charge which is fairly attributable to the Services provided under this document.
  - (c) Any payment required to be made by the Shipper under clause 23.1(a) or (b) may be included in monthly invoices issued by the Service Providers or included as lump sum or lump sums in an invoice or a number of invoices issued by the Service Providers. If the Service Providers cannot finally determine the amount of the payment for the period covered by an invoice or invoices then the Service Providers must make a reasonable estimate of the amount of the payment required to be made under clause 23.1(a) or (b) and that estimate shall be used for the purposes of the invoice or invoices. When the Service Providers have finally determined the payment required to be made under clause 23.1(a) or (b) for that period then the amount of over or under payment will be credited or debited (as applicable) in the next invoice or invoices. If the invoice for the last month in the term of this document has been issued, then the Service Providers must issue an additional invoice setting out any payment to be made by the Shipper, or that is owing to the Shipper, pursuant to this clause 23.1.
  - (d) The Service Providers will promptly advise the Shipper each time any:
    - (i) payment is required to be made under clause 23.1(a) or 23.1(b);
    - (ii) estimate is made under clause 23.1(c); or
    - (iii) final determination is made and corresponding credit or debit required to be made under clause 23.1(c),

and will provide the Shipper with sufficient written evidence of the matters giving rise to the requirement for a payment to be made under clause 23.1(a) or clause 23.1(b) (whichever is applicable) to enable the Shipper to verify the amount of the payment or payments and to consider any estimate made pursuant to clause 23.1(c).

## 23.2 GST

- (a) In this clause 23.2:
  - (i) except where the context requires otherwise, words or expressions used in this clause 23.2 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning given to them in the GST Act;
  - (ii) a reference to a GST liability or input tax credit entitlement of a party includes a GST liability or input tax credit entitlement of the representative member of any GST group of which that party is a member; and
  - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 23.2.
- (b) Any consideration payable or to be provided for a supply made under or in connection with this document, unless specifically described in this document as 'GST inclusive', does not include any amount on account of GST.
- (c) If GST is payable on any supply made under or in connection with this document (not being a supply the consideration for which is specifically described in this

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document as 'GST inclusive'), the recipient of the supply must pay to the supplier, an additional amount equal to the GST payable on the supply provided that the supplier gives the recipient a tax invoice for the supply.

- (d) If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that party is a member of (as the case may be), is entitled for that loss, cost or expense.
- (e) If an adjustment event occurs in relation to a taxable supply made under or in connection with this document then:
  - (i) if the adjustment event gives rise to an increase in the GST payable by the supplier in relation to the supply, a payment equal to that increase will be made by the recipient to the supplier;
  - (ii) if the adjustment event gives rise to a decrease in the GST payable by the supplier in relation to the supply, a payment equal to that decrease will be made by the supplier to the recipient;
  - (iii) the supplier must issue an adjustment note to the recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event; and
  - (iv) any payment under clauses 23.2(e)(i) or 23.2(e)(ii) must be paid to the supplier or recipient (as the case may be) within 15 days of the adjustment note being issued by the supplier.
- (f) If a payment is calculated by reference to or as a specified percentage of another amount or value, that payment shall be calculated by reference to or as a specified percentage of the amount or value exclusive of GST.

### **23.3 Survival**

This clause 23 survives the end of this document.

## **24. REPRESENTATIONS AND WARRANTIES**

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### **24.1 Shipper's representations and warranties**

The Shipper makes the following representations and warranties for the benefit of the Service Providers on the Commencement Date and on the date any Instrument of Agreement is incorporated into this document through the execution of a written agreement between the parties:

- (a) the Shipper has full corporate power and authority to enter into and perform this document, including the Instrument of Agreement;
- (b) the Shipper will have at all times all licences and permits required by law regarding dealing with Gas transported by the Pipeline;
- (c) the Shipper has made or, prior to the Initial Start Date applicable to a Path under this document will have made, all necessary or required arrangements for the pressure regulation, temperature regulation and measurement (for the purposes of allocation of quantities between Shippers at shared Receipt Points and Delivery Points) of Gas transported on the Shipper's behalf;

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- (d) the Shipper will ensure that the person who delivers the Gas on its account at its Receipt Points will at all times have the right or obligation to deliver it;
  - (e) the Shipper will ensure that the person to whom the Gas is delivered on its account under this document at each of its Delivery Points will at all times have the right to receive it;
  - (f) the Shipper will ensure that the Gas received onto the Pipeline at its Receipt Points will meet the Gas Specifications; and
  - (g) the Shipper will ensure that the necessary upstream and downstream Gas supply arrangements will at all times be in place so that its scheduled quantities and nominated quantities of Gas can be received and delivered by the Service Providers.

Each of these representations and warranties are separate and do not affect the interpretation of another representation or warranty.

#### **24.2 Service Providers' representations and warranties**

- (a) The Service Providers each make the following representations and warranties for the benefit of the Shipper on the Commencement Date and on the date any Instrument of Agreement is incorporated into this document through the execution of a written agreement between the parties:
  - (i) it has full corporate power and authority to enter into and perform this document and the Instrument of Agreement;
  - (ii) it will have at all times all the licences and permits required by law to operate the Pipeline; and
  - (iii) it will operate the Pipeline with due skill and care referable to good Australian engineering and operating standard.
- (b) Each of these representations or warranties are separate and do not affect the interpretation of another representation or warranty.
- (c) The Service Providers do not warrant the level of odorant downstream of the Delivery Point Measuring Equipment.

#### **24.3 Service Providers' right to suspend Service**

If the Shipper breaches any of the representations and warranties made under clause 24.1, the Service Provider may suspend (completely or partially) provision of the Service to the Shipper until the Service Provider is reasonably satisfied that the representations and warranties are no longer breached.

#### **24.4 Notice of suspension**

If the Service Providers suspend (wholly or partially) provision of the Service to the Shipper, they must give notice as per clause 32:

- (a) to the Shipper; and
- (b) if any of them know who the Shipper's supplier of Gas is, to the supplier.

#### **24.5 Payment obligations continue**

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Except as otherwise provided in clause 19.5, the Shipper's obligations to pay the Service Charges under this document continue, and are not suspended, if the Service Providers suspend (wholly or partially) provision of the Service to the Shipper.

## **25. TERMINATION**

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### **25.1 Event of Default**

For the purposes of this clause 25, each of the following is an **Event of Default**:

- (a) if an Insolvency Event occurs in respect of a party;
- (b) if a party fails to pay any sum due and payable under this document, including without limitation an invoice amount under clause 22 of this document, within 20 Days of the due date for payment;
- (c) if the Shipper takes delivery of Gas at a Delivery Point that it is not entitled to take under this document;
- (d) if a party defaults in performance of a material obligation and, where that default is capable of being remedied, does not remedy the default within 14 Days from the date the other party gives notice of that default; or
- (e) if the Shipper transfers or assigns all or a material part of its assets, or assigns its rights or obligations under this document, or undergoes a Change of Control, in breach of clause 34.

### **25.2 Default Notice**

If an Event of Default occurs, the non-defaulting party may give the defaulting party a notice in writing specifying that the Event of Default has occurred (**Default Notice**).

### **25.3 Rectification Period**

- (a) Subject to clause 25.3(b), if the Event of Default is a default referred to in clause 25.1(b), (d) or (e), upon receipt of the Default Notice, the defaulting party will have 7 Days to rectify the Event of Default (**Rectification Period**).
- (b) If the Event of Default is a default in performance of a material obligation that is not capable of being remedied, the defaulting party will have 7 Days to mitigate the effects of the default to the reasonable satisfaction of the non-defaulting party (also a **Rectification Period**).
- (c) If the Event of Default is a default referred to in clause 25.1(c) or an Insolvency Event, no Rectification Period applies.

### **25.4 Rights of Service Providers**

Upon the expiry of the Rectification Period or after the issue of Default Notice if no Rectification Period applies, if the Event of Default by the Shipper still exists, the Service Providers may, at their discretion, take any one or more of the following actions:

- (a) suspend or terminate the Service to the Shipper and, if the Service Providers wish to do so, provide access to a third party to that amount of the capacity in the Pipeline contracted to the Shipper under this document, until the Event or Events of Default have been either removed, rectified or remedied (as appropriate); and/or
- (b) terminate this document.

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## **25.5 Rights of Shipper**

Upon the expiry of the Rectification Period or after the issue of Default Notice if no Rectification Period applies, if the Event of Default by the Service Providers still exists, the Shipper may at its discretion, terminate this document.

## **25.6 Service Providers' additional rights to terminate this document**

The Service Providers may terminate this document:

- (a) for convenience, on 12 Months' notice;
- (b) where the Service Providers wish to decommission the Pipeline;
- (c) where the Power Station (or any material part of it) is proposed to be closed;
- (d) where the Service Providers Curtail or interrupt the provision of Services on a permanent basis in accordance with clause 19.1; or
- (e) where the Shipper breaches Schedule 1.

## **25.7 Obligation to decommission**

- (a) If this document ends or is terminated (and is not replaced with an equivalent agreement for the transportation of Gas), the Shipper must at its expense remove and decommission the connection point to the Pipeline in accordance with the reasonable requirements of the Service Providers and otherwise in accordance with good engineering and operating practice and all laws and requirements of authorities and make good the connection point site to the satisfaction of the Service Providers acting reasonably.
- (b) If the Shipper fails to decommission in accordance with clause 25.7(a), the Service Providers may do so at the Shipper's risk and charge all costs associated with doing so to the Shipper who must pay those costs upon demand.

## **25.8 Obligations that survive termination**

- (a) Termination of this document does not affect:
  - (i) the Shipper's obligation to pay Service Charges for the Service provided before termination;
  - (ii) the Service Providers' entitlement to claim damages for loss of bargain (including charges);
  - (iii) the Shipper's obligations under clause 25.7; and
  - (iv) obligations that this document says survive the end of this document.
- (b) The Shipper's obligation to pay the Service Charges for Service is a fundamental and essential term of this document and payment of Service Charges on time is of the essence of this document.

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## **26. LIABILITY AND INDEMNITY**

### **26.1 Liability of Service Providers**

To the extent permitted by Law, the Service Providers' liability to the Shipper in connection with this document, the operation of the Pipeline or the provision of Services to the

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Shipper, whether under common law, tort, equity statute or otherwise, is limited to any Direct Loss suffered or incurred by the Shipper as a direct result of the Service Providers' breach of this document.

## **26.2 Shipper's indemnities**

- (a) The Shipper indemnifies the Service Providers and keeps them indemnified, against all Loss suffered or incurred by the Service Providers (no matter to whom) arising wholly or partly from or in connection with:
  - (i) the Service Providers' operation of the Pipeline for the purposes of this document or the provision of Services to the Shipper or any breach of contract, including breach of this document by the Shipper, including any Loss resulting from or associated with (but not limited to):
    - (A) the delivery to a Receipt Point of Gas that does not meet the Gas Specifications;
    - (B) the Shipper's failure to cease the delivery or taking of Gas as required under this document;
    - (C) the Shipper's failure to comply with an Operational Flow Order;
    - (D) any Overrun Gas;
    - (E) any damage to, or interference by the Shipper or on the Shipper's behalf to, or with any of the Service Providers' assets (including Measuring Equipment or any connections installed at the Delivery Point); and
    - (F) loss of bargain following termination by the Service Providers for a breach by the Shipper;including without limitation liability of the Service Providers to Other Shippers or to those Other Shippers' and the Shipper's employees, agents and contractors;
  - (ii) tort, including negligence, or breach of a statutory duty by the Shipper; or
  - (iii) breach of an equitable duty, including breach of confidentiality or breach a fiduciary duty by the Shipper.
- (b) If a liability under clause 26.2(a) arose partly because of the Service Providers' breach of this document, the amount of the indemnity under clause 26.2(a) is to be reduced by the amount that fairly reflects the Service Providers' responsibility for the Loss concerned. It may be reduced to zero.

## **26.3 Exclusion of liability**

Without limiting clause 26.1, the Service Providers are not liable for:

- (a) any loss of profits, loss of revenue, loss of anticipated savings, loss of production, loss of use, loss of reputation, loss of contract, loss of opportunity, business interruption or any consequential, incidental, indirect, special or punitive damages; and
- (b) any liability of that party to any third party, or any claim, demand, action or proceeding brought against that party by any third party, and any costs or expenses in connection with the claim, demand, action or proceeding,

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in connection with any breach of this document, operation of the Pipeline or provision of Service to the Shipper however caused (including but not limited to, by the negligence of the Service Providers).

**26.4 Service Provider liability cap**

Notwithstanding any other provision of this document, the Service Providers' liability to the Shipper in connection with this document, the operation of the Pipeline or the provision of Services to the Shipper in any Year shall not exceed the sum equivalent to the lesser of the Forward Haulage Service Charges under this document for that Year (or pro rata for any Year that is less than 12 Months) or \$1 million.

**26.5 Costs and other expenses covered**

The indemnities given under clause 26.2 extend to costs and other expenses (including legal expenses) reasonably incurred in connection with a liability or a Claim.

**26.6 Exclusion of liability and indemnity do not terminate**

This clause 26 survives the end of this document.

**26.7 Application to Shipper Related Bodies Corporate**

The liability and indemnity provisions in this document (including in respect of clause 12 and this clause 26) shall apply to all Related Bodies Corporate of the Shipper (as they apply to the Shipper) and accordingly the Shipper must procure that no Related Body Corporate of the Shipper brings a Claim against the Service Providers or any Related Bodies Corporate of the Service Providers which is inconsistent with such provisions.

**27. AMENDMENT**

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- (a) Subject to clauses 27(b) and 27(c), this document may only be amended with the written agreement, signed by an Authorised Person, of the parties.
- (b) The Service Providers may make the following changes without the consent of the Shipper:
  - (i) change the nominations and scheduling procedures;
  - (ii) change the Operations Manual (if any);
  - (iii) change the Gas Specifications;
  - (iv) change the Measurement Manual (if any); or
  - (v) as otherwise provided for in this document.
- (c) The Service Providers may amend by written notice other provisions applicable to the Service under this document without the consent of the Shipper. The Shipper agrees to comply with the provisions so amended and notified. To the extent that those amendments materially prejudice the Shipper, the exclusive remedy of the Shipper is to terminate this document (without the Service Providers incurring any liability).

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## **28. CONFIDENTIALITY**

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### **28.1 Confidential Information**

Subject to clauses 28.2, 28.3 and 28.5, none of the parties will disclose or permit the disclosure of the Confidential Information without the prior written consent of the other parties.

### **28.2 Exceptions to confidentiality**

Any party may disclose Confidential Information which:

- (a) at the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the party, is publicly known;
- (b) at the time when it is disclosed, is already known to the party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 28.1;
- (c) after the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the party, comes into the public domain otherwise, than as a result of any breach of the confidentiality undertaking owed pursuant to clause 28.1; or
- (d) is required to be disclosed by any applicable laws, judicial processes, Government Body or the rules or regulations of any recognised stock exchange, to the extent so required, and the disclosing party will promptly notify the other party of that requirement.

### **28.3 Permitted disclosure**

Any party may disclose Confidential Information to:

- (a) its directors and employees;
- (b) its consultants, lawyers, auditors, professional advisors, insurers or potential insurers, potential equity investors, bona fide potential purchasers of the Pipeline (in the case of the Service Providers), financial institution or rating agency to the extent required in relation to the financing of a party's business activities, bankers and financial advisers;
- (c) a Related Body Corporate (or any of its officers, employees, consultants, financiers, auditors, bankers or financial advisers, lawyers, professional advisors, insurers or potential insurers) of a party;
- (d) a shareholder of the Service Provider or its Related Bodies Corporate (or any of its officers, employees, consultants, financiers, auditors, bankers or financial advisers, lawyers professional advisors, insurers or potential insurers); or
- (e) any potential assignee of the rights and interests of a party under this document or a third party to the extent required for the purposes of any proposed sale of its share capital or any proposed sale of the share capital of an entity which holds a direct or indirect interest in it or any relevant part of its business undertaking (including, in the case of the Service Providers, any sale of the Pipeline),

to the extent those persons have a need to know the Confidential Information, provided that the disclosing party is responsible for ensuring those persons keep the Confidential Information confidential and that those persons comply with the confidentiality obligations of the disclosing party set out in this clause 28.



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**28.4 Survival of clause**

This clause 28 survives the end of this document.

**28.5 Operational issues**

The Service Providers may disclose the Shipper's Nomination for a Receipt Point for a Day to any relevant gas producers.

**29. PUBLICITY**

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**29.1 No public statements**

Without the prior written consent of the other party and except as permitted by clause 28 above, a party must not make any public statement or announcement regarding this document.

**29.2 Survival**

This clause 29 survives the end of this document.

**30. CHANGE IN GAS LAW**

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- (a) If at any time during the Term a change in Law occurs that increases the amounts the Service Providers' are required to pay directly or indirectly in respect of the transportation of gas and the Shipper is not required to reimburse that amount to the Service Providers under any other provisions of this document (including without limitation clause 21.4 or clause 23.1) then the Shipper must pay the Service Providers an amount equal to the amount of the increase to the extent that it is referable to gas transported by the Service Providers under this document.
- (b) If the Service Providers cannot, within 60 Days, determine the effect of a change in the Gas Law for the period covered by an invoice then the Service Providers must make a reasonable estimate of the amount of the payment required to be made under clause 30(a) and that estimate will be used for the purposes of the invoice. When the Service Providers have determined the effect of a change in the Gas Law for that period then the amount of over or under payment will be credited or debited (as applicable) in the next invoice. If the final invoice has been issued, then the Service Providers must issue an additional invoice setting out any payment to be made by the Shipper, or that is owing to the Shipper, pursuant to this clause.
- (c) The Service Providers will promptly advise the Shipper of any:
  - (i) payment required to be made under clause 30(a);
  - (ii) estimate made under clause 30(b); or
  - (iii) final determination made and corresponding credit or debit required to be made under clause 30(b),

and will provide the Shipper with sufficient written evidence of the matters giving rise to the requirement for a payment to be made to enable the Shipper, acting reasonably, to verify the amount of the payment and to consider any estimate made pursuant to clause 30(b).

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- (d) In addition, the Shipper and the Service Providers must negotiate in good faith and use best endeavours to reach agreement on any amendments necessary to ensure that:
    - (i) this document complies with the Gas Law as changed; and
    - (ii) the Service Providers are in no worse position than they would have been in had such change not occurred.
  - (e) Where the parties cannot reach agreement on any amendments necessary to ensure compliance with this clause, the matter will be referred for resolution to an arbitrator under clause 31.

## **31. DISPUTE RESOLUTION**

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### **31.1 Disputes**

All Disputes must be dealt with in accordance with this clause 31.

### **31.2 Reference to negotiation**

- (a) A dispute must be dealt with in accordance with this clause 31.2 unless:
  - (i) it is a Technical Dispute or a Financial Dispute, which will be dealt with in accordance with clause 31.3; or
  - (ii) it is any other dispute and the dispute parties agree that it will be dealt with in accordance with clause 31.3.
- (b) If a dispute arises in connection with this document, the party claiming the Dispute must give a notice to the other party setting out particulars of the Dispute (**Dispute Notice**) and seek to convene a meeting of the representatives of the parties to seek to resolve the Dispute within 10 Business Days of providing the Dispute Notice.
- (c) If the Dispute is not resolved at the meeting convened under clause 31.2(b), or if no meeting is convened, the parties must, within 20 Business Days of service of the Dispute Notice, convene a meeting between their respective senior management who, if possible, were not directly involved in the events giving rise to the Dispute and attempt to resolve the Dispute.
- (d) If the Dispute is not resolved at the meeting convened under clause 31.2(c) or is not resolved by any means within 30 Business Days of service of the original Dispute Notice, or such further time as the parties agree, either party to the Dispute may initiate legal proceedings to finally resolve the Dispute.

### **31.3 Expert Determination**

- (a) If a Dispute is of a type specified in clause 31.2(a), within 20 Business Days after service of a Dispute Notice, senior representatives of the parties with authority to resolve the Dispute must meet in good faith to try to resolve the Dispute.
- (b) If, within 45 days of service of a Dispute Notice:
  - (i) the meetings under clause 31.3(a) have not taken place; or
  - (ii) the Dispute to which the Dispute Notice refers has not been resolved,

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then either party may propose to the other party that an Expert be appointed to determine the dispute, in which case clauses 31.3(c) to 31.3(n) will apply.

(c) If, within 14 days of a party proposing the appointment of an Expert under clause 31.3(b), the parties cannot agree whether a dispute is:

(i) a Technical Dispute; or

(ii) a Financial Dispute,

a final and binding decision in relation to that issue must be made by a King's Counsel or Senior Counsel admitted to practice in Australia, nominated by the Resolution Institute. The King's Counsel or Senior Counsel who is nominated may ask the parties to produce short submissions on the issue in order to assist him or her in reaching a decision.

(d) If the parties cannot agree on the identity of the relevant Expert within 14 days of (as applicable):

(i) the proposal to appoint an Expert to determine the Dispute;

(ii) a decision being made in accordance with clause 31.3(c); or

(iii) the parties being notified that the previously appointed Expert is unable or unwilling to complete,

the Expert must be nominated by the Resolution Institute (at the request of a party).

(e) The parties must request that the Expert determine the referred Dispute within 30 days of appointment unless 30 days is unreasonable in the circumstances, in which case the parties will, acting reasonably, agree and request a longer period for determination. If the parties cannot agree on the period for determination of the Dispute then that period will be determined by the Expert. In any case, the Expert will endeavour to provide his written decision and reasons within 90 days of appointment.

(f) If the Expert has been appointed, but is unable or unwilling to determine the reference, another Expert must be appointed.

(g) The Expert must act as an Expert and not as an arbitrator.

(h) The parties will have the right to make representations and submissions to the Expert in such manner as the Expert may determine. There will be no formal hearing unless the Expert decides that this is necessary.

(i) The Expert will have power to request any party to provide the Expert with such statements or documents or information within their control as the Expert may determine and the parties must comply with any such request.

(j) The Expert must give the Expert's decision in writing and with reasons to the parties, which decision:

(i) must promptly be given effect by the parties; and

(ii) will be final and binding (save in the case of fraud or manifest error) on the parties.

(k) If the Expert decides that a sum is due and payable by one party to another party then:

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- (i) any such sum will be due and payable within 14 days of receipt by the parties of written notice of such decision, unless the Expert decides otherwise; and
  - (ii) interest will accrue in accordance with clause 22.5 in respect of late payment.
- (l) The fees of the Expert and any other costs of and incidental to the Expert determination will be payable by such party as the Expert may determine but, in the absence of any such determination, by the parties in equal shares.
  - (m) By submitting a Dispute to Expert determination in accordance with this clause 31.3, the parties undertake to carry out any decision of the Expert without delay.
  - (n) Where a determination made by an Expert contains a clerical mistake, an error arising from an accidental slip or omission, or a material miscalculation, the Expert may correct his or her determination.

#### **31.4 Interlocutory or urgent relief**

Nothing in this clause 31 prevents a party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

#### **31.5 Parties to continue to perform**

Pending the resolution or determination of a Dispute, the parties must continue to perform their respective obligations under this document.

### **32. NOTICES**

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#### **32.1 Giving notice**

Unless otherwise set out in this document, a notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) delivered or sent by:
  - (i) email to that person's email address listed in the Instrument of Agreement; or
  - (ii) pre-paid mail (by airmail, if the addressee is overseas) to that person's address listed in the Instrument of Agreement.

#### **32.2 Notice given**

A notice, consent or other communication that complies with this clause is regarded as given and received, if it is delivered or sent:

- (a) by email: when the email (including any attachment) has been recorded as sent in the sender's email records provided that where an "out of office" or "delivery notification failure" reply or similar response is delivered to the sender, the email will not be taken to be given and received and the sender must use an alternative method of sending the notice, consent or other communication in accordance with clause 32.1; and

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- (b) by mail:
    - (i) within Australia – on the second Business Day after posting; or
    - (ii) to or from a place outside Australia – seven (7) Business Days after posting.

### **32.3 Address for notices**

A party's email address or address are those set out in the Instrument of Agreement.

### **32.4 Variation of Authorised Person**

Either party may change the Authorised Person, email address or address set out in the Instrument of Agreement by notice in writing to the other parties.

## **33. WAIVER OF RIGHTS**

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A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## **34. ASSIGNMENT AND CHANGE OF CONTROL**

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- (a) A party may not assign its rights and interest under this document without obtaining the prior written consent of the other parties, such consent not to be unreasonably withheld or delayed.
- (b) Shipper must ensure that it does not undergo a Change of Control without the prior written consent of the Service Providers.

## **35. SEVERABILITY**

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If any clause or provision of this document is held illegal, void or unenforceable by any judgment of a referee, court, arbitrator or tribunal having competent jurisdiction, the judgment does not affect the remaining provisions of this document which remain in full force and effect as if the clause or provision held to be illegal, void or unenforceable had not been included in this document.

## **36. ENTIRE AGREEMENT**

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- (a) This document constitutes the entire agreement between the parties or its subject matter and supersedes all prior negotiations, representations, understandings and agreements between the parties.
- (b) This document does not constitute a partnership between the parties.

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## **37. GOVERNING LAW**

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This document is governed by and is to be construed in accordance with the laws in force from time to time in the State in which the Pipeline is situated and the parties submit to the exclusive jurisdiction of that State.

## **38. EXECUTION**

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### **38.1 Counterparts**

This document may be executed in any number of identical counterparts all of which, taken together, are one instrument.

### **38.2 Execution by Attorneys**

Each person who executes this document as an attorney of a party declares that he or she is a properly appointed under a power of attorney of the party and that, to his or her knowledge, the power is in full operation.

## **39. INSURANCE**

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### **39.1 Insurance policies to be maintained**

The Shipper must procure and maintain the following insurances:

- (a) workers' compensation insurance which complies with relevant laws in force in the State, inclusive of common law;
- (b) public liability insurance covering claims in respect of:
  - (i) damage to real or personal property; and
  - (ii) injury to, or death of, persons,for not less than \$20,000,000 (twenty million dollars) per claim;
- (c) insurance covering third party bodily injury and property damage arising out of the use of mobile plant, equipment and vehicles for not less than \$20,000,000 (twenty million dollars) per claim;
- (d) professional indemnity insurance for not less than \$20,000,000 (twenty million dollars) per claim; and
- (e) any additional insurances required by Law,

in each case, for the Period of Supply.

### **39.2 Terms of insurance policies**

In the case of the insurances specified in clauses 39.1(b) and (c), the policies must, where permitted by Law:

- (a) identify the respective rights and interests of the Shipper and the Service Providers; and
- (b) contain a cross liability clause where the insurance policy covers the interest of more than one party, any act, negligence or omission or breach of a policy

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condition by an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, upon becoming aware of any act, negligence or omission as a result of which the risk of legal liability to that party/parties has increased due to a breach of a policy condition, give notice to the insurers.

**39.3 Evidence of insurance**

The Shipper must, upon reasonable notice, provide the Service Providers proof of currency and coverage of insurances referred to in clause 39.1. Such proof shall be in a form acceptable to the Service Providers and shall be provided, irrespective of a request by the Service Providers at least annually.

# Schedule 1 FIRB Conditions Compliance

## Obligations and Privacy Compliance

The Shipper (in this Schedule, the **Counterparty**) acknowledges that the Service Providers (in this Schedule, **Alinta Energy**) are required in the national interest to meet requirements set by the Australian Government's Foreign Investment Review Board (**FIRB**), requirements under the *Privacy Act 1988* (Cth) including the Australian Privacy Principles (**Privacy Act**), and requirements set by the Office of the Australian Information Commissioner (**OAIC**). As such:

### 1 Definitions

**Agreement** means the document to which this Schedule is attached.

**Bulk Customer Data** means data about multiple parties that receive or consume products (goods or services) whether or not they are existing, past or potential customers of Alinta Energy, or any of its related bodies corporate (as defined by the *Corporations Act 2001* (Cth)).

**Bulk Personal Information** means any holdings or files of personal information (as that term is defined in the Privacy Act) about multiple individuals, being more than 100 records, other than data that is directly related to a current or former employment relationship between Alinta Energy and an individual, and an employee record held by Alinta Energy and relating to an individual.

**Data Breach** means any suspected, likely, or actual unauthorised access to, or any disclosure of or loss of, Personal Information.

**Electricity or Gas Data** means data as to the quantum of gas and/or electricity delivered (both historical and current load demand) from or to any one or more sites (or their connection points). For the purposes of this Schedule, it is agreed that in the definition of "Electricity or Gas Data", 'site' means a power station or fixed point/facility where energy is produced or generated, on the one hand, and/or a point where energy is delivered to be consumed, on the other. 'Site' does not mean delivery to points (i) that are transit/interconnect points on third party distribution or transmission systems/networks other than delivery points of customers / end users; (ii) where in-pipe gas trades occur; and (iii) where energy is delivered into a gross market.

**Eligible Data Breach** has the meaning given to that term in the Privacy Act.

**FIRB Restricted Data** means any Bulk Personal Information, Bulk Customer Data and Electricity or Gas Data (other than information pertaining to the Counterparty as a 'customer' or any one or more of that customer's sites).

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by a State, Territory, Commonwealth, or a local government, and includes common law and the principles of equity as applicable from time to time, and any applicable legally binding industry codes of conduct.

**Necessary Notifications** means (a) notices to data subjects that their Personal Information will be disclosed to Alinta Energy for the purposes of Alinta Energy handling that information in the manner contemplated by this Agreement; and (b) directing the relevant individuals to Alinta Energy's Privacy Policy, available at [www.alintaenergy.com.au](http://www.alintaenergy.com.au).

**Personal Information** means (a) in respect of parties and/or information to which the Privacy Act applies, "personal information" as defined in the Privacy Act; and (b) to the extent that sub-clause (a) of this definition does not apply, information or an opinion about an individual which renders that individual reasonably identifiable.



**Privacy Law** means any Law that applies to either or both of the parties which affects privacy, data protection or any Personal Information (including its collection, storage, use or processing) including without limitation the Privacy Act, corresponding Australian State or Territory Privacy Laws, and the *Spam Act 2003 (Cth)*.

**Regulated Information** means all Personal Information (including of mass market customers and small & medium customers) which the Counterparty receives or has access to pursuant to this Agreement but excludes the contact details, employment titles and work signatures of employees, contractors, agents and representatives of Alinta Energy, the Counterparty and third parties engaged in connection with this Agreement.

**Supplier-Provided Information** means all Regulated Information which Alinta Energy receives from Supplier or has access to under this Agreement.

## **2 FIRB Data Security**

### **2.1 Dealing with FIRB Restricted Data**

Notwithstanding any other clause of this Agreement, if the Counterparty collects, holds, uses, discloses or otherwise deals with **FIRB Restricted Data** in connection with the Agreement, the Counterparty must:

- (a) only do so to the extent required for the purpose of the Agreement;
- (b) store FIRB Restricted Data only within Australia;
- (c) only allow access to FIRB Restricted Data from within Australia and not take FIRB Restricted Data outside of Australia;
- (d) not export any FIRB Restricted Data and put in place appropriate security controls to prevent the export of FIRB Restricted Data;
- (e) keep the FIRB Restricted Data confidential and protect it from unauthorised destruction, loss, alteration or disclosure or access; and
- (f) upon expiry or termination of this Agreement, as requested by Alinta Energy return, destroy or de-identify all FIRB Restricted Data to Alinta Energy's satisfaction.

### **2.2 Onshore maintenance**

If the Counterparty maintains, accesses, operates or controls Alinta Energy's generation, transmission or distribution systems or associated ICT infrastructure, the Counterparty must:

- (a) only undertake any such maintenance from within Australia. If such maintenance requires either physical servicing of components offshore or the acquisition of replacement components from outside Australia, the Supplier may do so but only with the prior written consent of Alinta Energy; and
- (b) ensure that such systems and associated ICT infrastructure can be accessed, operated and controlled only from within Australia.

### **2.3 Counterparty Personnel**

The Counterparty must ensure that any person it has engaged in connection with the Agreement (including without limitation any of its officers, employees, secondees, agents, contractors or subcontractors) (the **Counterparty Personnel**) complies with this clause 2 (FIRB Data Security).

## 2.4 Compliance

The Counterparty must:

- (a) promptly cooperate with any requests, enquiries and reasonable directions from Alinta Energy in relation to the management of FIRB Restricted Data and compliance with this clause 2 (FIRB Data Security);
- (b) within 30 days of a request from Alinta Energy to do so, provide Alinta Energy with an audited compliance statement from an independent third-party auditor certifying the Counterparty's compliance with this clause 2 (FIRB Data Security) and detailing the Counterparty's holdings, storage, and accessibility of FIRB Restricted Data;
- (c) immediately notify Alinta Energy if it becomes aware of a suspected or actual breach of this clause 2 (FIRB Data Security); and
- (d) immediately notify Alinta Energy in advance if any aspect of the Counterparty's operations, service delivery model or information management processes are likely to change which may result in non-compliance with any aspect of this clause 2 (FIRB Data Security).

## 2.5 Consequences of non-compliance

If the Counterparty is in breach of this clause 2 and does not rectify such breach within 14 days of receiving a written notice from Alinta Energy to do so, Alinta Energy may terminate the Agreement upon written notice to the Counterparty with immediate effect and without financial penalty or cost.

## 2.6 Disclosures to FIRB

Alinta Energy may disclose this Agreement (and information related to it) to the extent required by law, including without limitation to the Foreign Investment Review Board.

## 3 Privacy

### 3.1 Handling of Regulated Information and Personal Information

- (a) The Counterparty will not be required to create, receive, collect, store, access, disclose, exchange or otherwise handle Regulated Information pursuant to this Agreement.
- (b) Notwithstanding clause 3.1(a), the Counterparty and Alinta Energy must in relation to any Personal Information handled pursuant to this Agreement: (i) comply with all applicable Privacy Laws; (ii) only use or disclose Personal Information for the purpose of fulfilling their obligations under this Agreement; and (iii) protect Personal Information from misuse, interference and loss, unauthorised access, modification, or disclosure.
- (c) Each party must notify the other as soon as reasonably practicable upon becoming aware of a breach of this clause 3.1 (*Handling of Regulated Information and Personal Information*).

### 3.2 Investigation

The Counterparty must immediately notify and cooperate with Alinta Energy in respect of any actual or potential investigation by the OAIC (or an equivalent regulator of another jurisdiction) in relation to either party or their related bodies corporate in connection with this Agreement.

### 3.3 Destruction of Personal Information

Without limiting anything else in this clause 3, once this Agreement expires or terminates for any reason the Counterparty must destroy all Personal Information received by the Counterparty in

connection with this Agreement. The Counterparty may retain copies to the extent necessary to comply with any Law or internal corporate requirement.

#### **4 Data Breach Response and Notification**

##### **4.1 Suspected, likely or actual Data Breach**

In relation to Personal Information handled pursuant to this Agreement, the Counterparty must:

- (a) immediately report to Alinta Energy any Data Breach and the details of Personal Information impacted;
- (b) immediately investigate and take all reasonable steps to rectify, remedy, or mitigate such Data Breach and any harm to individuals;
- (c) provide Alinta Energy with details of the identity of any individuals or entities involved in the Data Breach;
- (d) provide details of the assessment that the Counterparty is undertaking, or plans to undertake, to determine whether there are reasonable grounds to believe that an Eligible Data Breach has occurred; and
- (e) co-operate with all reasonable instructions of Alinta Energy in relation to that Data Breach.

##### **4.2 Eligible Data Breach**

In relation to Personal information handled pursuant to this Agreement, the Counterparty must immediately upon becoming aware that there are reasonable grounds to believe there has been an Eligible Data Breach:

- (a) provide the following information to Alinta Energy, to the extent known:
  - i. the basis upon which a reasonable person would or would not conclude that the incident would be likely to result in serious harm to any of the individuals subject to the Eligible Data Breach;
  - ii. any remedial action the Counterparty has taken or proposes to take in relation to the incident;
  - iii. proposed steps that the Counterparty recommends the individuals subject to the Eligible Data Breach should take in response to the incident; and
  - iv. details of the assessment undertaken by the Counterparty to assess whether the incident amounts to an Eligible Data Breach;(collectively, the **Notifiable Matters**);
- (b) provide Alinta Energy with all information, documents and assistance it reasonably requires in respect of the Eligible Data Breach and any notification requirements;
- (c) provide Alinta Energy with ongoing updates (at least every two business days) with respect to the Notifiable Matters until such time as Alinta Energy determines that the incident has been remedied; and
- (d) not notify OAIC or affected individuals of the incident unless first approved by Alinta Energy (acting reasonably).

## **5 Compliance Statement**

The Counterparty must within 30 days of a request from Alinta Energy to do so, provide Alinta Energy with an audited compliance statement from an independent third-party auditor certifying the Counterparty's compliance with clauses 3 (*Privacy*) and 4 (*Data Breach Response and Notification*).

## **6 Indemnity and Liability**

- (a) The Counterparty indemnifies and holds harmless Alinta Energy, its related entities and the officers, directors and employees of all of them from and against all actions, claims, losses, damages, costs, expenses and other liabilities brought, made or recovered against, or incurred or suffered by, any of them in connection with any breach by the Counterparty, its related entities and the officers, directors and employees of all of them of clauses 3 (*Privacy*) and 4 (*Data Breach Response and Notification*).
- (b) The limitations of liability for the benefit of the Counterparty in the body of the Agreement do not apply in relation to clause 6(a).

## **7 Survival**

The terms of this Schedule will survive the expiry or termination of this Agreement.