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# AUSTRALIAN GAS TRADING ADDENDUM

EDITION: JULY 2013

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## PART A – INCORPORATING THE ISDA MASTER AGREEMENT AND DEFINITIONS

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### 1 Incorporating the ISDA Master Agreement

#### 1.1 Gas Transactions Governed by this Addendum

By incorporating this Addendum in their ISDA Master Agreement, the parties agree that every Gas Transaction between them entered into after that time is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated, provided that the parties express the transaction to be governed by their ISDA Master Agreement or this Addendum.

#### 1.2 Application of this Addendum

This Addendum applies to Gas Transactions as follows:

- (a) Part A applies to all Gas Transactions;
- (b) Part B applies only to Physical Gas Transactions; and
- (c) Part C applies only to Cash Settled Gas Transactions and MSV Transactions.

#### 1.3 Amendments to ISDA Master Agreement

By incorporating this Addendum in their ISDA Master Agreement, the parties agree that the ISDA Master Agreement is taken to be amended as follows for the purposes of each Gas Transaction:

- (a) the words "or Deliver" in the heading of Section 5(a)(i), "or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)" in the second line of Section 5(a)(i) and "or the first Local Delivery Day in the case of any such delivery", "in the case of any such payment" and ", in each case," in the third and fourth lines of Section 5(a)(i) are deleted;
- (b) the words "or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)" in the second line of Section 5(a)(ii)(1) are deleted and the words "or to deliver or receive Gas, the exclusive remedy for which is provided in clause 10 of the Australian Gas Trading Addendum published by the Australian Financial Markets Association Ltd." are added after the words "under Section 4(a)(i), 4(a)(iii) or 4(d)" at the end of the bracketed section of Section 5(a)(ii)(1); and
- (c) the words "(including any delivery due on the last delivery or exchange date of) a Specified Transaction or" in clause (3) of Section 5(a)(v) are deleted.

#### 1.4 Confirmations

- (a) The parties acknowledge that Gas Transactions governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated may be confirmed by various methods including, without limitation, the following:
  - (i) Letter
  - (ii) Facsimile
  - (iii) E-mail

- (b) A confirmation produced by any method constitutes a Confirmation for the purpose of this Agreement. Each such Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement in which this Addendum is incorporated.
- (c) The parties acknowledge that some Confirmations may describe some items by a term other than the defined term in this Addendum, the 2006 ISDA Definitions or the 2005 ISDA Commodity Definitions. For example:

"Settlement Date" may be referred to as "Maturity Date" or "Value Date"; and

"Floating Price" or "Floating Rate" may be referred to as "Reference Price".

In any case where the intention is clear that a term used in a Confirmation is intended to specify the particulars for a defined term in this Addendum, the 2006 ISDA Definitions or the 2005 ISDA Commodity Definitions, then that term is to be deemed to be that defined term.

## 1.5 Definitions

- (a) The definitions and provisions contained in the 2006 ISDA Definitions, the 2005 ISDA Commodity Definitions and in this Addendum are incorporated in each Confirmation. If there is an inconsistency between those definitions and provisions and any such Confirmation, the Confirmation will govern. In the event of any inconsistency between the definitions and provisions contained in the 2005 ISDA Commodity Definitions and the 2006 ISDA Definitions, the 2005 ISDA Commodity Definitions will govern. In the event of any inconsistency between the 2006 ISDA Definitions or the 2005 ISDA Commodity Definitions (on the one hand) and the provisions of this Addendum (on the other) this Addendum will govern.
- (b) Each Gas Transaction governed by the terms of this Addendum is a "Transaction" for the purpose of the ISDA Master Agreement in which this Addendum is incorporated.
- (c) In this Addendum references to the 2006 ISDA Definitions and the 2005 ISDA Commodity Definitions are references to those publications as published by the International Swaps and Derivatives Association, Inc.

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## 2 Definitions and Interpretation

### 2.1 Definitions

In this Agreement, unless the contrary intention appears:

**"Access Arrangements"** means the arrangements in force from time to time under which a party is or becomes entitled to transport any natural gas to be supplied under this Agreement whether entered into pursuant to the National Third Party Access Code for Natural Gas Pipelines or otherwise.

**"Additional Charges"** means the Additional Charges (if any) specified in the Confirmation.

**"Affected Party"** means the party affected by a Specified Force Majeure Event.

**"Agreed Quantity"** means on any Delivery Date:

- (a) in the case of a Firm Supply Transaction, the amount of Gas nominated by the Buyer in accordance with clause 5.6, as varied under clause 5.7;
- (b) in the case of an As Available Supply Transaction, the amount of Gas in respect of which the Seller has notified the Buyer that the Seller has accepted the Buyer's nomination under clause 5.6, as varied under clause 5.7; or

- (c) in the case of an Interruptible Supply Transaction, so much of (but not more than) the amount of Gas nominated by the Buyer under clause 5.6, as varied under clause 5.7, or at any other time, as the Seller in its discretion makes available to the Buyer under clause 5.2(a).

"**Alternative Damages**" means that clause 10.5 applies in the event of a breach of an obligation to deliver or receive Gas under this Agreement.

"**Alternative Price Standard**" means that clause 10.4 applies in the event of a breach of an obligation to deliver or receive Gas under this Agreement.

"**Annual Contract Quantity**" or "**ACQ**" means the Annual Contract Quantity (if any) specified in the Confirmation.

"**As Available Supply Transaction**" means a Physical Gas Transaction designated as an As Available Supply Transaction in the Confirmation. The delivery obligation in respect of an As Available Supply Transaction is set out in clause 5.2(b).

"**Auditor**" has the meaning given in clause 12.

"**Average Daily Quantity**" means, in any Contract Year, the Annual Contract Quantity divided by the number of Delivery Dates in that Contract Year expressed as a number of GJ per Delivery Date.

"**Billing Period**" means (i) the Billing Period specified in the Confirmation or (ii) if no Billing Period is specified, each period of one Month; provided that unless otherwise specified in the Confirmation, the first day of the first Billing Period is the Gas Day commencing on the Start Date and the last day of the last Billing Period is the Gas Day commencing on the last day of the Term.

"**Business Day**" has the meaning set out in the 2006 ISDA Definitions, provided that if no place is specified in the Confirmation for the purpose of the definition of Business Day, the place specified for that purpose shall be taken to be the capital city of the State or Territory where the Delivery Point first listed in the Confirmation is located.

"**Buyer Acceptance Failure Amount**" means, in respect of any Delivery Period, the amount payable by the Buyer under clause 10.2, 10.3, 10.4 or 10.5.

"**Buyer Force Majeure Event**" means an event which:

- (a) prevents (in whole or in part) the Buyer from receiving or using Gas due to an Order or Directive binding on the Buyer (whether alone or together with others); or
- (b) prevents the Buyer from receiving Gas at the Delivery Point due to a Force Majeure that occurs on the pipeline downstream of the Delivery Point,

but only to the extent that the Order, Directive or Force Majeure on the pipeline downstream of the Delivery Point is not due to an act, default or omission on the part of the Buyer.

"**Buyer Variation Charge**" means (i) the Buyer Variation Charge specified in the Confirmation or (ii) if none is specified, any Imbalance Charges which were incurred as a result of the Buyer's acceptance of quantities of Gas greater than or less than the Agreed Quantity for the relevant Delivery Period or Delivery Date, to the extent that such Imbalance Charges are referable to the excess or shortfall in quantities of Gas so accepted using a method of allocation of Imbalance Charges between other customers of the Seller which is commercially reasonable.

"**Calculation Agent**" means the Calculation Agent specified in the Confirmation save that for the purposes of determining the Seller Delivery Failure Amount the Calculation Agent shall

be the Buyer and for the purposes of determining the Buyer Acceptance Failure Amount the Calculation Agent shall be the Seller.

**"Capacity Charge"** means the Capacity Charge (if any) specified in the Confirmation.

**"Capacity Take or Pay Factor"** means the Capacity Take or Pay Factor (if any) specified in the Confirmation.

**"Capacity Take or Pay Payment"** has the meaning given in clause 9.2(a).

**"Capacity Take or Pay Period"** means the Capacity Take or Pay Period (if any) specified in the Confirmation.

**"Capacity Take or Pay Quantity"** means the Capacity Take or Pay Quantity (if any) specified in the Confirmation.

**"Cash Settled Gas Transaction"** means DWGM Transactions and STTM Transactions (each as defined in clause 13.2).

**"Change in Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**"Commodity Take or Pay Factor"** means the Commodity Take or Pay Factor (if any) specified in the Confirmation.

**"Commodity Take or Pay Payment"** has the meaning given in clause 9.1(a).

**"Commodity Take or Pay Period"** means the Commodity Take or Pay Period (if any) specified in the Confirmation.

**"Commodity Take or Pay Quantity"** has the meaning given in clause 9.1(c).

**"Contract Price"** means, in respect of any period, the amount of Contract Price payable for Gas delivered during that period specified in or calculated in accordance with the Confirmation.

**"Contract Year"** means the period of one year commencing on (and including) the Contract Year Start Day and ending on (and including) the Gas Day before the immediately following Contract Year Start Day, provided that (a) the first Contract Year will commence on and include the Gas Day commencing on the Start Date and (b) the last Contract Year will end on and include the Gas Day commencing on the End Date.

**"Contract Year Start Day"** means the Gas Day commencing on the Contract Year Start Day specified in the Confirmation or, if no Contract Year Start Day is specified, the Gas Day commencing on 1 January of each year.

**"Cover Standard"** means that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Agreement, then the performing party shall use commercially reasonable efforts to (i) if the Buyer is the performing party, obtain Gas (or an alternate fuel if elected by the Buyer and replacement Gas is not available), or (ii) if the Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or the Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

"CPI" means, for a Financial Quarter, the Consumer Price Index (All Groups), Weighted Average of Eight Capital Cities as published for that Financial Quarter by the Australian Bureau of Statistics provided that if that index is no longer published then:

- (a) CPI will be another index that the parties agree to adopt; or
- (b) if the parties do not agree on another index, CPI will be the index nominated by the Australian Government Statistician as the index which is closest in its scope and operation to the Consumer Price Index (All Groups), Weighted Average of Eight Capital Cities,

and provided further that if there is an adjustment to the reference base year of any relevant index, then for the purposes of this Agreement an arithmetic adjustment is to be made to each relevant index number so as to negate the effect of the adjustment.

"CPI Adjusted Amount" means, in respect of any amount or component of an amount payable by a party under this Agreement ("**Relevant Charge**") an amount calculated as follows in respect of any Review Date:

$$RC_n = RC_{n-1} * (1 + (IF_{RC} * (CPI_n - CPI_{n-1}) / CPI_{n-1}))$$

where:

$RC_n$  = the Relevant Charge applicable on and from the Review Date;

$RC_{n-1}$  = the Relevant Charge applicable immediately prior to the Review Date;

$CPI_n$  = the CPI for the CPI Quarter in respect of the Review Date;

$CPI_{n-1}$  = for the first Review Date, CPI for the CPI Base Quarter and, for each subsequent Review Date, the CPI for the CPI Quarter in respect of the preceding Review Date; and

$IF_{RC}$  = the CPI Indexation Factor.

"CPI Base Quarter" means (i) the CPI Base Quarter specified in the Confirmation or (ii) if none is specified, the Financial Quarter ending on the most recent 30 September prior to the Trade Date.

"CPI Indexation Factor" means the CPI Indexation Factor specified in the Confirmation, or if none is specified, 1.

"CPI Indexed Amount" has the meaning given in clause 6.4.

"CPI Quarter" means, in respect of any Review Date (i) the CPI Quarter in respect of that Review Date specified in or determined in accordance with the Confirmation or (ii) if none is specified, the Financial Quarter ending on the most recent 30 September prior to the relevant Review Date.

"Daily Nomination" has the meaning given in clause 5.6.

"Daily Nomination Time" means (i) the time specified in the Confirmation or (ii) if none is specified, 10am on the Gas Day immediately preceding the Gas Day on which the relevant Gas is to be delivered.

"Delivered Gas" means, for any period, the quantity of Gas that the Seller (or the Transporter on its behalf) has delivered to the Buyer at the Delivery Point during that period.

**"Delivery Date"** means (i) each Gas Day commencing on or after the Start Date and on or before the End Date or (ii) the Delivery Date(s), if any, specified in the Confirmation.

**"Delivery Period"** means (i) the Delivery Period specified in the Confirmation or (ii) if no Delivery Period is specified, each period of one Month; provided that unless otherwise specified in the Confirmation, the first day of the first Delivery Period is the Gas Day commencing on the Start Date and the last day of the last Delivery Period is the Gas Day commencing on the last day of the Term.

**"Delivery Point"** means the Delivery Point(s) specified in the Confirmation.

**"Delivery Pressure Range"** means the pressure range specifications of the Receiving Transporter for the Delivery Point.

**"Determining Party"** means the party determined in accordance with clause 10.4(a).

**"Directive"** means any present or future requirement, instruction, direction or order of a Government Body that is binding on a party.

**"Dispute"** means any dispute or difference between the parties arising out of or in connection with a Physical Gas Transaction.

**"EGP"** means the Eastern Gas Pipeline from Longford in Victoria to Horsley Park in New South Wales.

**"Emergency Curtailment Event"** means the curtailment of the supply of Gas to the Delivery Point as a result of an emergency which results in a declaration of emergency or intervention in the supply of Gas lawfully made by a Government Body.

**"End Date"** means the Gas Day commencing on the day specified as the End Date in the Confirmation.

**"Energy Content"** means, for a quantity of gas, the energy produced by complete combustion of the quantity of gas with air, at Standard Conditions, with the gas and air free of water vapour, the products of combustion restored to Standard Conditions, and the water formed by combustion condensed into a liquid state.

**"Facility Force Majeure Event"** means a reduction in the capacity of the Reference Facility to process natural gas, and for which purpose the operator of the Reference Facility is the Relevant Operator.

**"Field Force Majeure Event"** means a reduction in the supply of natural gas available from the Reference Field, and for which purpose the operator of the Reference Field is the Relevant Operator.

**"Financial Quarter"** means any period of three months ending on 31 March, 30 June, 30 September or 31 December.

**"Firm Daily Nomination"** means, in the case of a Firm Supply Transaction, the Daily Nomination (as varied under clause 5.7) or, in the case of an As Available Supply Transaction the amount of Gas for which the Seller has accepted the Buyer's Daily Nomination (as varied under clause 5.7) for delivery on a Delivery Date.

**"Firm Supply Transaction"** means a Physical Gas Transaction designated as a Firm Supply Transaction in the relevant Confirmation. The basic delivery obligation in respect of a Firm Supply Transaction is set out in clause 5.1.

**"Force Majeure"** means any event or circumstance or combination of events and circumstances, not within the control of the Relevant Operator, and which by the exercise of a

standard of diligence, prudence and foresight consistent with that of a Reasonable and Prudent Operator, the Relevant Operator is not reasonably able to prevent or overcome, which causes or results in default or delay in the performance by the Affected Party of any of its covenants or obligations in this Agreement, including (provided the foregoing criteria are met):

- (a) forces of nature;
- (b) fire, explosion, civil commotion, malicious damage, sabotage, act of public enemy, blockages;
- (c) action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of any Federal or State court, government tribunal or authority or other organisation with regulatory powers (including denial, refusal or failure to grant any permit, authorisation, licence, dispensation, exemption or approval despite timely and reasonable efforts to obtain same);
- (d) strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing; and
- (e) failure or breakdown of plant, equipment, pipelines, platforms or wells, freezing of wells and lines of pipe, and partial or entire failure of reserves or wells.

"**Gas**" means hydrocarbons or a mixture of hydrocarbons that, at an absolute pressure of 101.325kPA and a temperature of 15 degrees centigrade, are in a gaseous state and meet the Specifications.

"**Gas Day**" means each period of 24 hours (subject to any applicable time-zone or daylight savings adjustments) commencing at the Gas Day Start Time.

"**Gas Day Start Time**" means (i) the Gas Day Start Time specified in the Confirmation or (ii) if none is specified, the start time for gas days specified by the Receiving Transporter as being applicable to the Delivery Point.

"**Gas Transaction**" means a Physical Gas Transaction, a Cash Settled Gas Transaction or an MSV Transaction.

"**GJ**" means 1 gigajoule. 1 gigajoule = 1,000,000,000 Joules.

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

"**GST**" has the meaning given in clause 3.

"**Head Supplier**" means (i) the Head Supplier specified in the Confirmation or (ii) if none is specified, a person or persons from whom the Seller purchases or intends to purchase natural gas for on-supply to the Buyer under a Physical Gas Transaction.

"**Head Supplier Force Majeure Event**" means a reduction in the supply of natural gas available to the Seller under a Head Supply Agreement. For the purposes of applying this definition, the seller under the Head Supply Agreement is taken to be the Relevant Operator.

"**Head Supplier Maintenance Curtailment**" means a Head Supplier for a Transaction interrupts or reduces the quantity of natural gas supplied to the Seller under a Head Supply Agreement for the purpose of carrying out improvements, alterations, repairs or maintenance to or inspection or testing of the Head Supplier's Facilities.

"**Head Supplier's Facilities**" means any reservoirs, platforms, pipelines, wells, plant, gas terminal, machinery or other equipment or facilities (whether or not owned or operated by the

Head Supplier) used from time to time by a Head Supplier to produce, gather, measure, receive, process, compress, store, treat, transport and/or deliver:

- (a) quantities of natural gas that may from time to time be intended by the Seller for delivery under a Transaction to the Delivery Point; and/or
- (b) any gases and/or liquids associated with such quantities of gas referred to under paragraph (a).

**"Head Supply Agreement"** means an agreement between the Seller and a Head Supplier for the purchase of Gas that will be on-sold to the Buyer under a Physical Gas Transaction.

**"Holding Company"** has the meaning given in the *Corporations Act*.

**"Imbalance Charges"** means any fee, penalty, cost or charge (in cash or in kind) assessed by a Transporter in accordance with the applicable Access Arrangements in respect of the transportation of natural gas on the Pipeline.

**"Indemnifiable Impost"** means any levy, fee, rate or charge imposed by any government or other authority authorised by law to impose such an impost (but excluding any Tax) that relates to the production, processing, physical supply, transport or sale of Gas.

**"Indemnifiable Tax"** has the meaning given in the Master Agreement.

**"Interruptible Supply Transaction"** means a Physical Gas Transaction designated as an Interruptible Supply Transaction in the relevant Confirmation. The basic delivery obligation in respect of an Interruptible Supply Transaction is set out in clause 5.2(a).

**"Invoicing Party"** means (i) the party identified in the Confirmation as the Invoicing Party or (ii) if none is specified, the Calculation Agent.

**"Joule"** means the joule specified in the International System of Units.

**"Loss Amount"** has the meaning given in clause 10.4(b).

**"Make-Up Gas"** has the meaning given in clause 9.3(a).

**"Make-Up Gas Contract Price"** means the price (if any) specified or calculated in accordance with the Confirmation for the purposes of clause 9.3(b).

**"Make-Up Gas Period"** means (i) the Make-Up Gas Period specified in the Confirmation or (ii) if none is specified, the remainder of the Term, in each case, excluding the Recovery Period.

**"Maximum Daily Quantity"** or **"MDQ"** means the Maximum Daily Quantity specified in the Confirmation.

**"Maximum Hourly Quantity"** or **"MHQ"** means (i) the Maximum Hourly Quantity specified in the Confirmation or (ii) if none is specified, 1/24<sup>th</sup> of MDQ.

**"Maximum Period Quantity"** or **"MPQ"** means the Maximum Period Quantity specified in the Confirmation.

**"Measuring Equipment"** means equipment used to measure the quality or quantities of Gas delivered at the Delivery Point for a Transaction, whether located at the Delivery Point or elsewhere.

**"Month"** means each period of one calendar month from and including the Gas Day commencing on the Start Date to and including the Gas Day commencing on the last day of



the Term, provided that (a) if the Start Date falls on a day other than the first day of the calendar month, the first Month will commence on the Gas Day commencing on the Start Date and end on the Gas Day commencing on the last day of the month in which the Start Date falls and (b) if the last day of the Term falls on a day other than the last day of a calendar month, the last Month will commence on the Gas Day commencing on the first day of the calendar month in which the last day of the Term falls and end on and include the Gas Day commencing on the last day of the Term.

"**MSV Transaction**" has the meaning given in clause 13.2.

"**Non-Invoicing Party**" means the party that is not the Invoicing Party.

"**Off-Specification Gas**" means any Gas that fails to comply with the Specifications.

"**Order**" meaning any law, order, rule, regulation, act, judgment, ruling, decree, decision, enforcement action, restraint, omission or failure to act of any Government Body, civil or military, whether or not legally valid.

"**Overrun Quantity**" means any quantity of natural gas of which the Buyer takes delivery at the Delivery Point on any Delivery Date in excess of the MDQ.

"**Payment Date**" means (i) the Payment Date(s) specified in the Confirmation or (ii) if none is specified, the later of the 20th day after the last day of each Billing Period and the 10th day after receipt by the Buyer of an invoice from the Seller.

"**Physical Gas Transaction**" means any transaction involving the physical sale of Gas which is or is described in its confirmation as a forward commodity transaction, a spot commodity transaction or a commodity option whether or not the Settlement Date is fixed and any other type of transaction involving the physical sale or exchange of Gas falling within the meaning of "Transaction" in the 2005 ISDA Commodity Definitions. "Physical Gas Transaction" also means any other type of transaction which the parties agree to be a Physical Gas Transaction involving the physical sale or exchange of Gas.

"**Pipeline**" means the pipeline or pipelines through which Gas is transported under a Gas Transaction, as specified in the Confirmation for the Gas Transaction.

"**Pipeline Force Majeure Event**" means a reduction in the capacity of the Pipeline to deliver natural gas to the Delivery Point, and for which purpose the operator of the Pipeline is the Relevant Operator.

"**PTS**" means GasNet's Principal Transmission System network of gas transmission pipelines.

"**Reasonable and Prudent Operator**" means a person seeking to perform its contractual obligations and conducting its operations in a proper and workmanlike manner in accordance with all relevant laws and regulations and directions of any government authority having jurisdiction over those obligations and or operations and in accordance with the methods and practices customarily considered to be good and prudent practice and exercising that degree of diligence in good practices, including in relation to oil field, gas field and pipeline operations.

"**Receiving Transporter**" means the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

"**Recovery Period**" means the Recovery Period specified in the Confirmation.

"**Recovery Period Supply Basis**" means:

- (a) if "Firm" is specified in the Confirmation as the Recovery Period Supply Basis, the same Supply Basis as a Firm Supply Transaction;
- (b) if "As Available" is specified in the Confirmation as the Recovery Period Supply Basis, the same Supply Basis as an As Available Supply Transaction; or

- (c) if "Interruptible" is specified in the Confirmation as the Recovery Period Supply Basis, the same Supply Basis as an Interruptible Supply Transaction.

**"Recovery Period Charges"** means in respect of any period during the Recovery Period (i) the Recovery Period Charges specified in the Confirmation or (ii) if none is specified, an amount equal to the charges set out in the published or regulated terms and conditions for transportation of natural gas generally available to potential shippers of natural gas on the Pipeline or Pipelines through which natural gas delivered to the Delivery Point is transported which apply to the transportation of gas under an Interruptible Supply Transaction.

**"Reference Facility"** means the reference facility(ies) specified in the Confirmation.

**"Reference Field"** means the field(s) specified in the Confirmation.

**"Related Body Corporate"** has the meaning given in the *Corporations Act*.

**"Relevant Operator"**, for the purposes of the definition of "Force Majeure", has the meaning specified in the applicable Specified Force Majeure Events.

**"Review Date"** means (i) the Review Date(s) specified in the Confirmation, or (ii) if none is specified, each 1 January falling within the Term.

**"Seller Curtailment Order"** means an order given by the Seller in relation to a Transporter Order Event as defined in paragraph (b) of the definition of Transporter Order Event.

**"Seller Delivery Failure Amount"** means, in respect of any Billing Period, an amount payable by the Seller under clause 10.2, 10.3, 10.4 or 10.5.

**"Seller Variation Charge"** means (i) the Seller Variation Charge specified in the Confirmation or (ii) if none is specified, an amount equal to any Imbalance Charges which were incurred as a result of the Seller's delivery of quantities of Gas greater or less than the Agreed Quantity for the relevant Delivery Period or Delivery Date, to the extent that such Imbalance Charges are referable to the excess or shortfall in quantities of Gas so delivered using a method of allocation between other providers of Gas to the Buyer at the Delivery Point which is commercially reasonable.

**"Specifications"** means the pressure, quality, and heat content requirements of the Receiving Transporter.

**"Specified Curtailment Event"** means each of the events specified below:

- (a) if Emergency Curtailment Event is specified in the Confirmation as being applicable, the occurrence of an Emergency Curtailment Event;
- (b) if Head Supplier Maintenance Curtailment is specified in the Confirmation as being applicable, the occurrence of a Head Supplier Maintenance Curtailment;
- (c) if Transporter Order Event is specified in the Confirmation as being applicable, the occurrence of a Transporter Order Event;
- (d) if Transporter Maintenance Event is specified in the Confirmation as being applicable, the occurrence of a Transporter Maintenance Event; and
- (e) the occurrence of any other event which is specified in the Confirmation as being a Specified Curtailment Event.

**"Specified Force Majeure Event"** means any event falling within the definition of Force Majeure which causes or results in the occurrence of:

- (a) if Buyer Force Majeure Event is specified in the Confirmation as being applicable, a Buyer Force Majeure Event;
- (b) if Facility Force Majeure Event is specified in the Confirmation as being applicable, a Facility Force Majeure Event;
- (c) if Field Force Majeure Event is specified in the Confirmation as being applicable, a Field Force Majeure Event;
- (d) if Head Supplier Force Majeure Event is specified in the Confirmation as being applicable, a Head Supplier Force Majeure Event;
- (e) if Pipeline Force Majeure Event is specified in the Confirmation as being applicable, a Pipeline Force Majeure Event;
- (f) if VicHub Force Majeure Event is specified in the Confirmation as being applicable, a VicHub Force Majeure Event; and
- (g) any other event which is specified in the Confirmation as being a Specified Force Majeure Event.

**"Spot Price"** means the Spot Price (if any) specified or calculated in accordance with the Confirmation.

**"Spot Price Standard"** means that clause 10.3 applies in the event of a breach of an obligation to deliver or receive Gas under this Agreement.

**"Start Date"** means the Start Date specified in the Confirmation.

**"Supply Basis"** means (subject to clause 9.4(a)) the Supply Basis specified in the Confirmation.

**"Standard Conditions"** means a pressure of 101.325kPa and a temperature of 15 degrees Centigrade.

**"Statement"** has the meaning given in clause 6.5.

**"Take or Pay Amount"** means, in respect of any Payment Date, the amount of the Commodity Take or Pay Payment or the amount of the Capacity Take or Pay Payment (if specified as being applicable under the Confirmation) payable on that Payment Date calculated in accordance with clause 9.

**"Term"** means the period commencing on the Start Date and ending on the End Date.

**"Tolerance Percentage"** means the Tolerance Percentage specified in the Confirmation or, if none is specified, 2% (being 0.02).

**"Total Contract Quantity"** or **"TCQ"** means the Total Contract Quantity specified in the Confirmation.

**"Transporter"** means all Gas gathering or pipeline companies, market operated systems or local distribution companies, acting in the capacity of a transporter, transporting Gas for the Seller or the Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Gas Transaction.

**"Transporter Maintenance Event"** means the interruption or reduction by the Transporter of the quantity of Gas transported for the Seller for the purpose of carrying out maintenance in accordance with the published or regulated terms and conditions for transportation of natural gas generally available to potential shippers of natural gas on the Pipeline.

**"Transporter Order Event"** means the occurrence of each of the following events:

- (a) the Transporter has given an order ("Transporter Order") to the Seller to alter natural gas deliveries from the Pipeline; and
- (b) the Seller has given an order ("Seller Curtailment Order") to the Buyer to alter the amount of natural gas that the Buyer takes from the Delivery Point as a result of the Transporter Order,

provided that no Transporter Order Event will be taken to have occurred unless and until the Seller has used reasonable endeavours to procure those other buyers (if any) whose actions or omissions have resulted in the need for the Transporter Order to alter the amount of gas which they deliver or take delivery of in order to comply with the Transporter Order.

**"Undelivered Quantity (Supply)"** means, for a Transaction for a Delivery Date, the aggregate (without counting any quantity more than once) of the quantity of Gas that:

- (a) the Seller fails to make available for delivery to the Buyer under that Transaction at the Delivery Point on that Delivery Date for any reason other than the act, default or omission of the Buyer;
- (b) the Buyer fails to accept under the Transaction at the Delivery Point on that Delivery Date due to a Buyer Force Majeure Event; or
- (c) the Buyer validly rejects under that Transaction at the Delivery Point on that Delivery Date on the basis that it is Off-Specification Gas.

**"Undelivered Quantity (Transport)"** means, for a Transaction for a Delivery Date, the aggregate (without counting any quantity more than once) of the quantity of Gas that:

- (a) the Seller fails to make available for delivery to the Buyer at the Delivery Point due to the occurrence of a Transporter Maintenance Event or a Pipeline Force Majeure Event (if specified in the Confirmation as being applicable); or
- (b) the Buyer fails to accept under that Transaction at the Delivery Point on that Delivery Date due to a Buyer Force Majeure Event, but only to the extent that the Seller's Transporter provides relief to the Seller from payment of capacity reservation or firm transportation charges for that Buyer Force Majeure Event in accordance with that Transporter's prevailing published or regulated terms and conditions; or
- (c) the Seller fails to make available for delivery to the Buyer at the Delivery Point due to the occurrence of a Transporter Order Event; provided, however, that the Buyer's actions or omissions did not result in the Transporter Order Event.

**"Variation Charge"** means the Buyer Variation Charge or the Seller Variation Charge.

**"VicHub"** means the interconnection of the EGP and the PTS Pipelines.

**"VicHub Force Majeure Event"** means a reduction in the VicHub capacity available to the Seller for the transportation of natural gas. For the purposes of applying this definition, the operator of VicHub is taken to be the Relevant Operator.

## 2.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to a specified quantity of Gas where expressed in units of energy is a reference to the quantity of that Gas which has the specified Energy Content; and
- (b) a quantity of Gas notified from one party to the other in respect of a Gas Transaction must be expressed in units of energy. Units of measurement used in connection with Gas Transactions must conform with Australian Standard AS1000 1998 "The International System of Units (SI) and its Application" and the *National Measurement Act 1960* (Cth).

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## 3 GST

- (a) If any party:
  - (i) is liable to pay goods and services tax ("GST") on a supply made by it under a Transaction;
  - (ii) certifies to the recipient that it has not priced the supply to include GST; and
  - (iii) issues a valid tax invoice to the recipient within 28 days of the supplier's liability for GST on the supply arising,

then the recipient agrees to pay the supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate (without deduction or set off) at the same time and in the same manner as the consideration is payable for the supply. If the recipient is required by law to withhold an amount in respect of GST from a payment to be made to the supplier because the supplier has not quoted its ABN, the withholding and payment to the Commissioner will be good discharge of its obligation to pay the amount to the supplier by way of GST under this clause 3.

- (b) However, the supplier agrees to issue a valid adjustment notice within 7 days of finding out that the actual amount of GST payable by it on the supply differs from the amount paid by the recipient. Payment adjustments must then be made between parties within two Business Days to reflect the actual amount of GST payable.
- (c) In this Agreement, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity) are, but for the operation of this clause 3, exclusive of GST.
- (d) All references in this clause to terms used in the *A New Tax System (Good and Services Tax) Act 1999* (Cth) and not otherwise defined in this Agreement have the meaning given in that Act.

#### 4 Dispute Resolution

- (a) All Disputes must be resolved in accordance with the procedures set out in this clause 4.
- (b)
  - (i) A party claiming that a Dispute has arisen must give notice to the other party describing the nature of the Dispute and designating its representative in negotiations. This representative must be a person who is the Chief Executive Officer or other senior officer of the party with authority to settle the Dispute and who has not been involved in the Dispute.
  - (ii) A party receiving a notice of Dispute must promptly give notice to the other party designating its representative in negotiations (with similar authority and who has not been involved in the Dispute).
  - (iii) The persons designated by the parties to resolve the Dispute are called the "**Parties' Representatives**" in this clause 4.
- (c) Within 14 days after a party has given a notice of Dispute, the Parties' Representatives must meet in good faith to discuss and attempt to resolve the Dispute. If the Dispute has not been resolved within 14 days after the Parties' Representatives first meet, the Parties' Representatives must, within a further 14 days, determine the process for resolving the matter through means other than litigation, such as further negotiations, mediation or conciliation and also determine:
  - (i) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
  - (ii) procedural rules and a timetable for the conduct of the selected mode of the proceedings; and
  - (iii) the procedure for selection and remuneration of any mediator who may be engaged by the parties,(the "**Alternative Dispute Resolution Process**").
- (d) The parties must implement and participate in the Alternative Dispute Resolution Process determined by the Parties' Representatives under paragraph (c).
- (e) If the Dispute is not resolved within 2 months after a party has given a notice of Dispute, or an Alternative Dispute Resolution Process is not determined within the time set out in paragraph (c), then either party may, by giving written notice to the other party, terminate any Alternative Dispute Resolution Process and may then commence litigation proceedings. Subject to paragraph (j), the parties agree not to commence litigation proceedings until the avenues of dispute resolution set out in paragraphs (c) and (d) have been exhausted. As an alternative to litigation proceedings, the parties may agree to submit the Dispute to arbitration in accordance with the provisions of the Commercial Arbitration Act (or its equivalent) in force in the jurisdiction whose laws govern this Agreement. Nothing in this clause 4 obliges a party to submit a Dispute to arbitration.
- (f) Except as otherwise agreed in writing or expressly permitted under this Agreement the parties must keep confidential all dispute resolution procedures, other than litigation, and the terms of any resolution, determination or award.
- (g) The parties may be legally represented in any dispute resolution procedure.

- (h) The commencement or conduct of dispute resolution procedures does not release the parties from their respective obligations under this Agreement.
- (i) Nothing in this clause 4 prevents a party from seeking injunctive or urgent declaratory relief in respect of a Dispute or any matter arising in connection with this Agreement.

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## **5 Agreement to Sell Gas**

### **5.1 Firm Supply Transaction**

In the case of a Firm Supply Transaction, the Seller must make available for delivery, and the Buyer must accept or cause to be accepted, Gas at the Delivery Point on each Delivery Date in the Agreed Quantity for that Delivery Date, subject to the terms of this Agreement.

### **5.2 Interruptible Supply Transactions and As Available Supply Transactions**

- (a) In the case of an Interruptible Supply Transaction, the Seller has no obligation to make Gas available for delivery to the Buyer under this Agreement, however, any Gas which the Seller does make available under an Interruptible Supply Transaction must be made available, and accepted or caused to be accepted by the Buyer, at the Delivery Point on a Delivery Date in the Agreed Quantity for that Delivery Date, subject to the terms of this Agreement.
- (b) In the case of an As Available Supply Transaction, the Seller has no obligation to deliver Gas to the Buyer on any Delivery Date unless and until the Seller accepts, by notice in writing to the Buyer, a Daily Nomination made under clause 5.6 (and any variation of that Daily Nomination made under clause 5.7), after which acceptance the Seller must make available for delivery, and the Buyer must accept or cause to be accepted, Gas at the Delivery Point on each Delivery Date in the Agreed Quantity for that Delivery Date, subject to the terms of this Agreement.

### **5.3 Maximum Quantities**

- (a) In respect of each Gas Transaction, the Seller is not obliged to make available for delivery at the Delivery Point a quantity of Gas which would cause the quantity of Gas delivered to exceed:
  - (i) an amount which would cause the Seller to be in breach of clause 7.2;
  - (ii) on any Delivery Date, the Maximum Daily Quantity (if any) for that Delivery Date;
  - (iii) in any Delivery Period, the Maximum Period Quantity (if any) for that period (subject to clause 9.3(e));
  - (iv) in any Contract Year, the Annual Contract Quantity (if any) for that year (subject to clause 9.3(e)); or
  - (v) the Total Contract Quantity (if any).
- (b) Except as otherwise agreed by the Seller (whether in this Agreement or otherwise) or under separate arrangement with a third party supplier, the Buyer must not take delivery from the Seller of Gas at the Delivery Point in quantities which exceed the maximum quantities specified in paragraph (a).

### **5.4 Tolerances**

If the Seller fails to make available for delivery the amount of Gas which it is required to make available on any Delivery Date, then:

- (a) the failure will not be a breach of this Agreement; and
- (b) the Seller shall be deemed to have met its obligation to deliver the Agreed Quantity of Gas on that Delivery Date,

as long as the difference between the quantity of Delivered Gas for the Delivery Date and the Agreed Quantity for the Delivery Date does not exceed an amount equal to the Tolerance Percentage multiplied by the Agreed Quantity for the relevant Delivery Date.

## 5.5 Annual and Periodic Estimates

- (a) The Buyer must provide to the Seller a notice of the Buyer's best estimate of its requirements for delivery of Gas under a Physical Gas Transaction (other than an Interruptible Supply Transaction) for:
  - (i) except where paragraph (b) applies, each Delivery Period of each Contract Year by no later than 30 days prior to commencement of that Contract Year;
  - (ii) except where paragraph (b) applies, each Month of each Contract Year by no later than 30 days prior to commencement of that Contract Year;
  - (iii) except where paragraph (b) applies, each Delivery Date of each Month by no later than 14 days before the commencement of that Month; and

in the case of a Physical Gas Transaction with a Term of less than one calendar month, for each Delivery Date by no later than 14 days before the commencement of the Term or as soon as practical after entry into the Physical Gas Transaction, whichever is latest.

- (b) The Buyer must revise estimates made pursuant to this clause and notify the Seller promptly of that revision:
  - (i) if its expectations change materially at any time; or
  - (ii) upon reasonable request by the Seller to do so.

## 5.6 Daily Nominations to be Provided Weekly

The Buyer must give to the Seller, no later than 9am (Eastern Standard Time) on each Friday during the Term, notice of the quantity of Gas required to be taken by the Buyer at the Delivery Point for each Delivery Date of the week commencing on the following Monday ("**Daily Nomination**"). For the avoidance of doubt, the Daily Nomination must include any Make-Up Gas to be taken by the Buyer in accordance with clause 9.

## 5.7 Changing Daily Nominations

The Buyer may vary the Daily Nomination for a Delivery Date by giving notice to the Seller by no later than the Daily Nomination Time.

## 5.8 Daily Nomination if No Nomination Made

If the Buyer has not notified the Seller of the daily nomination for a Delivery Date in accordance with this clause then the Daily Nomination for that Delivery Date will be the estimate provided by the Buyer under clause 5.5.

## 5.9 Seller's Notification of Inability to Supply

The Seller must notify the Buyer promptly if:



- (a) it becomes aware at any time that it will not be able to deliver the amount of Gas which the Buyer estimates and notifies to the Seller as being required by the Buyer for any given period under clause 5.5;
- (b) it becomes aware after receiving a Daily Nomination that it will not be able to deliver the Daily Nomination for any Delivery Date; or
- (c) it does not consent to delivery of any part of the Daily Nomination made by the Buyer which is in excess of the Maximum Daily Quantity (in which case the Daily Nomination shall be deemed to equal the Maximum Daily Quantity).

A notice under this clause 5.9 does not in any way relieve the Seller's obligation to supply Gas.

#### **5.10 Daily Nomination to be in Good Faith**

The Buyer must ensure that the Daily Nomination for each Delivery Date is made in good faith and is the Buyer's best estimate of its requirements for delivery of Gas.

#### **5.11 Changes in Nomination Time**

If at any time the owner of the relevant Pipeline changes the time for submitting nominations of intended Gas receipt and delivery quantities for the Pipeline, the Seller may change the Daily Nomination Time as it applies to that Pipeline under this Agreement, with the agreement of the Buyer (not to be unreasonably withheld or delayed).

#### **5.12 Title**

- (a) The Seller warrants to the Buyer that all Gas delivered under this Agreement will, when delivered at the Delivery Point, be free from all liens, charges, encumbrances, and adverse claims that might prevent, impede or prejudice the Buyer's title to that Gas.
- (b) The Seller warrants to the Buyer that it has title to all Gas to be delivered under this Agreement or will ensure that title to Gas transfers to the Buyer at the Delivery Point.
- (c) Title to and risk in all Gas delivered under this Agreement passes from the Seller to the Buyer at the Delivery Point. The Buyer has title to, risk in and control and possession of all Gas delivered under this Agreement when that Gas passes the Delivery Point.

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## **6 Payments**

### **6.1 Buyer Payment Obligations**

In consideration for the agreement of the Seller to make Gas available under this Agreement, the Buyer must pay the following amounts (adjusted, if applicable, by indexation in accordance with clause 6.4) to the Seller on each Payment Date:

- (a) the Contract Price;
- (b) the Additional Charges (if any);
- (c) the Take or Pay Amount (if any);
- (d) the Buyer Variation Charges (if any);
- (e) the Buyer Acceptance Failure Amount (if any); and

- (f) any amount in respect of GST payable under clause 3,

in respect of the immediately preceding Billing Period and calculated, where applicable, by reference to the amount of Delivered Gas for that Billing Period.

## 6.2 Seller Payment Obligations

The Seller must pay to the Buyer the Seller Delivery Failure Amount (if any) and the Seller Variation Charges (if any) payable by it (adjusted, if applicable, for indexation in accordance with clause 6.4) in respect of any Delivery Period on the Payment Date in respect of the Billing Period in which the last day of that Delivery Period falls.

## 6.3 Variation Charges

- (a) If the Buyer takes quantities of Gas from the Delivery Point during a Delivery Period or on a Delivery Date which are greater or less than the Agreed Quantity for that Delivery Period or Delivery Date (as applicable), then the Buyer shall pay the Seller the Buyer Variation Charge on the Payment Date in respect of the Billing Period in which the last day of the relevant Delivery Period falls.
- (b) If the Seller makes available quantities of Gas at the Delivery Point during a Delivery Period or on a Delivery Date which are greater or less than the Agreed Quantity for that Delivery Period or Delivery Point (as applicable), then the Seller shall pay the Buyer the Seller Variation Charge on the Payment Date in respect of the Billing Period in which the last day of the relevant Delivery Period falls.
- (c) The parties will use commercially reasonable steps to avoid the imposition of any Variation Charges. If the Buyer or the Seller receives an invoice from a Transporter that includes Imbalance Charges which may fall within the definition of Variation Charges payable under this Agreement, the parties shall determine the validity as well as the cause of such Imbalance Charges where applicable for the purposes of calculating any Variation Charge payable under this Agreement.

## 6.4 CPI

If CPI Indexation is specified in the Confirmation as being applicable to any amount or any component of any amount payable by the Buyer or the Seller under this Agreement (a "**CPI Indexed Amount**") then the amount or component, as the case may be, shall be recalculated by the Calculation Agent on or as soon as reasonably practicable after each Review Date so that on and from each Review Date until the next Review Date the amount or component is taken to be the CPI Adjusted Amount for all purposes under this Agreement.

## 6.5 Invoicing

On or before the 10th day after the last day of each Billing Period, the Invoicing Party must send to the Non-Invoicing Party a written statement ("**Statement**") showing for each Physical Gas Transaction for the immediately preceding Billing Period:

- (a) all amounts owing from one party to the other (including amounts payable under clause 3 in respect of GST);
- (b) the net amount payable from one party to the other and the party which owes that net amount;
- (c) any other information required to be provided with a Statement under this Agreement;
- (d) what, if any, information has been estimated in accordance with clause 6.8(a);

- (e) any other such information reasonably required by the Non-Invoicing Party to allow it to understand how the amounts referred to above were calculated.

## **6.6 Notice of Disputed Amounts**

- (a) If the Non-Invoicing Party has a good faith Dispute in respect of any Statement, it must on or before the due date for payment in respect of that Statement:
  - (i) notify the Invoicing Party of the nature of the Dispute and the amount in dispute, and, failing resolution of that Dispute by agreement, refer the matter for dispute resolution in accordance with clause 4; and
  - (ii) pay or accept payment of, as the case requires, the amount of the Statement that is not in dispute (provided that if the non-payment of an amount in dispute would cause the net amount payable in accordance with the Statement to change from an amount payable by one party to an amount payable by the other party, then pending resolution of the Dispute no amount will be payable in accordance with the Statement).
- (b) Within 10 days after the resolution of a Dispute notified by the Non-Invoicing Party under paragraph (a) above, the party agreed or determined to owe the disputed amount to the other party must pay to that other party the amount (if any) agreed or determined to be payable by that party, together with interest on that amount calculated under this Agreement as if that amount were overdue from the date on which the amount would ordinarily have been due under the Statement to, but excluding, the date of payment.

## **6.7 Correction of Errors in Statements**

If an error is discovered in the amount payable under any Statement, the Invoicing Party must:

- (a) as soon as practicable notify the Non-Invoicing Party stating the nature and amount of that error; and
- (b) provide for an appropriate adjustment payment in the next Statement to be issued or, if no further Statement would ordinarily be issued, issue a further Statement providing for an appropriate adjustment payment.

## **6.8 No Accurate Information**

- (a) If any information required to prepare a Statement is not available at the time that Statement is prepared, then the Invoicing Party may prepare that Statement based on its reasonable estimate of that information.
- (b) If, within 12 months of the date on which a Statement was delivered, a party becomes aware of any change to the information used to prepare the Statement or information that was estimated in order to prepare the Statement becomes available, that party must promptly notify the other party and an adjustment payment must be made to reflect the changed or newly available information. The adjustment payment must be made within 10 days of receipt of the notice. No interest will be payable under this clause in respect of the adjusted payment.

## **6.9 Failure to Issue Statement**

- (a) If the Invoicing Party fails to issue a Statement in accordance with this Agreement, then the Non-Invoicing Party may issue that Statement to the Invoicing Party and, once issued, that Statement shall be treated as a Statement issued by the Invoicing Party for the purposes of this Agreement except that the Invoicing Party shall be deemed to be the Non-Invoicing Party for the purposes of giving notice of a Dispute under clause 6.6.

- (b) Except as provided in this clause, failure to issue a Statement shall not affect the rights and obligations of the parties and shall not be a material breach of this Agreement.

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## **7 Quality and Measurement**

### **7.1 Delivery Pressure**

The Seller must ensure that Gas delivered to a Delivery Point is delivered within the Delivery Pressure Range. The Buyer is not obliged to take Gas at a pressure outside of the Delivery Pressure Range for the applicable Transaction.

### **7.2 Uniform Rate**

The Seller and the Buyer must each maintain deliveries and receipts of Gas at the Delivery Point as nearly as practicable at a uniform hourly rate of flow during a Gas Day, such uniform hourly rate of flow not to exceed the Maximum Hourly Quantity.

### **7.3 Gas Specifications**

Subject to clause 7.6, the Seller must ensure that all natural gas delivered to the Buyer at the Delivery Point meets the Specifications.

### **7.4 Notification of Off-Specification Gas**

Each party must notify the other as soon as practical after it becomes aware that Off-Specification Gas may be or has been delivered at the Delivery Point by the Seller (an "**Off-Specification Notice**"). The Off-Specification Notice must, as far as reasonably possible, identify the respects in which the Off-Specification Gas differs from the Specification, the quantity of the Off-Specification Gas and (in the case of a notice given by the Seller) the expected duration of the supply of Off-Specification Gas.

### **7.5 Buyer to Notify Rejection or Acceptance**

- (a) The Buyer must, within 2 hours after receiving or giving an Off-Specification Notice, advise the Seller by notice whether it rejects or accepts all or any of the Off-Specification Gas described in that Off-Specification Notice and delivered after that time.
- (b) If the Buyer does not give a notice rejecting the Off-Specification Gas within the time period specified in paragraph (a) and subsequently takes delivery of the Off-Specification Gas, the Buyer will be taken to have accepted the Off-Specification Gas described in the Off-Specification Notice, as if it were Gas.
- (c) If the Buyer accepts Off-Specification Gas described in an Off-Specification Notice, the Buyer is liable to pay the Seller for that Off-Specification Gas at the usual price under the applicable Transaction, as if it were Delivered Gas.
- (d) If the Buyer accepts Off-Specification Gas by notice given under paragraph (a) or is taken to have accepted Off-Specification Gas by operation of paragraph (b), the Seller:
  - (i) will be deemed to have delivered that Gas in accordance with this Agreement;
  - (ii) will not be responsible in any way for any loss, cost, damage or expense including consequential loss arising out of the acceptance by the Buyer of Off-Specification Gas, unless the Off-Specification Gas made available for delivery varies further from the Specifications than those variations set out in the Off-Specification Notice; and

- (iii) must use reasonable endeavours to resume deliveries of Gas and must notify the Buyer as soon as practicable after deliveries of Gas resume.
- (e) If the Buyer does not accept delivery of Off-Specification Gas by notice given under paragraph (a) and is not taken to have accepted Off-Specification Gas by operation of paragraph (b), the Seller must use reasonable endeavours to resume deliveries of Gas and must notify the Buyer as soon as practicable when deliveries of Gas will resume.

## **7.6 Indemnity for unnotified Off-Specification Gas**

The Seller shall indemnify the Buyer from and against any loss, cost, damage or expense (including consequential loss) arising out of the receipt by the Buyer of Off-Specification Gas, except where the Buyer accepts delivery of Off-Specification Gas which has been described in an Off-Specification Notice.

## **7.7 Exclusion of Warranties for Gas Quality**

Except as expressly set out in this Agreement or as prohibited by law, each party expressly disclaims any warranties, written or oral, expressed or implied, including without limitation any warranty as to quality, merchantability, or fitness for any particular purpose of any Gas.

## **7.8 Quantities Delivered to Delivery Point**

The parties acknowledge and agree that:

- (a) subject to paragraph (b), the Invoicing Party will procure the measurement of Delivered Gas in accordance with the Receiving Transporter or other regulatory requirements applying to the Delivery Point;
- (b) where the Invoicing Party has procured the measurement of quantities of Delivered Gas delivered in accordance with the requirements of the Receiving Transporter or other regulatory requirements applying to the pipeline downstream of the Delivery Point, and to the extent that such action does not cause the Invoicing Party to breach an agreement between the Invoicing Party and a third party, the Invoicing Party authorises the operator of the applicable pipeline to grant the Non-Invoicing Party access to the Invoicing Party's measurement data relevant to Delivered Gas;
- (c) subject to clause 7.11, the Invoicing Party's determination of the quantity of Gas will be conclusive evidence of the quantities of Delivered Gas; and
- (d) where there are multiple shippers at the Delivery Point, the quantity of Delivered Gas on any Delivery Date will be determined by the Invoicing Party in accordance with the Receiving Transporter's conditions for allocation between shippers, subject to any regulatory requirements applying to the Delivery Point.

## **7.9 Seller as Non-Invoicing Party to notify quantities**

If the Seller is the Non-Invoicing Party then the Seller must notify the Buyer in writing within 7 days after the end of each Delivery Period as to the quantity of Delivered Gas on each Delivery Date of that Delivery Period.

## **7.10 Right to Request Testing of Measuring Accuracy**

If either party becomes aware of or reasonably believes that there are any inaccuracies in the Measuring Equipment, that party must, as soon as reasonably possible, notify the other party of those inaccuracies.

The Non-Invoicing Party may at any time request that the Invoicing Party cause, or the Invoicing Party may itself require, testing of the accuracy of the Measuring Equipment.

#### **7.11 Measuring Equipment is Outside Accuracy Range**

If the Measuring Equipment is shown to be outside the range of accuracy permitted by the Access Arrangements or other regulatory requirements applying to the Pipeline, the Invoicing Party must issue a revised Statement to reflect any corrections to the quantities of the Gas delivered at the Delivery Point within a reasonable time of calculating or being informed of the revised quantities. This revised Statement must be retrospective to a reasonable date, having regard to the circumstances giving rise to the measuring error.

#### **7.12 Measuring Equipment is within Accuracy Range**

If the Non-Invoicing Party requests a test of the Measuring Equipment and the Measuring Equipment is shown to be within the range of accuracy permitted by the Access Arrangements or other regulatory requirements applying to the Pipeline, the Non-Invoicing Party must reimburse the Invoicing Party for all costs and expenses incurred by the Invoicing Party in respect of any testing of the accuracy of the Measuring Equipment. If the Non-Invoicing Party requests a test of the Measuring Equipment and the Measuring Equipment is shown to be outside the range of accuracy permitted by the Access Arrangements or other regulatory requirements applying to the Pipeline, the Invoicing Party will pay for all costs and expenses incurred in respect of any testing of the accuracy of the Measuring Equipment. The Invoicing Party must include these costs and expenses in its next Statement for the applicable Transaction.

#### **7.13 Inspection of Equipment and Records**

Each party must use reasonable endeavours to ensure that:

- (a) the other party is given prior notice of all routine cleaning, repairing, inspection, calibration or adjustment of the Measuring Equipment; and
- (b) the other party is provided, at any reasonable time and on the giving of reasonable prior notice, with access to and, if so requested, copies of, all records relating to the metering or measurement at the Delivery Point of Gas delivered under this Agreement including records relating to calibration, inspection and testing of the Measuring Equipment.

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## **8 Specified Curtailment Events and Specified Force Majeure Events**

### **8.1 Specified Curtailment Event**

- (a) If a Specified Curtailment Event occurs, then the Seller may by notice to the Buyer reduce the Maximum Daily Quantity that the Buyer may nominate during the period of the Specified Curtailment Event in accordance with clause 8.3, and the performance of the Seller's other obligations under this Agreement that are connected with the availability of that Gas accordingly.
- (b) Without limitation to paragraph (a), if the Specified Curtailment Event is a Transporter Order Event and the Seller has given a Seller Curtailment Order to the Buyer, the Buyer must use its best endeavours to comply with the Seller Curtailment Order in so far as the Seller Curtailment Order relates to the Pipeline and other facilities located downstream of the Delivery Point or the activities of the operator of those facilities.

### **8.2 Specified Force Majeure Event**

- (a) As soon as reasonably practicable, and in any event not more than 7 days, after the occurrence of a Specified Force Majeure Event, the Affected Party must, if it wishes

to claim relief under paragraph (b), notify the other party, first by telephone and then in writing, stating (to the extent then known by the Affected Party):

- (i) reasonably full particulars of the nature, causes and circumstances of the Specified Force Majeure Event;
  - (ii) the obligations of the Affected Party that are or may be affected by the Specified Force Majeure Event;
  - (iii) the date of commencement (or expected commencement) of the Specified Force Majeure Event;
  - (iv) the Affected Party's best estimate of the duration of Specified Force Majeure Event;
  - (v) the steps the Affected Party or any other person has taken or proposes to take to avoid, remedy or overcome the effects of, the Specified Force Majeure Event, and the likely costs of doing so; and
  - (vi) the Affected Party's best estimate of the time during which it will be unable to carry out all or a portion of its obligations under this Agreement as a result of the Specified Force Majeure Event and the time required to enable it to resume or, if relevant, commence full performance of its obligations under this Agreement.
- (b) Where the Affected Party has given a notice of a Specified Force Majeure Event under paragraph (a):
- (i) the Affected Party's obligations under this Agreement (other than an obligation to pay money) shall be suspended to the extent and for the period over which the Specified Force Majeure Event prevents the Affected Party from performing its obligations under this Agreement but only to the extent and for the period that performance of the obligations are genuinely prevented (in whole or in part) by a Specified Force Majeure Event specified in the notice;
  - (ii) the Affected Party will not be in default of its obligations under this Agreement (other than an obligation to pay money) to the extent that a failure or delay in the observance or performance of those obligations by the Affected Party is caused by the Specified Force Majeure Event specified in the notice; and
  - (iii) where the Affected Party is the Seller and its obligation to make Gas available is curtailed by a Specified Force Majeure Event, the amount of Gas which the Seller is required to make available in respect of a Firm Daily Nomination is reduced in the amount determined in accordance with clause 8.3.
- (c) The Affected Party must update the other party at least once each week, and on each other occasion when it becomes aware of a material change or addition to information previously notified by the Affected Party, as to each of the matters referred to in paragraph (a).
- (d) The Affected Party must notify the other party:
- (i) that the Specified Force Majeure Event has ended in part or in whole;
  - (ii) that the effects of the Specified Force Majeure Event no longer affect the performance of its obligations under this Agreement or affect that performance to a reduced extent;

- (iii) of the expected time at which it will be able to commence or recommence performance of its affected obligations in whole or in part; and
  - (iv) that it has resumed or commenced performance of its obligations under this Agreement,
- as soon as reasonably practicable after it becomes aware of the same.
- (e) The Affected Party must:
    - (i) use reasonable efforts (including the expenditure of reasonable amounts of money):
      - (A) to avoid, remedy or overcome the Specified Force Majeure Event as quickly as possible;
      - (B) to mitigate the effect of the Specified Force Majeure Event upon its performance of this Agreement; and
      - (C) to fulfil its obligations under this Agreement (but without prejudice to either party's right to terminate this Agreement); and
    - (ii) upon the Specified Force Majeure Event ceasing to prevent the performance by the Affected Party of any of its obligations under this Agreement, resume performance of those obligations.
  - (f) Nothing in this clause 8.2 requires the Affected Party to settle any strike, lockout, boycott, work ban or other labour dispute or difficulty except in a manner as it shall in its own judgment consider fit.

### 8.3 Calculations

Where the amount by which the Maximum Daily Quantity or the obligation of the Seller to deliver Gas on any Delivery Date may be reduced under clause 8.1(a) or 8.2(b)(iii), the Seller must to the extent reasonable and practicable allocate the reduced quantity of natural gas available to be delivered by it on a pro rata basis amongst the Buyer and the Seller's other customers according to the Firm Daily Nomination of the Buyer and the total nominations for firm delivery made by all the other customers of the Seller.

### 8.4 Force Majeure Event under Master Agreement

The provisions of section 5(ii)(1) of the Master Agreement, so far as they relate to the making or receiving of deliveries of Gas, do not apply to Gas Transactions.

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## 9 Take or Pay Obligations

### 9.1 Commodity Take or Pay

- (a) Where the Confirmation specifies that Commodity Take or Pay is applicable, if the Buyer does not take in a Commodity Take or Pay Period an amount of Gas equal to or greater than the Commodity Take or Pay Quantity for that Commodity Take or Pay Period, the Buyer must pay to the Seller on the Payment Date immediately following the relevant Commodity Take or Pay Period an amount ("**Commodity Take or Pay Payment**") calculated in accordance with the following formula:

$$CTPP = (CTPQ - DG) * CP$$

where:



- CTPP = the Commodity Take or Pay Payment (in \$);
- CTPQ = the Commodity Take or Pay Quantity for the Commodity Take or Pay Period (in GJ);
- DG = the quantity of Delivered Gas for the Commodity Take or Pay Period (in GJ); and
- CP = the Contract Price determined in accordance with paragraph (b) (in \$/GJ).

- (b) For the purposes of paragraph (a) the Contract Price will be:
  - (i) where the Contract Price is constant throughout the Commodity Take or Pay Period, that Contract Price; or
  - (ii) otherwise, the average of the Contract Price applicable on each Delivery Date of the Commodity Take or Pay Period.
- (c) The "**Commodity Take or Pay Quantity**" for a Commodity Take or Pay Period is an amount calculated in accordance with the following formula:

$$CTPQ = CTPF * (ADQ * N - UQ_s)$$

where:

- CTPQ = the Commodity Take or Pay Quantity (in GJ);
- CTPF = the Commodity Take or Pay Factor (if any);
- ADQ = the Average Daily Quantity (in GJ);
- N = the number of Delivery Dates in the Commodity Take or Pay Period; and
- UQ<sub>s</sub> = the Undelivered Quantity (Supply) for the Commodity Take or Pay Period (in GJ).

- (d) Notwithstanding paragraph (a), if:
  - (i) the Commodity Take or Pay Period is a period of one Month; and
  - (ii) the Make-Up Gas Period is the remainder of the Contract Year in which a Commodity Take or Pay Payment is made,

then the Buyer will not be liable to pay a Commodity Take or Pay Payment in relation to any Month if the Buyer has taken, and paid the Contract Price in respect of, an amount of Gas in the preceding Months of that Contract Year equal to not less than the Annual Contract Quantity multiplied by the Commodity Take or Pay Factor.

## 9.2 Capacity Take or Pay

- (a) Where the Confirmation specifies that Capacity Take or Pay is applicable, if the Buyer does not take in a Capacity Take or Pay Period an amount of Gas equal to or greater than the Capacity Take or Pay Quantity for that Capacity Take or Pay Period, the Buyer must pay to the Seller on the Payment Date immediately following the relevant Capacity Take or Pay Period an amount ("**Capacity Take or Pay Payment**") calculated in accordance with the following formula:

$$CapTPP = (CapTPQ - DG) * CapC$$

where:

- CapTPP = the Capacity Take or Pay Payment (in \$);
- CapTPQ = the Capacity Take or Pay Quantity for the Capacity Take or Pay Period (in GJ);
- DG = the quantity of Delivered Gas for the Capacity Take or Pay Period (in GJ); and
- CapC = the Capacity Charge determined in accordance with paragraph (b) (in \$/GJ).

- (b) For the purposes of paragraph (a) the Capacity Charge will be:
- (i) where the Capacity Charge is constant throughout the Capacity Take or Pay Period, that Capacity Charge; or
- (ii) otherwise, the average of the Capacity Charges applicable on each Delivery Date of the Capacity Take or Pay Period.
- (c) The "**Capacity Take or Pay Quantity**" for a Capacity Take or Pay Period is an amount calculated in accordance with the following formula:

$$\text{CapTPQ} = \text{CapTPF} * (\text{MDQ} * \text{N} - \text{UQ}_T)$$

where:

- CapTPQ = the Capacity Take or Pay Quantity (in GJ);
- CapTPF = the Capacity Take or Pay Factor (if any);
- MDQ = the Maximum Daily Quantity (in GJ);
- N = the number of Delivery Dates in the Capacity Take or Pay Period; and
- $\text{UQ}_T$  = the Undelivered Quantity (Transport) for the Capacity Take or Pay Period (in GJ).

### 9.3 Make-Up Gas Period

- (a) If the Buyer has paid a Commodity Take or Pay Payment in respect of a quantity of Gas, the Buyer is entitled to nominate under clause 5.6 and take an equivalent quantity of Gas (called "**Make-Up Gas**") at a subsequent time during the Make-Up Gas Period in accordance with this clause 9.3.
- (b) Unless otherwise specified in the Confirmation, the Contract Price for Make-up Gas taken during the Make-up Gas Period shall be nil, but all other charges continue to apply.
- (c) Make-Up Gas is taken to have accrued in the Commodity Take or Pay Period to which the Commodity Take or Pay Payment relates and to be delivered (and the outstanding balance of Make-Up Gas thereby reduced) on the basis that the Make-Up Gas first accrued will be deemed to be the first Make-Up Gas made available for delivery under paragraph (a).
- (d) Subject to paragraphs (e) to (g), if the Buyer has in any Commodity Take or Pay Period taken delivery of the Commodity Take or Pay Quantity for that Commodity

Take or Pay Period under the Transaction then any further deliveries of Gas in that Commodity Take or Pay Period (other than an Overrun Quantity) must first be applied against the outstanding balance of any Make-Up Gas accumulated by the Buyer for that Transaction. The Contract Price for any Gas delivered during the Commodity Take or Pay Period in excess of the aggregate of the Commodity Take or Pay Quantity and the outstanding balance of the Make-Up Gas (if any) will be the Contract Price specified or calculated in accordance with the Confirmation.

- (e) The limitations in clauses 5.3(a)(iii) and 5.3(a)(iv) shall not apply in a Delivery Period or a Contract Year (as applicable) to the extent that the excess consists of any Make-Up Gas nominated by the Buyer in accordance with this Agreement for delivery in that Delivery Period or Contract Year (as applicable).
- (f) To avoid doubt, the Buyer's right to nominate and to take Gas, including Make-Up Gas, is limited by the Maximum Daily Quantity on each Delivery Date.
- (g) The Buyer may only take Make-Up Gas within the Make-Up Gas Period. Any Make-Up Gas not taken within the Make-Up Gas Period, subject to clause 9.4, will be forfeited by the Buyer.
- (h) The provisions of this clause 9.3 apply separately and independently in relation to each Gas Transaction and the Make-Up Gas attributable to it.

#### **9.4 Recovery Period**

- (a) If, on the last day of the Term for a Physical Gas Transaction, the Buyer has an unused entitlement to take Make-Up Gas under that Physical Gas Transaction, the Term will be extended for the Recovery Period for the sole purpose of allowing the Buyer to take its entitlement to Make-Up Gas in accordance with clause 9.3, provided that during the Recovery Period:
  - (i) the Contract Price for Make-Up Gas made available for delivery to the Buyer at the Delivery Point during the Recovery Period shall be zero, unless otherwise specified in the Confirmation;
  - (ii) the Additional Charges shall be taken to be the Recovery Period Charges which are attributable to the Recovery Period and to the Make-Up Gas taken by the Buyer during the Recovery Period; and
  - (iii) regardless of the Supply Basis applicable prior to the commencement of the Recovery Period, the Supply Basis during the Recovery Period shall be the Recovery Period Supply Basis.
- (b) The Buyer will not be entitled to nominate or take any remaining Make-Up Gas after the end of the Recovery Period, and the Seller will have no obligation to refund any money previously paid by the Buyer in respect of that Make-Up Gas.
- (c) The provisions of this clause 9.4 are subject to clause 9.3(h).

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## **10 Delivery Shortfalls**

### **10.1 Application of this clause**

Subject to clause 11.3, in relation to an unterminated Transaction:

- (a) if the total amount of Gas which the Buyer accepted for delivery from the Seller during any Delivery Period was less than the total Agreed Quantity for that Delivery Period (taking into account any reductions in the Maximum Daily Quantity made under clause 8.1 or clause 8.2); or

- (b) if the total amount of Gas which the Seller made available to the Buyer during any Delivery Period was less than the total Agreed Quantity for that Delivery Period (taking into account any reductions in the Maximum Daily Quantity made under clause 8.1 or clause 8.2),

then the remedy for the parties shall be determined:

- (i) where Cover Standard is specified in the Confirmation, in accordance with the provisions of clause 10.2;
- (ii) where Spot Price Standard is specified in the Confirmation, in accordance with the provisions of clause 10.3 or clause 10.4 (as applicable);
- (iii) where Alternative Price Standard is specified in the Confirmation, in accordance with provisions of clause 10.4;
- (iv) where Alternative Damages is specified in the Confirmation, in accordance with the provisions of clause 10.5; and
- (v) where no Remedy Basis is specified in the Confirmation, in accordance with the provisions of clause 10.2.
- (vi) For the avoidance of doubt, the occurrence of any of the events specified in paragraph (a) or (b) above shall not be an Event of Default or result in any other liabilities or remedies other than those referred to in paragraphs (i) to (v) above.

## **10.2 Cover Standard**

- (a) Where Cover Standard or this clause is expressed to apply to a Transaction, the sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Gas for the Transaction shall be recovery of the following:
  - (i) in the event of a breach by the Seller on any Delivery Date(s), payment by the Seller to the Buyer in an amount equal to the positive difference, if any, between the purchase price paid by the Buyer pursuant to the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Agreed Quantity and the quantity actually delivered by the Seller for each relevant Delivery Date; or
  - (ii) in the event of a breach by the Buyer on any Delivery Date(s), payment by the Buyer to the Seller of an amount equal to the positive difference, if any, between the Contract Price and the price received by Seller pursuant to the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Agreed Quantity and the quantity actually taken by the Buyer for each relevant Delivery Date; or
  - (iii) in the event that the Buyer has used commercially reasonable efforts to replace the Gas or the Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be:
    - (A) any unfavourable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point; or
    - (B) if the Spot Price for the relevant Delivery Date(s) is not specified in the Confirmation or is otherwise not ascertainable for whatever reason, an amount equal to the Contract Price multiplied by 1.20,

in each case, multiplied by the difference between the Agreed Quantity and the quantity actually delivered by the Seller and received by the Buyer for each relevant Delivery Date.

- (b) Variation Charges shall not be recovered under this clause 10.2, but the Seller and the Buyer shall be responsible for Variation Charges, if any, as provided in clause 6.3.

### **10.3 Spot Price Standard**

- (a) Where Spot Price Standard or this clause is expressed to apply to a Transaction, the sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Gas for the Transaction shall be recovery, subject to paragraph (b), of the following:
  - (i) in the event of a breach by the Seller on the Delivery Date(s), payment by the Seller to the Buyer in an amount equal to the difference between the Agreed Quantity and the actual quantity delivered by the Seller and received by the Buyer for each relevant Delivery Date, multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or
  - (ii) in the event of a breach by the Buyer on any Delivery Date(s), payment by the Buyer to the Seller in an amount equal to the difference between the Agreed Quantity and the actual quantity delivered by the Seller and received by the Buyer for each relevant Delivery Date, multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price.
- (b) Where the Spot Price Standard is to be used for a Transaction but no Spot Price has been defined or is otherwise not ascertainable, the Alternative Price Standard will be used.
- (c) Variation Charges shall not be recovered under this clause 10.3, but the Seller and the Buyer shall be responsible for Variation Charges, if any, as provided in clause 6.3.

### **10.4 Alternative Price Standard**

- (a) Where Alternative Price Standard or this clause is expressed to apply to a Transaction, the sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Gas for the Transaction shall be recovery of the following:
  - (i) in the event of a breach by the Seller on the Delivery Date(s), payment by the Seller to the Buyer in an amount equal to the Loss Amount, for which the Buyer will be the Determining Party; or
  - (ii) in the event of a breach by the Buyer on any Delivery Date(s), payment by the Buyer to the Seller in an amount equal to the Loss Amount, for which the Seller will be the Determining Party.
- (b) The Loss Amount for the purposes of this Alternative Price Standard will be the amount of the direct losses or costs of the Determining Party that are or would be incurred under the circumstances prevailing on the applicable Delivery Date(s) by reason of the quantity actually delivered by the Seller or accepted by the Buyer being different than the Agreed Quantity for each applicable Delivery Date. Indirect or consequential losses, such as loss of profits, are not recoverable.

- (c) The Loss Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result.
- (d) In determining the Loss Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:
  - (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
  - (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
  - (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this clause, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

- (e) Commercially reasonable procedures used to determine a Loss Amount may include the following:
  - (i) application to relevant market data from third parties pursuant to clause 10.4(d)(ii) or information from internal sources pursuant to clause 10.4(d)(iii) of pricing or other valuation models that are, at the time of the determination of the Loss Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Transaction; and
  - (ii) application of different valuation methods to different Transactions or groups of Transactions depending on the type, complexity, size or number of the Transactions or group of Transactions.

## 10.5 Alternative Damages

Where Alternative Damages or this clause is expressed to apply to a Transaction, the sole and exclusive remedy of the parties in the event of a breach of an obligation to deliver or receive Gas for the Transaction shall be payments provided for as Alternative Damages in the Confirmation.

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## **11 Taxes and Imposts**

### **11.1 Change in Law**

Unless otherwise specified in the Confirmation, each amount payable under this Agreement in relation to Physical Gas Transactions has been determined by the parties having regard to the Indemnifiable Taxes and Indemnifiable Imposts in force at the Trade Date of the Transaction. If at any time after the Trade Date a Change in Law occurs that:

- (a) increases the amounts required to be paid directly or indirectly by the Seller in respect of the acquisition, purchase, transportation, supply or sale of Gas by the Seller and that amount is not to be reimbursed to the Seller under any other provision of this Agreement, then the Buyer must pay to the Seller an amount equal to the net amount of the increase to the extent that it is referable to Gas supplied and/or transported by the Seller to the Buyer under this Agreement and to the extent that it is an Indemnifiable Tax or Indemnifiable Impost; or
- (b) decreases the amounts required to be paid directly or indirectly by the Seller in respect of the acquisition, purchase, transportation, supply or sale of Gas by the Seller and that amount is not to be reimbursed to the Buyer under any other provisions of this Agreement, then the Seller must reduce the amount required to be paid by the Buyer for supply and transportation of Gas under this Agreement by an amount equal to the net amount of the decrease to the extent that it is referable to Gas supplied and/or transported by the Seller to the Buyer under this Agreement and to the extent that it is an Indemnifiable Tax or Indemnifiable Impost.

### **11.2 Reasonable estimate**

If the Seller cannot finally determine the effect of a Change in Law for the period covered by a Statement then the Seller must make a reasonable estimate of the amount of the payment required to be made under clause 11.1(a) or the reduction required to be made under clause 11.1(b) (whichever is applicable) and that estimate shall be used for the purposes of the Statement. When the Seller has finally determined the effect of a Change in Law for that period then the amount of over or under payment will be credited or debited (as applicable) in the next Statement. If the final Statement for the Transaction has been issued, then the Invoicing Party must issue an additional Statement setting out the payment to be made pursuant to this clause.

### **11.3 Advice to Buyer**

The Seller must promptly advise the Buyer of any:

- (a) payment required to be made under clause 11.1(a);
- (b) reduction required to be made under clause 11.1(b);
- (c) estimate made under clause 11.2; or
- (d) final determination made and corresponding credit or debit required to be made under clause 11.2,

and provide sufficient written evidence of the matters giving rise to the requirement for a payment to be made under clause 11.1(a) or reduction to be made under clause 11.1(b) to enable the Buyer to verify the amount of the payment or reduction and to consider any estimate made pursuant to clause 11.2.

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## 12 Independent Review

- (a) If:
  - (i) there is a Specified Curtailment Event or a Specified Force Majeure Event;  
or
  - (ii) a Variation Charge is imposed,
- (b) then the Buyer or in the case of a Variation Charge, the party liable to pay the Variation Charge (the "Notifying Party") is entitled, by giving at least 7 days notice to the other party (the "Audited Party"), to have an independent auditor ("Auditor") engaged by the Audited Party review the allocations and the basis of the curtailment or review the basis of any Variation Charges (as applicable) to verify that the Audited Party has complied with its obligations under this Agreement. Before the Audited Party engages the Auditor, the Audited Party must advise the Notifying Party of the Auditor's identity and the Auditor's daily rates and estimated total costs. In addition, the Notifying Party must be satisfied (not unreasonably) as to the independence of the Auditor.
- (c) The Audited Party must give reasonable assistance to the Auditor in carrying out the audit, including answering any reasonable questions or requests for explanation or requests for further information; provided, however, that nothing in this clause obligates the Audited Party to assist the Auditor in carrying out the audit if:
  - (i) doing so would cause the Audited Party to breach its confidentiality obligations under any agreement to which the Audited Party is a party, provided the Audited Party has complied with this clause; or
  - (ii) the Auditor fails to execute a confidentiality agreement satisfactory to the Audited Party (acting reasonably).
- (d) The Auditor will be engaged on the basis that the Auditor is not permitted to disclose to the Notifying Party any information disclosed to the Auditor by the Audited Party. The Auditor may only disclose to the Notifying Party:
  - (i) whether the Audited Party has complied with its obligations under this Agreement; and
  - (ii) if the Auditor determines that the Audited Party has not complied with its obligations under this Agreement, the amount the Notifying Party should have been allocated during the curtailment or the Variation Charge which should have been paid (as applicable);
- (e) The Notifying Party will pay the costs of the Auditor unless the Auditor determines that the Audited Party has not complied with its obligations under this Agreement, in which case the Audited Party will pay the costs of the Auditor



## PART C – CASH SETTLED GAS TRANSACTIONS AND MSV TRANSACTIONS

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### 13 Application and definitions

#### 13.1 Application

This Part C applies to STTM Transactions, DWGM Transactions and MSV Transactions.

#### 13.2 Definitions and interpretation

The following definitions apply to any Transaction for which Part C is applicable to the exclusion of the same definition in Part A of this Addendum.

“**AEMO**” means Australian Energy Market Operator Limited (ACN 072 010 327).

“**Billing Period**” has the meaning given to “billing period” in Part 19 of the National Gas Rules where the Transaction is a DWGM Transaction and has the meaning given to “billing period” in the STTM Rules where the Transaction is an STTM Transaction or an MSV Transaction.

“**Business Days**” are defined in the 2005 ISDA Commodity Definitions and the places to apply for the purposes of the definition are the capital cities of the State or Territory in Australia in which the parties’ Australian head offices are located.

“**DWGM Transaction**” means any Transaction which is or is described in its Confirmation as a fixed forward contract for cash settlement referable to market prices for the Declared Wholesale Gas Market in Victoria (where “market prices” has the meaning given in Part 19 of the National Gas Rules).

“**Gas Day**” has the meaning given to “gas day” in Part 19 of the National Gas Rules where the Transaction is a DWGM Transaction and where the Transaction is an STTM Transaction or an MSV Transaction has the meaning given to “gas day” in the STTM Rules for the Hub for the Transaction.

“**Hub**” means, for an STTM Transaction or an MSV Transaction, the Adelaide hub, Brisbane hub or Sydney hub (where each of those terms has the meaning given in the STTM Rules) as specified in the Confirmation for the Transaction.

“**Market Information Bulletin Board**” has the meaning given in Part 19 of the National Gas Rules.

“**Modified Market Schedule Quantities**” has the meaning given to “modified market schedule quantities” in the STTM Rules.

“**MSV Transaction**” means any Transaction which is or is described in its Confirmation as a transaction for a market schedule variation (where “market schedule variation” has the meaning given in the STTM Rules).

“**National Gas Rules**” means the rules of that name made under the National Gas Law (being the National Gas Law set out in *National Gas (South Australia) Act 2008* (SA) as amended from time to time).

“**Non Work Day**” means a Gas Day that is not a Work Day.

“**Registered Trading Right**” has the meaning given to “registered trading right” in the STTM Rules.

“**STTM Procedures**” means the procedures of that name made under the National Gas Law.

“**STTM Rules**” means Part 20 of the National Gas Rules.

“**STTM Transaction**” means any Transaction which is or is described in its Confirmation as a fixed forward contract for cash settlement referable to the ex ante market price (where “ex ante market price” has the meaning given in the STTM Rules).

“**Trading Participant**” has the meaning given to “Trading Participant” in the STTM Rules.

“**Trading Right**” has the meaning given to “trading right” in the STTM Rules.

“**Work Day**” means a Gas Day commencing on a day other than Saturday, Sunday or:

- (i) (where the Transaction is a DWGM Transaction) a day that has been proclaimed to be a public holiday in Victoria; or
- (ii) (where paragraph (i) does not apply) a day that has been proclaimed to be a public holiday in:
  - (A) Adelaide where the Hub for the Transaction is the Adelaide hub;
  - (B) Brisbane where the Hub for the Transaction is the Brisbane hub; or
  - (C) Sydney (other than the August bank holiday) where the Hub for the Transaction is the Sydney hub.

### 13.3 Calculation of prices and related matters

- (a) For the purposes of determining a Commodity Reference Price under section 7.2(c)(v)(B) of Article 7 of the 2005 ISDA Commodity Definitions for a DWGM Transaction or an STTM Transaction:

“**STTM Ex Ante Market Price**” means:

Commodity:	Gas
Unit:	GJ
Price Source:	AEMO
Specified Price:	The ex ante market price, determined in accordance with the STTM Rules, as published by AEMO for the Hub specified in the Confirmation and referred to as the “ex ante market price”.

“**Victorian Gas Market Price**” means:

Commodity:	Gas
Unit:	GJ
Price Source:	AEMO

Specified Price: The market price, determined in accordance with Part 19 of the National Gas Rules, applicable at 6 am as published by AEMO in the Market Information Bulletin Board and referred to as the “6 am ex ante price”.

- (b) When a Calculation Period for a Transaction is a period shorter than one day, the term “Pricing Date” for that Calculation Period means that Calculation Period.
- (c) The Market Disruption Events which apply to a Transaction are:
  - (i) Price Source Disruption;
  - (ii) Tax Disruption;
  - (iii) Material Change in Formula.
- (d) The term “Material Change in Formula” does not apply to a change in the administered price cap, cumulative price threshold, MPC (market price cap), MMP (minimum market price), nor VoLL, (as each term is defined in the National Gas Rules).
- (e) The Disruption Fallbacks which apply to each Transaction for each Calculation Period are:
  - (i) Negotiated Fallback;
  - (ii) Calculation Agent Determination, on the basis that:
    - (A) the Calculation Agent for these purposes is an expert having an office in Australia selected by the parties or failing agreement within two Business Days, selected by the chief executive officer for the time being of the Australian Financial Markets Association Ltd (or any successor body) at the request of one of the parties; and
    - (B) the Calculation Agent is to act as an expert (and not as an arbitrator); and
  - (iii) No Fault Termination, as provided for in section 7.5(e) of the 2005 ISDA Commodity Definitions.
- (f) For each Calculation Period that occurs in a Billing Period the Settlement Date is the day upon which payment would be due under the National Gas Rules in respect of Gas bought in that Calculation Period.
- (g) For the purposes of any calculations referred to in the 2005 ISDA Commodity Definitions or in this Addendum (unless otherwise specified), all percentages and quantities used in or resulting from such calculations, other than the Australian Dollar (as defined in the 2006 ISDA Definitions) denominated Fixed Amounts, Floating Amounts and Cash Settlement Amounts resulting from such calculations, will be rounded in the manner determined in good faith by the Calculation Agent having regard to the Calculation Agent’s usual practices. All Australian Dollar (as defined in the 2006 ISDA Definitions) denominated amounts resulting from such calculations (including, without limitation, Fixed Amounts and Cash Settled Amounts) will be rounded to the nearest cent.

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## 14 MSV Transactions

### 14.1 Application and definitions

- (a) This clause 14 applies only to MSV Transactions.
- (b) For the purposes of this clause 14:
  - (i) **“Buyer”** is the party nominated as such in the Confirmation (and need not be the Receiving Participant) and subject to the terms of the Transaction is the party required to pay for delivery.
  - (ii) **“Confirmation Deadline”** for an STTM Gas Day means the time specified as such in the Confirmation, and if none is specified, then 5 pm on the seventh Gas Day after the STTM Gas Day.
  - (iii) **“Fixed Amount”** means the amount (if any) specified in the Confirmation. If a Fixed Price (in \$/GJ) is specified in the Confirmation, the Fixed Amount will be equal to the Fixed Price (in \$/GJ) multiplied by the MSV Quantity (in GJ).
  - (iv) **“MSV”** means a “proposed market schedule variation” (as that term is used in the STTM Rules) in respect of the Hub and STTM Gas Day.
  - (v) **“MSV Quantity”** is the quantity, in GJ specified in the Confirmation and for which an MSV in respect of the Hub and STTM Gas Day must be submitted and confirmed.
  - (vi) **“Originating Participant”** is the party nominated as such in the Confirmation.
  - (vii) **“Payment Date”** for an STTM Gas Day means the day specified as such in the Confirmation, or if no day is specified, then the day upon which payment is due under the STTM Rules in respect of Gas bought on the STTM Gas Day under those rules.
  - (viii) **“Receiving Participant”** is the party nominated as such in the Confirmation.
  - (ix) **“Seller”** is the party nominated as such in the Confirmation (and need not be the Originating Participant) and subject to the terms of the Transaction is the party entitled to receive payment on the Payment Date.
  - (x) **“STTM Direction”** is specified in the Confirmation as either an increase or a decrease to the modified market schedule quantity (as that term is defined in the STTM Rules) of the Originating Participant.
  - (xi) **“STTM Gas Day”** for an MSV Transaction means the Gas Day in respect of which the MSV is to be submitted and confirmed and is identified in the Confirmation.
  - (xii) **“Submission Deadline”** for an STTM Gas Day means the time specified as such in the Confirmation; or if no time is specified, then 4 pm on the seventh Gas Day after the STTM Gas Day.
- (c) For the purposes of this clause 14, an MSV is only ‘valid’ if:
  - (i) the MSV is for the MSV Quantity, for the Hub, in the STTM Direction and for the STTM Gas Day applicable to the MSV Transaction; and

- (ii) contains the other information specified for the MSV in the Confirmation; and
  - (iii) if the submission, or acceptance (as the case may be) is in accordance with the STTM Rules and the STTM Procedures; and
  - (iv) the MSV is not rejected by AEMO.
- (d) In this clause 14, references to a time of day are to Australian eastern standard time (and are not adjusted for daylight saving time in any jurisdiction).

#### **14.2 Delivery and payment**

- (a) Delivery of an MSV Transaction is by transfer of a part of a market schedule quantity (as defined in the STTM Rules) effected in accordance with this clause.
- (b) To effect delivery of an MSV Transaction:
  - (i) the Originating Participant must submit (or, where relevant, procure that the alternative Trading Participant specified in the Confirmation submits) a valid MSV to AEMO by the Submission Deadline; and
  - (ii) if the Originating Participant has complied with its obligations under clause 14.2(b)(i), then the Receiving Participant must confirm (or, where relevant, procure that the alternative Trading Participant specified in the Confirmation confirms) the valid MSV by the Confirmation Deadline in accordance with the STTM Rules and the STTM Procedures.
- (c) If the MSV Transaction is delivered, then the Buyer must pay to the Seller the Fixed Amount on the Payment Date.

#### **14.3 Warranties**

- (a) The following warranties are made by the following parties on the date an MSV Transaction is entered into:
  - (i) by the Originating Participant - the Originating Participant (or, where relevant, the alternative Trading Participant specified in the Confirmation) has Registered Trading Rights that are consistent with the increase or decrease in its Modified Market Schedule Quantities under the proposed MSV Transaction; and
  - (ii) by the Receiving Participant - the Receiving Participant (or, where relevant, the alternative Trading Participant specified in the Confirmation) has Registered Trading Rights that are consistent with the increase or decrease in its Modified Market Schedule Quantities under the proposed MSV Transaction.
- (b) The warranties do not constitute a representation for the purpose of Section 5(a)(iv) of the Agreement.

#### **14.4 Failure to deliver**

- (a) If the Seller is the:
  - (i) Originating Participant and fails to comply with its obligations under clause 14.2(b)(i); or
  - (ii) Receiving Participant and fails to comply with its obligations under clause 14.2(b)(ii),

then that failure shall not constitute an Event of Default but the obligations of the parties under clause 14.2(b) and the corresponding obligation under clause 14.2(c) cease and instead the Seller shall pay the Buyer the Buyer's MSV Payment Amount on the Payment Date and the Buyer shall pay the Seller the Fixed Amount on the Payment Date.

- (b) If the Buyer is the:
  - (i) Originating Participant and fails to comply with its obligations under clause 14.2(b)(i); or
  - (ii) Receiving Participant and fails to comply with its obligations under clause 14.2(b)(ii),

then that failure shall not constitute an Event of Default but the obligations of the parties under clause 14.2(b) and the corresponding obligation under clause 14.2(c) cease and instead the Buyer shall pay the Seller the Seller's MSV Payment Amount on the Payment Date and the Buyer shall pay the Seller the Fixed Amount on the Payment Date.

- (c) Sections 9(h)(i)(2)(B) and 9(h)(i)(4) of the ISDA Master Agreement do not apply to a failure to deliver under clause 14.4(a) or clause 14.4(b).

#### **14.5 Calculation of MSV Payment Amount**

- (a) The Buyer's MSV Payment Amount is the greater of zero and the additional effective amount (if any) payable by the Buyer (or, where relevant, by the alternative Trading Participant specified in the Confirmation) under the STTM Rules taking into account GST and any input tax credits as a result of the failure by the Seller referred to in clause 14.4(a).
- (b) The Seller's MSV Payment Amount is the greater of zero and the additional effective amount (if any) payable by the Seller (or, where relevant, by the alternative Trading Participant specified in the Confirmation) under the STTM Rules taking into account GST and any input tax credits as a result of the failure by the Buyer referred to in clause 14.4(b).
- (c) The Buyer must determine and advise the Seller of the Buyer's MSV Payment Amount at least one Business Day before the Payment Date. If the Buyer is unable to determine the Buyer's MSV Payment Amount by that date, the Buyer may notify the Seller in which case the Payment Date will become the date that is one Business Day after the Buyer notifies the Seller of the Buyer's MSV Payment Amount.
- (d) The Seller must determine and advise the Buyer of the Seller's MSV Payment Amount at least one Business Day before the Payment Date. If the Seller is unable to determine the Seller's MSV Payment Amount by that date, the Seller may notify the Buyer in which case the Payment Date will become the date that is one Business Day after the Seller notifies the Buyer of the Seller's MSV Payment Amount.