



# Northern Gas Pipeline Nitrogen Removal Services Agreement

**Commercial and confidential**

Jemena Northern Gas Pipeline Pty Ltd  
Service Provider

[Insert Customer name]  
Customer

**Version 13 March 2019**

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# Northern Gas Pipeline Nitrogen Removal Services Agreement

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## Date

**Parties**                    **Jemena Northern Gas Pipeline Pty Ltd (ACN 607 928 790)** of 567 Collins Street, Melbourne Victoria 3000 (**Service Provider**)

**[Insert Customer name] (ABN [insert ABN]) of [insert address]**  
(**Customer**)

## Background

- A.            On or about the date of this agreement, the Customer (as the “Shipper”) and the Service Provider (as the “Transporter”) entered into the GTA pursuant to which the Customer proposes to transport Gas to the eastern gas market via the Pipeline.
- B.            As at the date of this agreement, the Customer acknowledges that Gas to be delivered by or on behalf of the Pipeline Shippers and to be transported to the eastern gas market via the Pipeline will need to be treated to comply with the Pipeline Gas Specification.
- C.            The Service Provider has offered to supply the Nitrogen Removal Services to the Customer, and the Customer has agreed to acquire the Nitrogen Removal Services, on the terms of this agreement.

## Operative provisions

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### 1. Definitions

In this agreement:

**Aboriginal Land Rights Claim** means a traditional land claim as that term is defined under the ALRA, which has not been finally disposed of.

**Actual Delivered Quantity** or **ADQ** means the actual quantity of Gas, as allocated and determined by the Service Provider in accordance with this agreement, made available and delivered or deemed to be delivered by the Service Provider to or on behalf of the Customer in respect of a Nitrogen Removal Service at the NRSA Delivery Point for a Day.

**Actual Received Quantity** or **ARQ** means the actual quantity of Gas, as allocated and determined by the Service Provider in accordance with this agreement, made available and received or deemed to be received by the Service Provider from or on behalf of the Customer in respect of a Nitrogen Removal Service at the NRSA Receipt Point for a Day.

**ACST** means Australian Central Standard Time.

**Adequate Assurance** has the meaning given in clause 29.3(a).

**Adjustment Note** has the meaning given in the GST Act.

**Adjustment Period** has the meaning given in clause 19.5(b).

**AEST** means Australian Eastern Standard Time.

**ALRA** means the Aboriginal Lands Rights (Northern Territory) Act 1976 (Cth).

**Applicable Law** means:

- (a) principles of common law or equity applying in Australia;
- (b) statutes, regulations, by-laws or other subordinate instruments of the Commonwealth and the States and Territories of Australia or of an Authority;
- (c) the Constitution of the Commonwealth of Australia;
- (d) requirements binding under law;
- (e) mandatory Approvals; and
- (f) guidelines of an Authority that have the force of law,

applicable to a party or the performance by a party of its obligations under this agreement.

**Approval** means any licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) that must be obtained or satisfied (as the case may be) in connection with the operation and maintenance of the Nitrogen Removal Skid, and the provision of the Nitrogen Removal Services.

**As-Available Charge** means the charge for the As-Available Nitrogen Removal Services as calculated in accordance with Schedule 1 and as varied from time to time in accordance with this agreement.

**As-Available Nitrogen Removal Service** means a Nitrogen Removal Service that is subject to Capacity being available on the Day that the Service Provider has to meet its obligations under all Nitrogen Removal Services Agreements for Nitrogen Removal Services with a higher priority number and Curtailment.

**Associate** means, in relation to a person, any Related Body Corporate of that person and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and in the case of the Customer, includes any other person to whom the Customer delegates a right, power, function or duty under this agreement, but does not include the Service Provider or any of its Associates.

**Associated Service** means, in respect of a Nitrogen Removal Service, the associated service provided or to be provided by the Transporter under the GTA from time to time which is identified in Schedule 1 for each Nitrogen Removal Service.

**Auditor** has the meaning given in clause 20(a)

**Authorised Overrun Gas** has the meaning given in clause 5.3(c).

**Authority** means any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality and includes a stock exchange;

whether of Australia or elsewhere, but does not include the Customer or any representative of the Customer.

**Bank Bill** means a bill of exchange (as defined in the Bills of Exchange Act 1909 (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

**Bank Bill Rate** means, in respect of a period, the rate (expressed as a yield per centum per annum to maturity rounded upwards, if necessary, to four decimal places) that is quoted at approximately 10:10 am (Sydney time) on page "BBSY" of the Reuters Monitor System on the first day of the relevant period for which the rate is sought, as the average bid rate for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of the average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the **Bank Bill Rate** will be the bid rate specified by the non-defaulting party, acting reasonably, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday for Darwin pursuant to the Public Holidays Act (NT).

**Business Hours** means between 9:00 am and 5:00 pm on a Business Day.

**Capacity** means, at any point in time, the quantity of Gas that can be treated in the Nitrogen Removal Skid at that point in time.

**Carbon Charge** means any cost, Loss, fee, expense, penalty, fine, royalty, tax, rate, duty, levy or charge imposed, levied or incurred whether directly or indirectly and including on an accrual basis in respect of any Greenhouse Gas emissions, or in respect of any existing or new trading mechanism or scheme, or any other existing or new mechanism, that has as one of its objectives a reduction in or modification of behaviour in respect of Greenhouse Gas emissions, including any direct or indirect cost of acquiring or failure to surrender any permit, credit or licence which is required in connection with the emission of Greenhouse Gas or any unit (however called) which relates to the amounts of emissions of Greenhouse Gas, and any direct or indirect cost of any relevant activities undertaken for the purposes of reducing or offsetting such emissions but does not include any penalty or fine incurred by the Service Provider or its Related Bodies Corporate due to the Wilful Misconduct or negligence of the Service Provider or its Related Bodies Corporate.

**Change of Control** means, with respect to the Customer, when at any time:

- (a) the persons who immediately prior to that time had Control of the Customer ceases to have Control of the Customer; or
- (b) one or more persons who immediately prior to that time did not have Control of the Customer acquires Control of the Customer.

**Change of Law** means:

- (a) any Applicable Law being introduced, amended or repealed in whole or in part;
- (b) the imposition of any Impost which was not previously in force;



- (c) the rate at which any Impost is levied being varied from the previous rate prevailing;
- (d) the basis on which any Impost is levied or calculated being varied from the previous basis on which it was levied or calculated;
- (e) a variation in the interpretation or administration of any Applicable Law by an Authority; or
- (f) a scheme being introduced by any Authority providing for the Service Provider to gain or hold any Approval or providing for the Service Provider to purchase, hold or surrender any Approval or any such scheme being varied,

except to the extent that such introduction, amendment, repeal, imposition or variation relates to Income Tax, Carbon Charge or GST.

**Charges** means the NRSA Tariffs and all charges payable by the Customer to the Service Provider in accordance with this agreement (as adjusted in accordance with this agreement).

**Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity):

- (a) under, arising out of, or in connection with, this agreement;
- (b) arising out of, or in connection with, the Nitrogen Removal Services or either party's conduct prior to the Execution Date; or
- (c) otherwise at law, including in contract, in tort, for specific performance or for restitution.

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties or their respective Associates in connection with this agreement, relating to the business, technology or other affairs of a party or its Related Bodies Corporate (or in the case of the Service Provider, of any shareholders of SGSP (Australia) Assets Pty Ltd and their respective Associates) including:

- (a) this agreement;
- (b) information provided by:
  - (i) the Customer or any of its Associates to the Service Provider or any of its Associates; or
  - (ii) the Service Provider or any of its Associates to the Customer or any of its Associates,

in connection with this agreement whether prior to or after the Execution Date;

- (c) all trade secrets, financial, marketing, systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of confidence, owned or used by or licensed to a party;

- (d) information of the kind referred to in section 275(1) of the PPSA; and
- (e) any other information in connection with the Nitrogen Removal Services which the Service Provider is required to keep confidential in complying with any Applicable Law,

but does not include any such information that:

- (f) is in, or becomes part of, the public domain other than through a breach of this agreement or an obligation of confidence owed to or by the person providing the Confidential Information;
- (g) a party can prove by written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (h) a party acquires from a source other than the other party (or any Associate of that other party) where the source is entitled to disclose it.

**Confirmed Delivery Nomination** means the amount of Gas that the Service Provider confirms, in accordance with clause 6.4 will be scheduled for delivery to the NRSA Delivery Point in respect of a Nitrogen Removal Service.

**Confirmed Nomination** has the meaning given in clause 6.4.

**Confirmed Receipt Nomination** means the amount of Gas that the Service Provider, confirms, in accordance with clause 6.4 will be scheduled for receipt at the NRSA Receipt Point in respect of a Nitrogen Removal Service, taking into account:

- (a) Facility Use Gas that the Customer is required to deliver in accordance with this agreement; and
- (b) System Use Gas that the Customer, as the Shipper under the GTA, is required to deliver in accordance with the GTA.

**Contract Year** means a period of 12 consecutive Months commencing at 8:00 am on 1 January and ending immediately prior to 8:00 am on 1 January of the next year, except that:

- (a) the first Contract Year will commence at 8:00 am on the first Day of the NRSA Services Term and will end immediately prior to 8:00 am on the following 1 January; and
- (b) the final Contract Year will end on the NRSA End Date.

**Control** in respect of an entity has the meaning given in section 50AA of the Corporations Act and **Controlled** has a similar meaning.

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

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

**Cure Period** has the meaning given in clause 21.2(c) as amended by clause 21.2(g).

**Cure Plan** has the meaning given in clause 21.2(e).

**Curtailement** means a reduction in or an interruption to the provision of a Nitrogen Removal Service, and Curtail and Curtailed have a corresponding meaning.

**Customer Website** means the Service Provider's customer site on the World Wide Web at [www.access.jemena.com.au](http://www.access.jemena.com.au) or such other URL as notified to the Customer by the Service Provider.

**Daily Imbalance** has the meaning given in clause 8.1.

**Daily Nomination** has the meaning given in clause 6.4(a).

**Date of Service Commencement** means the date on which the Nitrogen Removal Skid is completed and ready to provide the Nitrogen Removal Services, as notified by the Service Provider to the Customer in accordance with clause 3.1(b).

**Day** means:

- (a) on and from the Execution Date until the Standard Market Timetable Commencement Date, the 24 hour period starting at 08:00 hours ACST on a day and ending at 07:59 hours ACST on the following day; and
- (b) on and from the Standard Market Timetable Commencement Date, the 24 hour period starting at 06:00 hours AEST on a day and ending at 05:59 hours AEST on the following day.

and Daily has a corresponding meaning.

**Default Notice** has the meaning given in clause 21.2(a).

**Defaulting Party** has the meaning given in clause 21.1.

**Delay Event** means a delay event (as described in the Capacity Transfer and Auction Timetable in the Capacity Transfer and Auction Procedures) that affects AEMO's ability to comply with the that timetable.

**Dispute** means any dispute, controversy or Claim under, arising out of or in connection with this agreement or the breach, termination or claimed invalidity of this agreement.

**Downstream Shutdown** has the meaning given in clause 11.3.

**Event of Default** has the meaning given in clause 21.1.

**Event of Insolvency** means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or

- (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Customer under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any Applicable Law to be (for any purpose), insolvent or unable to pay its debts,

but in respect of the Service Provider, an Event of Insolvency does not include any internal restructuring or solvent reorganisation of (or any action taken to restructure or reorganise) any member or members of the SGSPAA Group.

**Excluded Loss** means any:

- (a) loss of revenue or profit or anticipated loss of revenue or profit;
- (b) loss of reputation;
- (c) loss of business opportunity or goodwill;
- (d) special or punitive damages; or
- (e) any indirect or consequential loss.

**Execution Date** means the date this agreement is executed by both parties.

**Expert Determination Agreement** means the agreement in the form set out in Schedule 2.

**Facility Use Gas** means the quantities of Gas:

- (a) used by the Service Provider for the purposes of operating the Nitrogen Removal Skid; and
- (b) otherwise lost or unaccounted for in connection with the normal operation of the Nitrogen Removal Skid by the Service Provider (including the nitrogen removal process); and
- (c) recorded as lost or gained due to a metering error,

but does not include Gas lost through the Wilful Misconduct or negligence of the Service Provider or breach by the Service Provider of its obligations under this agreement.

**Financial Default** means:

- (a) any default by a party in the payment of any amount due and payable to the other party under this agreement;
- (b) a party has experienced or experiences an Event of Insolvency; or
- (c) where the Customer fails to provide on-going credit support in accordance with clause 29.

**Firm Charge** means the charge for the Firm Nitrogen Removal Services as calculated in accordance with Schedule 1 and as varied from time to time in accordance with this agreement.

**Firm Nitrogen Removal Service** means the Nitrogen Removal Service that gives the highest level assurance to the Customer that the Gas will be treated, subject to Curtailment.

**Force Majeure Event** means:

- (a) any event or circumstance, or a combination of events and/or circumstances that:
  - (i) causes or results in the prevention or delay of a party from performing any of its obligations under this agreement; and
  - (ii) is beyond the reasonable control of that party and could not, or the effects of that event or circumstance, or that combination of events and/or circumstances, could not, have been prevented, delayed, overcome or remedied by that party using Good Industry Practice,

and, provided the event or circumstance, or combination of events and/or circumstances meets the foregoing criteria, includes:

- (i) an act of God;
- (ii) a strike, lockout, ban or other labour difficulty, act of public enemy, war (whether declared or undeclared), terrorist act, blockade, revolution, riot, insurrection, malicious damage or civil commotion;
- (iii) landslide, cyclone, storm, flood, washout, fire, earthquake, explosion (including radioactive and toxic explosion), tidal wave, epidemic or quarantine;
- (iv) an order of any court or tribunal;

- (v) in relation to either party, any failure of any third party to perform its obligations to such party, where such failure is caused by any event or circumstance that, if such event or circumstance had affected a party to this agreement, would have been a Force Majeure Event under this agreement; and
- (vi) an embargo, unavailability or shortage of essential equipment, chemicals or other materials, goods (other than Gas), labour or services, lack of transportation or communication,

provided that, notwithstanding paragraph (a) above, the following events or circumstances will not constitute a Force Majeure Event:

- (b) the failure or inability of the Customer or a person supplying Gas at or upstream of the NRSA Receipt Point to provide Gas at a NRSA Receipt Point for treatment under this agreement (including a failure or inability to provide Gas which meets the Gas Specification or the other physical requirements set out in this Agreement or the Annexures);
- (c) the inability of Shipper or a person receiving the Gas at or downstream of the NRSA Delivery Point to take Gas;
- (d) financial hardship or the inability of a party, and/or any Related Body Corporate of a party, to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this agreement;
- (e) breakdown or failure of equipment caused by normal wear and tear, or failure to properly maintain equipment or stock of spares;
- (f) changes in market conditions for transportation, purchase or sale of Gas; and
- (g) failure or inability of either party to pay any sum due and payable under this agreement.

**Gas** means a substance that:

- (a) is mostly methane;
- (b) is in a gaseous state at a temperature of 15 degrees Celsius and at a pressure of 101.325 kPa; and
- (c) consists of naturally occurring hydrocarbons or a naturally occurring mixture of hydrocarbons and non-hydrocarbons.

**Gas Transportation Agreement** means any gas transportation agreement entered into between the Transporter and any Pipeline Shipper.

**General Liability Limitation** has the meaning given in clause 26.2(a).

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight reasonably and ordinarily expected from a skilled, competent and experienced person acting in good faith and carrying out the same type of activity under the same or similar circumstances in a similar location and acting generally in accordance with Applicable Laws, applicable Approvals and good and prudent management and operating methods, practices and standards, including Australian Standard AS 2885 (Pipelines – gas and liquid petroleum).

**Grantor** has the meaning given in clause 31(a).

**Greenhouse Gas** means a greenhouse gas as defined by the National Greenhouse and Energy Reporting Act 2007 (Cth).

**GST** includes amounts defined as "GST" under the GST law and amounts payable on account of a notional liability under Division 177 of the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST law** has the meaning given in the GST Act.

**GTA** means the document entitled "Gas Transportation Agreement" between the Shipper and the Transporter dated on or about the date of this agreement.

**GTA Receipt Point** means the Warrego receipt point (KP 0) under the GTA.

**Guarantor** has the meaning given in clause 29.3(a).

**Heritage and Sacred Site Legislation** means any law relating to the protection or preservation of places, sites and objects of Aboriginal or cultural heritage value from time to time, including:

- (a) the Heritage Act (NT);
- (b) the ALRA;
- (c) the Northern Territory Aboriginal Sacred Sites Act (NT);
- (d) the Aboriginal Cultural Heritage Act 2003 (Qld); and
- (e) the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth).

**Heritage or Sacred Site Claim** means a claim made under any Heritage and Sacred Site Legislation.

**Income Tax** has the same meaning given in section 995-1 of the Income Tax Assessment Act 1997 (Cth).

**Impost** means any impost, deduction, withholding of any nature, royalty (whether based on value, profit or otherwise), tax, excise, levy, fee, payment, rate, duty, charge, liability or cost levied, charged or imposed by any Authority or other person or body authorised by law to impose that Impost, whatever it is called, and whatever the reason for imposing or levying it, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing.

**Independent** means:

- (a) in respect of a natural person, a person who has not at any time in the previous two years been an auditor, employee, director or contractor of either party or any of their respective Related Bodies Corporate and who does not directly hold any significant financial interest within either party or any of their respective Related Bodies Corporate; and
- (b) in respect of any other entity (including a partnership), an entity:
  - (i) that is not the current auditor of a party or its Related Bodies Corporate; and

- (ii) whose senior personnel directly engaged in the relevant role for the purposes of this agreement are not persons of the type described in paragraph (a) of this definition.

**Input Tax Credit** has the meaning given in the GST Act.

**Interest** means interest calculated with monthly resets and compounded monthly.

**Intra-Day Nomination** has the meaning given in clause 6.5(a).

**Letter of Credit Collateral** has the meaning given in clause 29.3(a)(ii).

**Loss** means:

- (a) any cost, expense, loss, damage or liability; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent (including any Excluded Loss).

**MDQ** means, with respect to a transportation service under the GTA, the MDQ for that transportation service set out in the relevant GTA annexure.

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

**Measurement Manual** is the document of that name as published from time to time on the Public Website.

**MHQ** has the meaning given in clause 7.3(b).

**Minimum Service Charge** means the minimum charge for a Nitrogen Removal Service for each Month as specified in Schedule 1 and which is payable even if that Nitrogen Removal Service is not requested or used by the Customer.

**Month** means a period commencing at 8:00 am on the first Day of a month and ending immediately prior to 8:00 am on the first Day of the next month, except that:

- (a) the first Month will commence at 8:00 am on the first Day of the NRSA Services Term and end immediately prior to 8:00 am on the first Day of the next month or at the expiry of the Day this agreement terminates or expires in accordance with its terms (if this agreement terminates within one month of the first Day of the NRSA Services Term); and
- (b) the final Month will commence at 8:00 am on the first Day of the month in which the NRSA End Date or earlier termination of this agreement occurs (or the first Day of the NRSA Services Term if this agreement terminates within one month of the first Day of the NRSA Services Term) and will end at the expiry of the last Day of the NRSA Services Term.

**Monthly Invoice** has the meaning given in clause 19.1.



**National Gas Law** means the schedule to the *National Gas (Northern Territory) Act, National Gas (South Australia) Act 2008* (SA) as in force in Victoria under the *National Gas (Victoria) Act 2008* (Vic) and in New South Wales under the *National Gas (New South Wales) Act 2008* (NSW).

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

**Native Title Claim** means a claim in an application for an approved determination of native title recognised by the NTA.

**Nitrogen Removal Services** has the meaning given in clause 5.1(b).

**Nitrogen Removal Services Agreement** means any nitrogen removal services agreement entered into between the Service Provider and any Nitrogen Removal Services Customer.

**Nitrogen Removal Services Customer** means a person to whom the Service Provider has agreed to provide nitrogen removal services and, where the context requires, includes the Customer.

**Nitrogen Removal Skid** means the nitrogen removal skid located before the start of the Pipeline where the inlet pipeline crosses the boundary of the Jemena compound at Warrego including all associated equipment, including:

- (a) the NRSA Receipt Point and the NRSA Delivery Point and their respective facilities; and
- (b) all ancillary equipment (including the booster compressors) owned and/or controlled by the Service Provider including metering and gas quality equipment,

but excluding the Pipeline.

**Nomination** has the meaning given clause 6.2(a).

**Non-Defaulting Party** has the meaning given in clause 21.2(a).

**Non-Financial Default** means a party's failure to perform or comply with any of its material obligations under this agreement, but does not include a Financial Default.

**Notice of Dispute** has the meaning given in clause 22.2.

**NRMDQ** means, with respect to a Nitrogen Removal Service applicable to a transportation service under the GTA, the MDQ for that transportation service plus Facility Use Gas plus System Use Gas. The MDQ and NRMDQ for any Day which is other than twenty-four (24) hours in length will be the proportion of that amount that the length of the day bears to twenty-four (24) hours.

**NRSA Delivery Point** means the outlet flange of the Nitrogen Removal Skid as shown on the layout diagram in Schedule 4.

**NRSA End Date** means the 'End Date' as defined under the GTA.

**NRSA Gas Specification** means the gas specification set out in section 1 of Schedule 3.

**NRSA Receipt Point** means the fence line of the APA compound at Warrego, Northern Territory as shown on the layout diagram in Schedule 4.

**NRSA Services Term** means the period commencing at the same time as the Services Term under the GTA and ending immediately prior to 8.00am on the NRSA End Date or such earlier date upon which termination of this agreement takes effect.

**NRSA Shutdown** means period outages of the Nitrogen Removal Skid required in order to carry out major inspections, maintenance and cleaning.

**NRSA Tariff** means the applicable tariff set out in Schedule 1 for each Nitrogen Removal Service and as varied from time to time in accordance with this agreement.

**NTA** means the Native Title Act 1993 (Cth).

**Off-Specification Gas** means Gas that fails to meet the NRSA Gas Specification.

**Overdue Rate** means, in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period.

**Overrun Charge** has the meaning given in clause 5.5.

**Overrun Gas** has the meaning given in clause 5.3(a).

**Permitted Curtailment** has the meaning given in clause 15.1(b) and clause 15.1(c).

**Pipeline** means the gas transmission pipeline that the Transporter proposes to construct and operate to connect gas transportation facilities in the Northern Territory to existing gas transportation facilities in or around Mt Isa and includes all associated facilities, including:

- (a) the receipt points and delivery points and their respective facilities;
- (b) all ancillary infrastructure owned and/or, controlled by the Transporter including mainline valves, scraper stations, receipt and delivery stations with filtering, metering and gas quality equipment, cathodic protection, communication facilities, control room and access tracks,

but excluding:

- (c) all facilities upstream and downstream of those facilities not owned or controlled by the Transporter or its Related Bodies Corporate; and
- (d) the Nitrogen Removal Skid.

**Pipeline Gas Specification** means the gas specification set out in section 2 of Schedule 3.

**Pipeline Off-Specification Gas** means Gas that fails to meet the Pipeline Gas Specification.

**Pipeline Shipper** means a person with whom the Transporter has agreed to provide a service on the Pipeline.

**Planned Maintenance Schedule** has the meaning given in clause 15.6(a).

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**PPSA Security Interest** means a "security interest" as defined in the PPSA.

**Priority of Nitrogen Removal Service** means the order that the Nitrogen Removal Services will be ceased or reduced in accordance with any Curtailment or during a

Force Majeure Event as set out in clause 5.1(d) with the Nitrogen Removal Service with the lowest priority number being Curtailed last.

**Proposed Cure Plan** has the meaning given in clause 21.2(d).

**Public Website** means the Service Provider's public site on the World Wide Web at [www.jemena.com.au](http://www.jemena.com.au) or such other URL as notified to the Customer by the Service Provider.

**PypIT** has the meaning given in clause 6.2(a).

**Quarter** means a period of 3 calendar months commencing on the first day of July, October, January or April and **Quarterly** has a corresponding meaning.

**Receiver** includes a receiver or receiver and manager.

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

**Secured Party** has the meaning given in clause 31(a).

**Services Term** has the meaning given in the GTA.

**SGSPAA Group** means SGSP (Australia) Assets Pty Ltd and its wholly owned subsidiaries.

**Shipper** means the party identified as the 'Shipper' under the GTA.

**Shutdown** means an Upstream Shutdown or a Downstream Shutdown, as the context requires.

**Start Date** means the date that the Nitrogen Removal Services commence as set out in Schedule 1.

**Standard Market Timetable** means the standard market timetable made under Part 26 of the National Gas Rules.

**Standard Market Timetable Commencement Date** means the date on which the Standard Market Timetable commences as specified in or for the purposes of Part 26 of the National Gas Rules, which is currently 1 October 2019.

**Suspension Period** has the meaning given in clause 14(d).

**System Use Gas** has the meaning given in the GTA.

**Tax Invoice** has the meaning given in the GST Act.

**Third Party Works** means works conducted on, at or adjacent to the Nitrogen Removal Skid which result, or are likely to result, in any reduction in the Capacity and which is caused by, or effected to permit:

- (a) the expansion of Capacity to provide nitrogen removal services utilising the Nitrogen Removal Skid; or
- (b) the connection of additional facilities to the Nitrogen Removal Skid,

in connection with an agreement with a Nitrogen Removal Services Customer or a prospective Nitrogen Removal Services Customer.

**Transporter** means the party identified as the 'Transporter' under the GTA.

**Upstream Shutdown** has the meaning given in clause 11.3.

**Week** means:

- (a) on and from the Execution Date until the Standard Market Timetable Commencement Date, a period of seven (7) consecutive Days commencing at 08:00 hours ACST on a Saturday; and
- (b) on and from the Standard Market Timetable Commencement Date, a period of seven (7) consecutive Days commencing at 06:00 hours AEST on a Saturday.

**Weekly Nomination** has the meaning given in clause 6.3(a).

**Wilful Misconduct** means any act or failure to act taken or not taken with an intentional disregard of foreseeable, harmful and avoidable consequences, but does not include:

- (a) an error of judgment, mistake, act or omission (negligent or not) which is made, done or omitted to be done in good faith; or
- (b) an act or omission done or omitted to be done at the express instruction or with the express agreement of the other party.

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## 2. General rules of interpretation

### 2.1 Interpretation

In this agreement:

- (a) **(headings)**: headings (including any headings at the beginning of subclauses) are for convenience only and do not affect interpretation; and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) **(cross references)**: a reference to:
  - (i) a party, clause, paragraph, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, paragraph, Schedule, Exhibit, Attachment or Annexure of or to this agreement; and
  - (ii) this agreement includes all Schedules, Exhibits, Attachments or Annexures to it;
- (d) **(document as amended)**: a reference to a document (including this agreement) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's executors, administrators, successors and permitted assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(include)**: "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (j) **(or)**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(\$)**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: except where expressly stated otherwise, a reference to time is a reference to time in Darwin, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(may)**: the term "may", when used in the context of a power, right or remedy exercisable by a party, means that that party can exercise that power, right or remedy in its absolute and unfettered discretion and has no obligation to do so;
- (p) **(replacement bodies)**: where there is a reference to an Authority, institute or association or other body referred to in this agreement which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this agreement is deemed to refer to that other entity; or
  - (ii) ceases to exist, this agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (q) **(units)**: except as expressly provided for in this agreement, terminology used to describe units is in accordance with Australian Standard AS1000-1998 "The International System of Units (SI) and its Application" and the National Measurement Act 1960 (Cth) and Australian Standard AS1376-1996 "Conversion Factors";
- (r) **(day)**: a reference to **day** is a reference to a calendar day;
- (s) **(week)**: a reference to a **week** is a reference to a period of 7 consecutive days;
- (t) **(month)**: a reference to **month** is a reference to a calendar month; and
- (u) **(no bias against draftsman)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

## 2.2 Rounding

- (a) **(Quantity of Gas rounded to nearest GJ)** Any numerical calculation of a quantity of Gas must be rounded to the nearest GJ by being rounded up if the first decimal place is greater than or equal to 5, and rounded down if the first decimal place is less than 5.
- (b) **(AUD per GJ rounded to 4 decimal places)** Any numerical calculation of the AUD amount per GJ used for the determination of the Charges and other payments, will be rounded to 4 decimal places by being rounded up, if the decimal place following the fourth decimal place is greater than or equal to 5, and rounded down, if the decimal place following the fourth decimal place is less than 5.
- (c) **(Other amounts rounded to 4 decimal places)** Subject to clauses 2.2(a) and 2.2(b), any numerical calculation, not the subject of clause 2.2(d), that results in more than four decimal places must be rounded to four decimal places by being rounded up, if the decimal place following the fourth decimal place is greater than or equal to 5, and rounded down, if the decimal place following the fourth decimal place is less than 5.
- (d) **(Amounts payable rounded to nearest cent)** After first applying clauses 2.2(a), 2.2(b) and 2.2(c) any individual amount payable on an invoice or bill issued pursuant to this agreement must be rounded to the nearest cent by being rounded up if the next decimal place is greater than or equal to 5, and rounded down if the next decimal place is less than 5.

## 2.3 Contract Years of less than 365 days

Any quantity expressed in this agreement which is applied to or by reference to a Contract Year will in the case of a Contract Year comprising less than 365 days (or in the case of a leap year, 366 days) be reduced on a pro rata basis based on the number of days in that Contract Year.

## 2.4 Standards

A reference to any standard, code, guideline, specification, policy, procedure, directive, circular, code of practice or requirement relating to or affecting the Nitrogen Removal Skid or the Nitrogen Removal Services, is a reference to the version last published from time to time.

## 2.5 Action without delay

Unless there is a provision in this agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

## 2.6 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the Customer or an obligation of the Service Provider under this agreement will not limit or exclude any other right of the Customer or obligation of the Service Provider under this agreement unless expressly stated.
- (b) Any provision of this agreement which seeks, either expressly or by implication, to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by law.

## 2.7 Relationship of the parties

- (a) Nothing in this agreement:
  - (i) **(no additional relationship)**: creates a partnership, a joint venture or a fiduciary, employment or agency relationship, between the Customer and the Service Provider; or
  - (ii) **(no good faith)**: imposes any duty of good faith on the Customer or the Service Provider (unless otherwise expressly provided).
- (b) No party has the authority to:
  - (i) **(no pledge of credit)**: pledge, or purport to pledge, the credit of the other party; or
  - (ii) **(no warranties, representations or undertakings)**: make or give (or purport to make or give) any representations, warranties or undertakings for or on behalf of the other party.

## 2.8 Reasonable endeavours of a party

Any statement in this agreement providing that a party will use or exercise "reasonable endeavours" in relation to an outcome, means that party:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, including having regard to its resources and other commercial interests and responsibilities; and
- (b) **(no guarantee)**: does not guarantee the relevant outcome will be brought about.

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## 3. Term of agreement

This agreement commences on the Execution Date and unless terminated earlier in accordance with its terms, ends on the NRSA End Date.

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## 4. Gas for commissioning and testing

- (a) The Service Provider will be responsible for providing Gas required for the purposes of testing and commissioning the Nitrogen Removal Skid.
- (b) If the Service Provider requests, the Customer may:
  - (i) provide assistance, at the Service Provider's cost, required by the Service Provider for the purposes of testing and commissioning the Nitrogen Removal Skid; and
  - (ii) make available at the entry point to the Nitrogen Removal Skid and sell Gas to be used for the purposes of testing, commissioning and energizing the Nitrogen Removal Skid at a commissioning gas price to be agreed between the parties.
- (c) The Customer is not liable to pay any Charges in relation to the Gas which is put through the Nitrogen Removal Skid for the purposes of commissioning the Nitrogen Removal Skid.

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## 5. Nitrogen Removal Services and Overrun Gas

### 5.1 Nitrogen Removal Services

- (a) On each Day during the NRSA Services Term, the Customer may nominate to receive a quantity of Gas at the NRSA Receipt Point and subject to the terms of this agreement and provided that the Gas complies with the NRSA Gas Specification and the gas pressure prescribed under clause 11, the Service Provider must accept delivery of such quantities of Gas at the NRSA Receipt Point and must perform the Nitrogen Removal Services.
- (b) On each Day where the Service Provider has accepted delivery of the Customer's Gas at the NRSA Receipt Point in accordance with clause 5.1(a), the Service Provider will treat and deliver such Gas, so that when delivered to the NRSA Delivery Point, such Gas will meet the Pipeline Gas Specification (**Nitrogen Removal Services**).
- (c) The Service Provider will be responsible for any waste nitrogen stream from the Nitrogen Removal Skid or other waste.
- (d) The Priority of Nitrogen Removal Services means the order that the treatment of Gas will be ceased or reduced in accordance with any Curtailment or during a Force Majeure Event. In this agreement, the Firm Nitrogen Removal Service will be Curtailed last. Further:
  - (i) **Firm Nitrogen Removal Service (Priority 1):** in the event of insufficient Capacity to meet all firm nitrogen removal services contracted by the Service Provider (including under this agreement), the Service Provider will Curtail the quantities of Gas to be treated using the Nitrogen Removal Skid on account of the Customer and all other Nitrogen Removal Services Customers for all firm nitrogen removal services under all Nitrogen Removal Services Agreements, such Curtailment to be made on a proportionate basis according to the proportion that the customer's NRMDQ is as a percentage of the total NRMDQs for all firm nitrogen removal services under all Nitrogen Removal Services Agreements, as applicable; and
  - (ii) **As-Available Nitrogen Removal Service (Priority 10):** in the event of insufficient Capacity to meet all as-available nitrogen removal services contracted by the Service Provider (including under this agreement), the Service Provider will Curtail the quantities of Gas to be treated using the Nitrogen Removal Skid to the Customer and all other Nitrogen Removal Services Customers for all as-available nitrogen removal services based on the commencement date of that as-available nitrogen removal service, with the last signed Nitrogen Removal Services Agreement for an as-available nitrogen removal service being Curtailed first.

### 5.2 Maximum Daily Quantity

In respect of a Nitrogen Removal Service, the Service Provider is not obliged on any Day to:

- (a) receive at the NRSA Receipt Point; or
- (b) deliver at the NRSA Delivery Point,



- (c) a quantity of Gas that is greater than the NRMDQ for that Nitrogen Removal Service.

### **5.3 Overrun Gas**

- (a) An overrun occurs in regard to a Nitrogen Removal Service when and to the extent that an Overrun occurs under the GTA (**Overrun Gas**).
- (b) Where the Customer has nominated overrun gas under the GTA the Customer may nominate an equivalent quantity of Overrun Gas, plus Facility Use Gas and plus System Use Gas, for any Nitrogen Removal Service on any Day under this agreement, and, subject to clause 5.4, the Service Provider will use reasonable endeavours to deliver Overrun Gas nominated by the Customer on any Day.
- (c) The Service Provider will authorise Overrun Gas nominated by the Customer to the extent that the Customer has a confirmed receipt nomination under the GTA (**Authorised Overrun Gas**).
- (d) Subject to clause 5.4, the Service Provider must use reasonable endeavours to deliver Authorised Overrun Gas.
- (e) The Service Provider is under no obligation to accept a Nomination from the Customer for Overrun Gas or deliver Overrun Gas that is not Authorised Overrun Gas.

### **5.4 Overrun is interruptible**

The delivery of Overrun Gas on a Day is interruptible at the absolute discretion of the Service Provider, and the Service Provider will have no liability to the Customer as a result of any interruption arising directly or indirectly out of the Customer taking Overrun Gas.

### **5.5 Charges for Overrun**

The Service Provider will charge the Customer for Overrun Gas at 130% of the relevant NRSA Tariff (**Overrun Charge**).

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## **6. Nominations and Facility Use Gas**

### **6.1 Rolling 15 Month forecasts**

At least 30 Days prior to the commencement of each Quarter, the Customer must notify the Service Provider on a non-binding basis of the quantities of Gas to be delivered to the NRSA Receipt Point with respect to a Nitrogen Removal Service for each Day of the following 15 Months.

### **6.2 Nominations, confirmations and notices**

- (a) Nominations are the Customer's notifications to the Service Provider, through the Service Provider's accounting system from time to time, as at the Execution Date known as PypIT (**PypIT**), of the quantities of Gas the Customer requests to be received at the NRSA Receipt Point and delivered to the NRSA Delivery Point, on the Customer's account in respect of each

Nitrogen Removal Service on each Day under this agreement (**Nominations**). Nominations can cover a period of one week, one Day or, in the case of an Intra-Day Nomination, part of one Day.

- (b) A Nomination under this clause 6 must be submitted to PypIT and will be effective from the time the Nomination is saved in PypIT. If the Customer is unable to submit a Nomination because of a fault with PypIT, then:
  - (i) the Customer must first telephone the Commercial Operations team at the telephone number set out in clause 33.1 to notify the Service Provider that the Customer will be submitting the Nomination by email; then
  - (ii) the Nomination must be submitted to the Service Provider by email to the email address set out in clause 33.1 in a CSV file or other acceptable format as nominated by the Service Provider.
- (c) The Service Provider will provide confirmations and reports under this clause 6 via email from PypIT. In the event there is a fault with PypIT, the Service Provider will use the email address or addresses notified by the Customer to the Service Provider from time to time.

### 6.3 Weekly Nominations

- (a) No later than 2:00 pm on each Friday, the Customer must, in respect of each Nitrogen Removal Service, provide to the Service Provider a Nomination setting out, for each Day in the week commencing at 8:00 am on the next Saturday the quantity of Gas that the Customer requires the Service Provider:
  - (i) to deliver to the Customer at the NRSA Delivery Point; and
  - (ii) to receive at the NRSA Receipt Point,**(Weekly Nomination)**.
- (b) During the week the Customer must ensure the Weekly Nomination always represents a good faith forecast by the Customer as to its expected receipts and deliveries of Gas on each of the next 3 Days during that week, or the remaining Days in that week, as the case requires.
- (c) The Service Provider is not required to respond to the Customer's Weekly Nomination or any revision to the Weekly Nomination.

### 6.4 Daily Nominations

- (a) The procedure set out in this clause 6.4(a) applies in respect of Daily Nominations under this agreement on and from the Execution Date until the Standard Market Timetable Commencement Date. For the avoidance of doubt, the times referred to in this clause 6.4(a) are in ACST.
  - (i) No later than 14:00 hours on the Day before the Customer is to deliver Gas to the NRSA Receipt Point, the Customer may, by notice to the Service Provider, request a change to the Customer's Weekly Nomination (**Daily Nomination**). If the Customer does not request a change in respect of any Day covered by the Weekly Nomination by 14:00 hours on the Day before that Day, the Customer's Daily Nomination for that Day will be deemed to be as set out in the last revised Weekly Nomination for that Day.

(ii) The Service Provider must, by 16:00 hours or as soon as possible thereafter on the Day before the Day on which the Customer is to deliver Gas to the NRSA Receipt Point, provide a notice to the Customer containing the Customer's:

- A. Confirmed Receipt Nomination; and
- B. Confirmed Delivery Nomination,

for each Firm Nitrogen Removal Service (together, a **Confirmed Nomination**). The Confirmed Nomination will contain an amount of Gas that the Service Provider confirms (in respect of a Firm Nitrogen Removal Service) (assuming that no Curtailment will be required as a result of that Day's renominations under Gas Transportation Agreements) will be scheduled for receipt at a NRSA Receipt Point. Any estimate provided in the Confirmed Nomination is not binding upon the Service Provider unless that estimate is confirmed pursuant to clause 6.4(a)(iii).

(iii) If there are renominations under any Gas Transportation Agreements that are accepted by the Service Provider and either of these events results in a change to the Customer's Confirmed Nomination, the Service Provider must, by 22:30 hours or as soon as possible thereafter on the Day before the Day on which the Customer is to deliver Gas to the NRSA Receipt Point, provide a revised Confirmed Nomination to the Customer containing the Customer's:

- A. revised Confirmed Receipt Nomination; and
- B. revised Confirmed Delivery Nomination,

for all Services (together, a **Revised Confirmed Nomination**). If the Service Provider does not provide a Revised Confirmed Nomination by 22:30 hours or as soon as possible thereafter to the Customer, the estimates set out in the Confirmed Nomination will become binding as the Confirmed Delivery Nomination and Confirmed Receipt Nominations.

(iv) The Service Provider is not under any obligation to accept any Daily Nomination submitted after 14:00 hours on the Day before the Customer is to deliver Gas to the NRSA Receipt Point.

(v) In making a decision regarding whether to accept a Daily Nomination, the Service Provider, acting reasonably and in good faith, will consider:

- A. operational matters;
- B. the provisions of this agreement; and
- C. whether the Customer has a confirmed receipt nomination under the GTA,

and the Service Provider's decision regarding a Daily Nomination is final provided it is consistent with the Customer's confirmed receipt nomination under the GTA.

(vi) Unless otherwise set out in the Confirmed Nomination or unless the Confirmed Nomination as it relates to Firm Nitrogen Removal Services is amended by the Revised Confirmed Nomination, the Confirmed Nomination is final with respect to Firm Nitrogen

Removal Services and has immediate effect upon receipt by the Customer.

- (vii) The Revised Confirmed Nomination is final with respect to all Services and has immediate effect upon receipt by the Customer.
  - (viii) If a Delay Event occurs and AEMO claims an extension of time (as contemplated by the Capacity Transfer and Auction Procedures) and the Service Provider determines, acting reasonably, that the extension of time will affect its ability to comply with the timeframes set out in this clause 6.4(a) (**Timetable Delay**), then the Service Provider will be relieved of its obligation to comply with the timeframes set out in this clause 6.4(a) whilst the Timetable Delay applies and the timeframes will be extended by such period of time that is consistent with the Timetable Delay effected by AEMO.
- (b) The procedure set out in this clause 6.4(b) applies in respect of Daily Nominations under this agreement on and from the Standard Market Timetable Commencement Date. For the avoidance of doubt, the times referred to in this clause 6.4(b) are in AEST
- (i) No later than 15:00 hours on the Day before the Customer is to deliver Gas to the NRSA Receipt Point, the Customer may, by notice to the Service Provider, request a change to the Customer's Weekly Nomination (**Daily Nomination**). If the Customer does not request a change in respect of any Day covered by the Weekly Nomination by 15:00 hours on the Day before that Day, the Customer's Daily Nomination for that Day will be deemed to be as set out in the last revised Weekly Nomination for that Day.
  - (ii) The Service Provider must, by 16:30 hours or as soon as possible thereafter on the Day before the Day on which the Customer is to deliver Gas to the NRSA Receipt Point, provide a notice to the Customer containing the Customer's:
    - A. Confirmed Receipt Nomination; and
    - B. Confirmed Delivery Nomination,for each Firm Nitrogen Removal Service (together, a **Confirmed Nomination**). The Confirmed Nomination will contain an amount of Gas that the Service Provider confirms (in respect of a Firm Nitrogen Removal Service) (assuming that no Curtailment will be required as a result of that Day's renominations under Gas Transportation Agreements) will be scheduled for receipt at a NRSA Receipt Point. Any estimate provided in the Confirmed Nomination is not binding upon the Service Provider unless that estimate is confirmed pursuant to clause 6.4(b)(iii).
  - (iii) If there are renominations under any Gas Transportation Agreements that are accepted by the Service Provider and either of these events results in a change to the Customer's Confirmed Nomination, the Service Provider must, by 22:00 hours or as soon as possible thereafter on the Day before the Day on which the Customer is to deliver Gas to the NRSA Receipt Point, provide a revised Confirmed Nomination to the Customer containing the Customer's:
    - A. revised Confirmed Receipt Nomination; and
    - B. revised Confirmed Delivery Nomination,

for all Services (together, a **Revised Confirmed Nomination**). If the Service Provider does not provide a Revised Confirmed Nomination by 22:00 hours or as soon as possible thereafter to the Customer, the estimates set out in the Confirmed Nomination will become binding as the Confirmed Delivery Nomination and Confirmed Receipt Nominations.

- (iv) The Service Provider is not under any obligation to accept any Daily Nomination submitted after 15:00 hours on the Day before the Customer is to deliver Gas to the NRSA Receipt Point.
- (v) In making a decision regarding whether to accept a Daily Nomination, the Service Provider, acting reasonably and in good faith, will consider:
  - A. operational matters;
  - B. the provisions of this agreement; and
  - C. whether the Customer has a confirmed receipt nomination under the GTA,

and the Service Provider's decision regarding a Daily Nomination is final provided it is consistent with the Customer's confirmed receipt nomination under the GTA.

- (vi) Unless otherwise set out in the Confirmed Nomination or unless the Confirmed Nomination as it relates to Firm Nitrogen Removal Services is amended by the Revised Confirmed Nomination, the Confirmed Nomination is final with respect to Firm Nitrogen Removal Services and has immediate effect upon receipt by the Customer.
- (vii) The Revised Confirmed Nomination is final with respect to all Services and has immediate effect upon receipt by the Customer.
- (viii) If a Delay Event occurs and AEMO claims an extension of time (as contemplated by the Capacity Transfer and Auction Procedures) and the Service Provider determines, acting reasonably, that the extension of time will affect its ability to comply with the timeframes set out in this clause 6.4(b) (**Timetable Delay**), then the Service Provider will be relieved of its obligation to comply with the timeframes set out in this clause 6.4(b) whilst the Timetable Delay applies and the timeframes will be extended by such period of time that is consistent with the Timetable Delay effected by AEMO.

## 6.5 Intra-Day Nomination

- (a) On one occasion during a Day (unless otherwise agreed), the Customer may, by notice to the Service Provider, request a change to the Customer's Confirmed Nomination for the remaining part of that Day for any Nitrogen Removal Service in accordance with this clause 6.5 (as may be agreed by the Service Provider in its sole discretion) (**Intra-Day Nomination**).
- (b) The Customer must submit an Intra-Day Nomination in accordance with clause 6.5(a) and submit a consistent intra-day nomination under the GTA. The Customer may ask the Service Provider whether an Intra-Day nomination is likely to be accepted in advance of making it by contacting the Service Provider's Commercial Operations team in accordance with clause 33.1.

- (c) The Service Provider will respond to an Intra-Day Nomination as soon as practicable in good faith and in accordance with clause 6.5(d), using reasonable endeavours to ensure that response is consistent with the response under the GTA and to respond within one hour after receiving it.
- (d) The Service Provider will assess, in its sole discretion, whether the Service Provider can fully or partially meet the Intra-Day Nomination taking into account:
  - (i) operational matters;
  - (ii) the provisions of this agreement, including any relevant Annexures;
  - (iii) whether one or more Intra-Day Nominations were received from the Customer or other Nitrogen Removal Services Customers before the Intra-Day Nomination;
  - (iv) whether sufficient Capacity is available, taking into account the Priority of Nitrogen Removal Service; and
  - (v) whether the Customer has a consistent confirmed receipt nomination under the GTA,
 and the Service Provider's decision regarding an Intra-Day Nomination is final.
- (e) Once a decision regarding the Intra-Day Nomination has been made by the Service Provider, the Service Provider will provide a revised Confirmed Nomination to the Customer.
- (f) The Customer is responsible for making all necessary contractual arrangements to deliver Gas at the Receipt Point and receive Gas from the Delivery Point.

## **6.6 Nomination changes are not retrospective**

Changes to Nominations cannot be made retrospectively, that is, after the Service Provider has provided a Nitrogen Removal Service to the Customer. Nominations and changes to Nominations may only be made for a Nitrogen Removal Service that has not been delivered by the Service Provider.

## **6.7 Compatible Nominations**

Customer will ensure that all Nominations the Customer provides to the Service Provider are compatible with similar forecasts provided under service agreements with operators of interconnected facilities at the NRSA Receipt Point and NRSA Delivery Point (if relevant).

## **6.8 Changes to Nominations procedure**

- (a) Subject to clause 6.8(d), the Service Provider may by notice in writing to the Customer notify the Customer of any reasonably required changes to the nominations procedures set out in this clause 6.
- (b) Within 5 Business Days of receiving the notice issued under clause 6.8(a), or such other period agreed between the parties, the Customer may provide any feedback that it may have on the proposed changes set out in the notice, and the Service Provider will consider (acting reasonably) any feedback the

Customer may have before issuing a further notice setting out the changes to the nominations procedures set out in this clause 6.

- (c) The changes detailed in the further notice issued pursuant to clause 6.8(b) (as amended pursuant to clause 6.8(b) as applicable) will take effect on and from the date specified in the further notice issued pursuant to clause 6.8(b), such date not to be less than 7 Days from the date the further notice was issued pursuant to clause 6.8(b).
- (d) Notwithstanding anything in this clause 6.8, clauses 6.8(b) and 6.8(c) do not apply if the Service Provider is required to make changes to the nominations procedures set out in this clause 6 in order for the Service Provider, the Customer or both to comply with any Applicable Law. In such a case, the Customer must, as soon as reasonably practicable after receiving the notice issued under clause 6.8(a), comply with the changes to the nominations procedures.

## **6.9 Facility Use Gas**

The Service Provider has title to, and control and possession of, all Facility Use Gas within the Nitrogen Removal Skid during the NRSA Services Term.

## **6.10 Customer's supply obligation**

- (a) The Customer must, at its expense, contribute Facility Use Gas requirements to the Nitrogen Removal Skid. The Customer's proportion of Facility Use Gas in relation to the Nitrogen Removal Services is determined as the ratio of:
  - (i) its Actual Delivered Quantity under the Nitrogen Removal Services at the NRSA Delivery Point; to
  - (ii) the total actual delivered quantity of Gas that is made available and delivered or deemed to be delivered by the Service Provider to or on behalf of all Nitrogen Removal Services Customers under all firm and as-available nitrogen removal services for all Nitrogen Removal Services Customers for the NRSA Delivery Point on the Day.
- (b) The Customer's contribution to Facility Use Gas is calculated at the end of each Day.
- (c) The daily Facility Use Gas volumes shown on the Customer Website are indicative only until the end of the Month when the customer accounting reports are finalised.
- (d) The Service Provider will use reasonable endeavours to minimise the use of any Facility Use Gas supplied in accordance with clause 6.10.

## **6.11 Facility Use Gas haulage charge**

There is no charge to the Customer by the Service Provider for the haulage of Facility Use Gas supplied in accordance with clause 6.10.

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## **7. Scheduling**

### **7.1 Scheduling of nominated quantities of Gas**

The Service Provider must, by 4:00 pm on each Day, notify the Customer of the quantities of Gas that the Service Provider has scheduled to receive at the NRSA Receipt Point and to deliver to the NRSA Delivery Point Gas on account of the Customer for the following Day.

### **7.2 Notices**

For the purposes of this clause 7, a notice, confirmation or other communication will be submitted to the Customer Website, and is effective from the time it is submitted to the Customer Website. If the Service Provider is unable to submit any such notice, confirmation or other communication to the Customer Website because of a fault with the Customer Website, notification may be given in accordance with clause 33.

### **7.3 Service Provider's obligations**

- (a) The Service Provider will, at the time the Confirmed Nominations are issued to the Customer, determine the flow rates (in GJ/Day) required to flow from the NRSA Receipt Point to the NRSA Delivery Point to meet the Customer's Confirmed Nominations.
- (b) All quantities of Gas scheduled are to be received and/or delivered at an hourly rate not exceeding the maximum hourly quantity, which is calculated as the Confirmed Nominations for the Day divided by 20, for each of the NRSA Receipt Point and the NRSA Delivery Point (**MHQ**).
- (c) The Service Provider may, entirely at its discretion, increase the MHQ if, in its opinion, the variance from the MHQ:
  - (i) will not be detrimental to the operation of the Nitrogen Removal Skid; and
  - (ii) will not detrimentally affect the Nitrogen Removal Services Customers.

### **7.4 Changes to scheduling**

- (a) Subject to clause 7.4(d), the Service Provider may by notice in writing to the Customer notify the Customer of any reasonably required changes to the scheduling procedures set out in this clause 7.
- (b) Within 5 Business Days of receiving the notice issued under clause 7.4(a), or such other period agreed between the parties, the Customer may provide any feedback that it may have on the proposed changes, and the Service Provider will consider (acting reasonably) any feedback the Customer may have before issuing a further notice setting out the changes to the scheduling procedures set out in this clause 7.
- (c) The changes detailed in the further notice issued pursuant to clause 7.4(b) (as amended pursuant to clause 7.4(b) as applicable) will take effect on and from the date specified in the further notice issued pursuant to clause 7.4(b), such date not to be less than 7 Days from the date the further notice was issued pursuant to clause 7.4(b).



- (d) Notwithstanding anything in this clause 7.4, clauses 7.4(b) and 7.4(c) do not apply if the Service Provider is required to make changes to the scheduling procedures set out in this clause 7 in order for the Service Provider, the Customer or both to comply with any Applicable Law.

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## **8. Imbalances**

### **8.1 Calculation of Imbalance**

For each Day during the NRSA Services Term, the Service Provider will calculate Daily Imbalances daily for each Nitrogen Removal Service using the following formula:

where:

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

**ARQ** is the aggregate of the Actual Received Quantity for the NRSA Receipt Point;

**ADQ** is the aggregate of the Actual Delivered Quantity for the NRSA Delivery Point; and

**FUG** is the Customer's Facility Use Gas allocation (as calculated under clause 6.10) for quantities of Gas transported on the Customer's account under this agreement for the Nitrogen Removal Services,

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

### **8.2 Allocation of Imbalance to Associated Service**

- (a) Any Daily Imbalance quantities arising in connection with a Nitrogen Removal Service will be allocated to the relevant Associated Service for the following Day.
- (b) Any difference between the Customer's nominated Facility Use Gas quantity and the Customer's Facility Use Gas allocation (as calculated under clause 6.10) for quantities of Gas treated and delivered on the Customer's account under this agreement for a Nitrogen Removal Service, will not incur imbalance charges under this agreement.

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## **9. Allocation of NRSA Receipt Point and NRSA Delivery Point Quantities**

### **9.1 Allocations for more than one Nitrogen Removal Services Customer**

If, at any time, there is more than one Nitrogen Removal Services Customer:

- (a) nominating Gas for receipt at the NRSA Receipt Point; or
- (b) for whom there is a nomination for delivery of Gas at the NRSA Delivery Point,

the Service Provider must allocate the relevant quantities of Gas received by the Service Provider and delivered to the Nitrogen Removal Services Customers, between the Nitrogen Removal Services Customers in accordance with this clause 9.

## **9.2 Pro rata allocation of receipts and deliveries**

Where there are multiple customers making Gas available at the NRSA Receipt Point and subject to clause 9.3, the Service Provider will determine the allocation of quantities of Gas delivered or received under each Nitrogen Removal Service on each Day for the account of the Customer and other Nitrogen Removal Services Customers taking into account:

- (a) the Priority of Nitrogen Removal Service; and
- (b) each Nitrogen Removal Services Customer's confirmed nomination(s) at the NRSA Receipt Point or NRSA Delivery Point,

and the Customer is deemed to have received or delivered (as the case may be) an allocation of Gas determined equal to the proportion its confirmed entitlement bears to the sum of all confirmed entitlements as determined by the Service Provider for that Day at the NRSA Receipt Point and NRSA Delivery Point.

## **9.3 Multi-Shipper's agreement**

- (a) If requested by a Nitrogen Removal Services Customer, the Service Provider will use reasonable endeavours to agree a multi-shipper agreement with all Nitrogen Removal Services Customers that deliver Gas at the NRSA Receipt Point to determine the allocation method to apply at the NRSA Receipt Point.
- (b) If a multi-shipper agreement has been entered into pursuant to clause 9.3(a), the Service Provider must allocate the quantities of Gas actually received at the NRSA Receipt Points in accordance with the multi-shipper agreement.
- (c) Allocation methodologies may:
  - (i) not be changed during a Month; and
  - (ii) never be changed retrospectively.

## **9.4 Allocation by third party operators of infrastructure**

The Service Provider may enter into arrangements with third party operators of connecting infrastructure to determine the allocations of Gas received at the NRSA Receipt Point to the extent necessary for the proper management of Gas flowing from one pipeline system to another.

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# **10. Title and possession**

## **10.1 Title**

- (a) The Customer, or its subcontractor, will retain title to all Gas, except Facility Use Gas.
- (b) Title, and subject to clause 12.1(a), risk, in the waste nitrogen stream and other waste removed by the Nitrogen Removal Skid transfers to the Service Provider immediately upon being extracted from the Gas.

## **10.2 Possession**

Subject to the terms of this agreement, possession of Gas passes from the Customer to the Service Provider at the NRSA Receipt Point, and passes from the Service Provider to the Customer at the NRSA Delivery Point.

## **10.3 Warranty**

The Customer warrants that at the time of supply of Gas to the Service Provider at the NRSA Receipt Point the Customer will have good title to, or the right to supply, that Gas at the NRSA Receipt Point.

## **10.4 Service Provider not a bailee**

The Service Provider is not a bailee of the Gas in relation to which the Service Provider provides the Nitrogen Removal Services.

## **10.5 Commingling of Gas**

The Service Provider may commingle Gas supplied by the Customer at the NRSA Receipt Point with other Gas in the Nitrogen Removal Skid, and deliver commingled Gas to the Customer at the NRSA Delivery Point.

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## **11. Pressure and Shutdowns**

### **11.1 Service Provider to maintain receipt and delivery pressure**

The Service Provider must ensure that at all times during the NRSA Services Term the NRSA Receipt Point operates within the pressure range specified in Schedule 1.

### **11.2 Customer's obligations**

The Customer must deliver the Gas to the NRSA Receipt Point at a pressure between the minimum and maximum pressures set out in Schedule 1.

### **11.3 Customer Shutdowns**

If there is a planned shutdown of infrastructure that is upstream of the NRSA Receipt Point that will affect the Customer (**Upstream Shutdown**) or of infrastructure that is downstream of the NRSA Delivery Point (**Downstream Shutdown**), then for the purpose of aligning the Nitrogen Removal Skid maintenance with such Shutdown, the Customer must, to the extent the Customer has been notified of such Shutdown, notify the Service Provider as soon as practicable of the relevant Shutdown setting out the dates on which the relevant Shutdown will commence and conclude and any forecast of gas demand expected (if any) in that period. The quantities of Gas during any Shutdown will be nominated by the Customer in accordance with clause 6.

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## **12. Quality**

### **12.1 Specification**

- (a) The Customer must ensure that Gas made available for delivery to the Service Provider at the NRSA Receipt Point meets the NRSA Gas Specification.
- (b) Subject to clause 12.1(a), the Service Provider must ensure that Gas that meets the Pipeline Gas Specification is made available for receipt by the Customer at the NRSA Delivery Point.

### **12.2 NRSA Receipt Point quality**

- (a) As soon as reasonably practicable after a party becomes aware that:
  - (i) Off-Specification Gas; or
  - (ii) (in relation to the same off-specification gas event or circumstance) Off-Specification Gas that varies further from the gas specification set out in a prior notice issued under this sub-clause,may be, or has been, made available at the NRSA Receipt Point, it must notify the other party.
- (b) A notice given under clause 12.2(a) must, to the extent reasonably practicable, identify:
  - (i) the nature of the deficiency, including details of how the Off-Specification Gas varies from the NRSA Gas Specification;
  - (ii) the duration and quantity of the supply of Off-Specification Gas prior to the notice;
  - (iii) where the notice is given by the Customer:
    - A. the anticipated duration and quantity of such supply if it has not already ceased; and
    - B. when the Customer reasonably estimates that the Customer will resume delivery of Gas that meets the NRSA Gas Specification; and
  - (iv) where the notice is given by the Service Provider, whether it will accept delivery of any further quantity of Off-Specification Gas.
- (c) The Service Provider is deemed to have rejected delivery of all quantities of Off-Specification Gas delivered prior to a notice being given under clause 12.2(a).
- (d) The Service Provider is deemed to have accepted delivery of all quantities of Off-Specification Gas delivered to the Service Provider after two hours from when the Service Provider first became aware that:
  - (i) Off- Specification Gas; or
  - (ii) (in relation to the same off-specification gas event or circumstance) Off-Specification Gas that varies further from the gas specification set out in a prior notice issued under clause 12.2(a),

was made available for receipt by the Customer at the NRSA Receipt Point.

- (e) If a notice is given under clause 12.2(a):
  - (i) the Customer must take all steps reasonably practicable to resume making available for delivery to the NRSA Receipt Point, Gas that meets the NRSA Gas Specification as soon as possible; and
  - (ii) the Customer must notify the Service Provider as soon as reasonably practicable of when the Customer reasonably estimates that the Customer will resume delivery of Gas to the NRSA Receipt Point that meets the NRSA Gas Specification.
- (f) Unless the Service Provider has given notice under clause 12.2(a) that it will accept delivery of the Off-Specification Gas, the Service Provider must promptly cease to receive deliveries of Off-Specification Gas at the NRSA Receipt Point until the Customer is able to resume making available for delivery Gas that meets the NRSA Gas Specification, or until the Service Provider otherwise notifies the Customer to resume delivery of Off-Specification Gas, in which case the Service Provider is deemed to accept delivery of such further Off-Specification Gas delivered in response to such notice.
- (g) If the Service Provider gives notice under clause 12.2(a) that it will accept delivery of Off-Specification Gas, or is deemed to accept such delivery under clause 12.2(c) or clause 12.2(f), the Customer (in addition to the Customer's obligation under clause 12.2(e)):
  - (i) may make that Off-Specification Gas available for delivery to the Service Provider ; and
  - (ii) must notify the Service Provider as soon as reasonably practicable after the Customer becomes aware that such Off-Specification Gas varies further from the NRSA Gas Specification than was set out in the relevant notice given under clause 12.2(a), including those details set out in clauses 12.2(b)(i) to 12.2(b)(iii) (inclusive) to the extent reasonably practicable.

### **12.3 Liability - NRSA Receipt Point**

- (a) The Customer will
  - (i) bear the risk of, and be responsible for; and
  - (ii) indemnify the Service Provider against,  
any Claim or Loss (including legal costs on a full indemnity basis) suffered or incurred by the Service Provider including:
    - (iii) any liability to, or a claim by, a third party; and
    - (iv) clearing, cleaning and repairing (including if and to the extent necessary by replacement or rectification) of any part of the Nitrogen Removal Skid,

as a direct result of the delivery by the Customer at the NRSA Receipt Point of any Off-Specification Gas which the Service Provider has not:

  - A. given notice that it will accept; or
  - B. been deemed to have accepted.

- (b) The Customer will not be liable to the Service Provider under clause 12.3(a), with respect to any Off-Specification Gas that the Service Provider accepts (or is deemed to have accepted) at the NRSA Receipt Point.

## **12.4 NRSA Delivery Point quality**

- (a) As soon as reasonably practicable after a party becomes aware that:
  - (i) Pipeline Off-Specification Gas; or
  - (ii) (in relation to the same off-specification gas event or circumstance) Pipeline Off-Specification Gas that varies further from the gas specification set out in a prior notice issued under this sub-clause,may be, or has been, made available at a NRSA Delivery Point, it must notify the other party.
- (b) The notice given under clause 12.4(a) must, to the extent reasonably practicable, identify:
  - (i) the nature of the deficiency, including details of how the Pipeline Off-Specification Gas varies from the Pipeline Gas Specification;
  - (ii) the duration and quantity of the supply of Pipeline Off-Specification Gas prior to the notice;
  - (iii) where the notice is being provided by the Service Provider, to the extent it is able to reasonably ascertain:
    - A. the anticipated duration and quantity of such supply if it has not already ceased; and
    - B. when the Service Provider reasonably estimates that it may resume delivery of Gas that meets the Pipeline Gas Specification; and
  - (iv) where the notice is given by the Customer, whether it will accept delivery of any further quantity of Pipeline Off-Specification Gas.
- (c) The Customer is deemed to reject delivery of all quantities of Pipeline Off-Specification Gas delivered prior to giving notice to the Service Provider under clause 12.4(a) that it will or will not accept further delivery of any further quantity of Pipeline Off-Specification Gas.
- (d) If a notice is given under clause 12.4(a):
  - (i) the Service Provider must take all steps reasonably practicable to resume delivery to the NRSA Delivery Point, Gas that meets the Pipeline Gas Specification as soon as possible;
  - (ii) where the notice is given by the Customer, the Service Provider must notify the Customer as soon as reasonably practicable of when the Service Provider reasonably estimates that the Service Provider will resume delivery of Gas to the NRSA Delivery Point that meets the Pipeline Gas Specification; and
  - (iii) where the notice is given by the Service Provider, the Customer must notify the Service Provider as soon as reasonably practicable of whether it will or will not accept delivery of such Pipeline Off-Specification Gas.

- (e) If the Customer gives notice under clause 12.4(a) or 12.4(d)(iii) that the Customer will not accept or will no longer accept delivery of the Pipeline Off-Specification Gas, the Service Provider must promptly, cease deliveries, on account of the Customer, of Pipeline Off-Specification Gas to the NRSA Delivery Points until the Service Provider is able to resume delivery of Gas that meets the Pipeline Gas Specification, or until the Customer otherwise notifies the Service Provider to resume delivery of Pipeline Off-Specification Gas, in which case the Customer is deemed to accept delivery of such further Pipeline Off-Specification Gas delivered in response to such notice.
- (f) If the Customer gives notice under clause 12.4(a) or 12.4(d)(iii) that it will accept delivery of Pipeline Off-Specification Gas, or is deemed to accept such delivery under clause 12.4(e), the Service Provider must (in addition to the Service Provider's obligation under clause 12.4(d)):
  - (i) make that Pipeline Off-Specification Gas available for delivery to the Customer; and
  - (ii) notify the Customer as soon as reasonably practicable after the Service Provider becomes aware that such Pipeline Off-Specification Gas varies further from the Pipeline Gas Specification than was set out in the relevant notice given under clause 12.4(a), including those details set out in clauses 12.4(b)(i) to 12.4(b)(iii) (inclusive) to the extent reasonably practicable.
- (g) The Customer will not be obliged to pay Charges in respect of any Pipeline Off-Specification Gas delivered by the Service Provider where:
  - (i) the Pipeline Off-Specification Gas provided is solely due to the Service Provider's failure to undertake the Nitrogen Removal Services pursuant to this agreement;
  - (ii) the Customer has supplied the Gas in accordance with the NRSA Gas Specification; and
  - (iii) the Service Provider has not otherwise accepted the Pipeline Off-Specification Gas by giving notice under clause 12.4(a), or by deemed acceptance of the Pipeline Off-Specification Gas under clause 12.4(e).

## **12.5 Liability - NRSA Delivery Point**

- (a) Subject to clause 12.5(b), the Service Provider will:
  - (i) bear the risk of, and be responsible for; and
  - (ii) indemnify the Customer against,
 

any Claim or Loss (including legal costs on a full indemnity basis) suffered or incurred by the Customer, including any liability to, or a claim by, a third party, as a direct result of the delivery by the Service Provider at a NRSA Delivery Point of any Pipeline Off-Specification Gas that the Customer has not given notice under clause 12.4(a) or clause 12.4(d)(iii) that it will accept.
- (b) The Service Provider will not be liable to the Customer under clause 12.5(a) with respect to any Pipeline Off-Specification Gas that the Customer accepts under clause 12.4(a).

## **12.6 Limitations of liability**

- (a) The sole remedy of a party in relation to Losses caused by or arising in connection with Pipeline Off-Specification Gas are the rights to the indemnities provided for under this clause 12.
- (b) A party who is entitled to be indemnified under this clause 12 must take all reasonable steps to mitigate its Losses the subject of the indemnity. The indemnifying party's liability under the indemnity in this clause 12 will be reduced proportionally to the extent the indemnified party (or a Related Body Corporate of the indemnified party) has contributed to or caused the event the subject of the indemnity.

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## **13. Metering**

### **13.1 How metering to be conducted**

The quantity and quality of Gas received at the NRSA Receipt Point and delivered at the NRSA Delivery Point will be measured in accordance with this clause 13 and the Measurement Manual.

### **13.2 Provision and operation of Measuring Equipment**

- (a) The Service Provider must at its cost provide, operate and maintain the Measuring Equipment as required under this agreement.
- (b) The Measuring Equipment will be owned by the Service Provider and will:
  - (i) be designed and constructed in accordance with the Service Provider's Metering Facility Design Guide (Document No: OP0000-EG-PH-GE-00003);
  - (ii) perform measurement of volumes, mass and energy to a level of accuracy acceptable to the Service Provider, as detailed in the Measurement Manual;
  - (iii) be validated to procedures, and at intervals, as detailed in the Measurement Manual; and
  - (iv) provide measurement data to the Service Provider's control room in a compatible format.

### **13.3 Uniformity of flow**

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

### **13.4 Measurement Manual**

- (a) The Service Provider must maintain an up to date version of a Measurement Manual on the Public Website.
- (b) The Measurement Manual must specify:



- (i) the technical requirements for Measuring Equipment;
  - (ii) accuracy validation procedures; and
  - (iii) procedures for correction of readings from faulty Measuring Equipment.
- (c) The technical requirements in the Measurement Manual must be:
- (i) in accordance with Good Industry Practice and conform to appropriate Australian and International standards and codes; and
  - (ii) modified where necessary to comply with Australian Standard AS 1000- 1998.
- (d) The Service Provider may amend the Measurement Manual at any time to reflect new technologies and standards consistent with the terms and conditions of this agreement and Good Industry Practice.

### **13.5 Inspection of equipment and records**

The Customer may, at any reasonable time during Business Hours and upon reasonable notice, inspect the records for the previous 12 Months pertaining to the validation, inspection and maintenance of Measuring Equipment applied to Gas treated for the Customer's account under this agreement.

### **13.6 Validation of meters**

- (a) At the Customer's prior written reasonable request, the Service Provider will permit the Customer to be present at routine cleaning, repairing, inspection, validation or adjustment of the Measuring Equipment in accordance with the Measurement Manual.
- (b) If the Customer reasonably believes that particular Measuring Equipment are inaccurate, the Service Provider must act within a reasonable period of time upon the Customer's written request to validate the Measuring Equipment.

### **13.7 Payment for validations**

- (a) If the Measuring Equipment is accurate within the tolerances set out in the Measurement Manual, the responsibility for the cost of validations under clause 13.6(b) will be held by the party that requests the validation.
- (b) At all other times, the responsibility for the cost of validation will be held by the Service Provider.

### **13.8 Existing Facilities**

If the NRSA Receipt Point or the NRSA Delivery Point is connected to third party upstream or downstream gas transportation facilities, whether or not equipment is already installed for measuring or monitoring gas at those points (**Existing Facilities**), the Service Provider may agree with the owner or operator of the Existing Facilities on matters that include:

- (a) necessary upgrades to the Existing Facilities to satisfy the requirements of this clause 13 and the Measurement Manual;
- (b) the methodology to allocate Gas at those points by the Service Provider, the owner or operator of the Existing Facilities, or any of them;

- (c) the provision of access to all measurement and other relevant information produced or recorded for each Existing Facility;
- (d) the Customer's reasonable rights of access to attend all validation and testing of the Existing Facilities; and
- (e) other operational matters.

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## 14. Force Majeure

- (a) A party will not be in default of its obligations under this agreement to the extent that any failure or delay in the observance or performance of those obligations by that party is caused by a Force Majeure Event.
- (b) The Customer will not be relieved of its obligation to pay any Charges that become due and payable under this agreement during the occurrence of a Force Majeure Event affecting the Customer.
- (c) If a party is affected by a Force Majeure Event, then as soon as reasonably practicable after the occurrence of the Force Majeure Event, it must notify the other party of the Force Majeure Event and give details of:
  - (i) the Force Majeure Event, including the date of commencement of the Force Majeure Event;
  - (ii) the nature and extent of the obligations affected by, or other consequences of, the Force Majeure Event and, if the affected party is the Service Provider, the notice must include details of the reduction in available Capacity and any anticipated Curtailment;
  - (iii) the action that the affected party has taken and proposes to take to remedy the situation;
  - (iv) the affected party's estimate of the time during which it will be unable to carry out the affected obligations due to the Force Majeure Event; and
  - (v) the affected party's estimate of the costs it will incur to remedy the situation.
- (d) The affected obligation is suspended from the date the notice is given under clause 14(c) until the affected party is able to fulfil its obligations under this agreement (**Suspension Period**).
- (e) Notwithstanding clause 14(a), the party affected by the Force Majeure Event must:
  - (i) use reasonable endeavours to mitigate the effect of the Force Majeure Event upon its performance of this agreement and to fulfil its obligations under this agreement and the other party must provide all reasonable assistance requested by the affected party;
  - (ii) keep the other party informed of the steps being taken to mitigate the effect of the Force Majeure Event upon its performance of this agreement, and an estimate of the continued duration of the delay or non-performance; and
  - (iii) when the period for which its obligations are affected by a Force Majeure Event ceases or abates to an extent that permits resumption of performance, notify the other party and

recommence performance as expeditiously as possible of all of its affected obligations under this agreement the subject of its original notice under this clause.

- (f) Neither party will, by virtue of this clause 14, be required to:
- (i) adjust or settle any strike, lock out, ban or other industrial disturbance; or
  - (ii) make payment of, or otherwise give compensation in response to, or as a consequence or in settlement of, any Aboriginal Land Rights Claim, Native Title Claim or Heritage or Sacred Site Claim by or on behalf of indigenous peoples,

and the settlement of any strike, lockout, ban or other industrial disturbance or any Aboriginal Land Rights Claim, Native Title Claim or Heritage or Sacred Site Claim by or on behalf of indigenous peoples is entirely within the discretion of the party affected by the Force Majeure Event.

- (g) If the Suspension Period lasts for:
- (i) more than 12 consecutive Months; or
  - (ii) for an aggregate of 12 Months in any consecutive 24 Month period,

and the Service Provider is not able to provide more than 50% of the NRMDQ of a Nitrogen Removal Service during that Suspension Period due to that Force Majeure Event, the Service Provider or the Customer may, terminate the provision of the whole of the relevant Nitrogen Removal Service.

- (h) If a Nitrogen Removal Service is terminated pursuant to clause 14(g), neither party will have any liability to the other party or have any further obligation to the other party in respect of that Nitrogen Removal Service, but such termination will not affect any rights, powers, remedies, obligations, duties and liabilities of either party in respect of that Nitrogen Removal Service that have accrued prior to the date of such termination or that are available under any Applicable Law or that are provided by this agreement to survive termination in respect of that Nitrogen Removal Service, and any such rights, powers, remedies, obligations, duties and liabilities will continue to be enforceable notwithstanding such termination of a Nitrogen Removal Service.

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## **15. Curtailment to Services**

### **15.1 Permitted Curtailment**

- (a) If the Service Provider Curtails all or any part of the Nitrogen Removal Services, in the following events or circumstances:
- (i) if a Force Majeure Event affects the Service Provider's ability to provide the Nitrogen Removal Services in accordance with clause 14;
  - (ii) Third Party Works;
  - (iii) in an emergency;

- (iv) for maintenance (other than a NRSA Shutdown);
- (v) in order to comply with any Applicable Laws or codes or guidelines of any Authority;
- (vi) at the direction of an Authority;
- (vii) in order to protect life or property;
- (viii) a NRSA Shutdown; or
- (ix) if the Service Provider suspends (wholly or partly) receipt of Gas at the NRSA Receipt Point due to the Customer delivering Off-Specification Gas to the NRSA Receipt Point,

and:

- (x) the Service Provider has complied with clause 15.2;
- (xi) for the purposes of clauses 15.1(a)(iii), 15.1(a)(v), 15.1(a)(vi) and 15.1(a)(vii), the requirement to comply with any Applicable Law, or prevent or abate any emergency situation, or comply with the direction of an Authority, or to protect life or property, did not arise as a result of any Wilful Misconduct of, or breach of this agreement by, the Service Provider; and
- (xii) the Service Provider has acted in accordance with Good Industry Practice,

then the Service Provider will not be liable to the Customer (and the Customer must not make any Claim) for or arising out of, or in connection with, any Curtailment to the Nitrogen Removal Services as a result of the events or circumstances set out in clause 15.1(a).

- (b) A Curtailment that is permitted by clause 15.1(a) is a **Permitted Curtailment**.
- (c) Despite clause 15.1(a), any Curtailment of the Nitrogen Removal Services which has arisen from or has been caused by a curtailment of the transportation services under the GTA is a Permitted Curtailment.
- (d) NRSA Shutdowns occur at the timeframes as required by Applicable Laws.
- (e) The Service Provider will use reasonable endeavours to minimise the duration of Curtailments associated with any Third Party Works, maintenance or a NRSA Shutdown including by co-ordinating the Third Party Works, maintenance or NRSA Shutdowns to the Customer's Shutdowns where possible.

## 15.2 Notice of Curtailment

- (a) The Service Provider must notify the Customer as soon as reasonably practicable of an anticipated Curtailment or interruption including under clause 15.1.
- (b) Any notice from the Service Provider under clause 15.2(a) must include, to the extent that the Service Provider is aware:
  - (i) the anticipated times, dates and duration that the Nitrogen Removal Services will be Curtailed;
  - (ii) the reason that the Nitrogen Removal Services will be Curtailed; and

- (iii) the extent to which the Service Provider will be able to provide any Nitrogen Removal Services during the Curtailment.

### **15.3 Relief from payment of Charges**

The Customer's liability to pay the Charges will be proportionately reduced to the extent that all or any part of the Nitrogen Removal Services is Curtailed due to:

- (a) a Force Majeure Event affecting the Service Provider's ability to provide the Nitrogen Removal Services;
- (b) an event or circumstance listed in clauses 15.1(a)(ii) and 15.1(a)(iv), where the aggregate duration of the Curtailments caused by such events or circumstance, exceeds 96 hours in any 12 month period; or
- (c) an event or circumstance listed in clauses 15.1(a)(iii), 15.1(a)(v), 15.1(a)(vi) and 15.1(a)(vii), where the requirement to comply with any Applicable Law, or prevent or abate any emergency situation, or comply with the direction of an Authority, or to protect life or property, arose as a result of any Wilful Misconduct of, or breach of this agreement by, the Service Provider.

### **15.4 Condition of Curtailment**

The Service Provider must ensure that any Curtailment ends as quickly as reasonably possible and with as little disruption to the Nitrogen Removal Services as reasonably possible.

### **15.5 Priority during Curtailment**

When allocating Capacity to Services during a Curtailment (including a Permitted Curtailment), the Service Provider must allocate available Capacity by applying the Priority of Nitrogen Removal Services.

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

- (a) The Service Provider must publish on the Public Website by the first Day of December each Contract Year a program for the following Contract Year outlining planned alterations, maintenance and repairs that will affect Capacity (**Planned Maintenance Schedule**).
- (b) The Service Provider must give the Customer as much notice as is reasonably possible of any changes to the Planned Maintenance Schedule, including but not limited to any other planned alterations, maintenance or repairs to the Nitrogen Removal Skid not detailed in the Planned Maintenance Schedule.
- (c) The Service Provider will use reasonable endeavours to perform any alterations, maintenance or repairs:
  - (i) to avoid or minimise any Curtailment, so far as is reasonably practicable;
  - (ii) to occur during a period that has low aggregate demand for Capacity; and
  - (iii) to cause as little disruption to the provision of Nitrogen Removal Services as is reasonably practicable.

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## 16. Charges

- (a) The Customer must pay the Service Provider the Charges as calculated and escalated in accordance with this agreement, in the manner and times set out in clause 19.
- (b) Unless expressly provided for in this agreement, the Customer is not relieved of its obligation to pay the Charges in any event or circumstance.

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## 17. Change of Law and Carbon Charge

### 17.1 Change of Law

- (a) If at any time after the Execution Date, a Change of Law directly or indirectly:
  - (i) has affected or affects the costs of the Service Provider in respect of the Nitrogen Removal Services or other things supplied or provided under or in connection with this agreement; or
  - (ii) has led or leads to a change in the benefits gained by the Service Provider from the activities described in clause 17.1(a)(i) (except by operation of this clause 17.1),  
  
and the increase or decrease in those costs or that change in benefit is not to be reimbursed under any other provision of this agreement or another Nitrogen Removal Services Agreement, at the election of the Service Provider either:
    - (iii) the Charges may be adjusted; or
    - (iv) an amount may be payable by one party to the other,  
  
to reflect the impact on the Service Provider, of the increase or decrease or the change in the costs or benefit, as the case may be, attributable to the Change of Law, in accordance with this clause 17.1.
- (b) Where any additional costs or charges under clauses 17.1(a)(i) or 17.1(a)(ii) relate to the provision of treatment services provided by the Service Provider to all Nitrogen Removal Services Customers, then the Customer's liability for those costs or charges will be allocated by the Service Provider to the Customer on a pro-rata basis by having regard to each Nitrogen Removal Services Customer's NRMDQ for firm services under their respective agreement.
- (c) If a party (**Proposer**) proposes to vary the Charges or that an amount be paid by one party to the other by reason of the matters set out in clause 17.1(a), the Proposer must give the other party (**Recipient**) a notice in writing as soon as practicable:
  - (i) identifying the relevant Change of Law; and
  - (ii) setting out reasonable details of:
    - A. the impact of the identified Change of Law on the Service Provider; and
    - B. either:

- 1) the proposed adjustment to the Charges and the date the proposed adjustment will be effective; or
  - 2) the proposed amount to be paid by one party to the other and the date such payment will be made.
- (d) By no later than 30 days after the notice is given under clause 17.1(c), either party (the Proposer or Recipient) may give the other party a notice in writing stating that the party wishes to seek verification of the proposed adjustment to the Charges or the proposed amount to be paid by one party to the other.
- (e) Any adjustment to the Charges, or any amount to be paid by one party to the other, set out in a notice given by the Proposer under clause 17.1(c) will be effective:
- (i) if a party does not seek verification in accordance with clause 17.1(d), from the date the proposed adjustment to the Charges is proposed to be effective, or the date the proposed amount to be paid by one party to the other is proposed to be paid (as set out in a notice given by the Proposer under clause 17.1(c));
  - (ii) if a party seeks verification in accordance with clause 17.1(d), from the date the parties agree to the adjustment of the Charges; or
  - (iii) if the parties do not agree to the adjustment of the Charges within 60 Days of the date of the notice given by the Proposer under clause 17.1(c), then the matter will be a Dispute.
- (f) If a final determination of the adjustment to the Charges cannot be calculated for the period covered by an invoice issued under clause 19, then:
- (i) the Service Provider will make a reasonable estimate of the adjustment for the purposes of calculating the amount payable by the Customer under that invoice;
  - (ii) when a final determination of the adjustment can be made, the Service Provider will prepare a reconciliation for the Customer showing any under or over payment;
  - (iii) if requested by the Customer, the Service Provider will promptly provide documentation reasonably required by the Customer to allow verification of payment of that under or over payment; and
  - (iv) the extent of the under or over payment will be credited or debited (as the case may be) in the next invoice, together with Interest for the relevant period at the Overdue Rate.
- (g) If a final determination of the amount to be paid by one party to the other cannot be calculated for the period covered by an invoice issued under clause 19, then the Service Provider:
- (i) will make a reasonable estimate of the amount to be paid by one party to the other for the purposes of calculating the amount payable by the Customer under that invoice;
  - (ii) when a final determination of the amount to be paid by one party to the other can be made, will prepare a reconciliation for the Customer showing any under or over payment;

- (iii) if requested by the Customer, will promptly provide documentation reasonably required by the Customer to allow verification of payment of that under or over payment; and
- (iv) will credit or debit (as the case may be) the extent of the under or over payment in the next invoice, together with Interest for the relevant period at the Overdue Rate.

## 17.2 Carbon Charge

If the Service Provider or any Related Body Corporate of the Service Provider is required to pay any Carbon Charge in respect of the Nitrogen Removal Services or any payment the Service Provider receives from the Customer under this agreement, then the Customer must pay to the Service Provider an additional amount that the Service Provider determines to be necessary to ensure that the Service Provider or any Related Body Corporate of the Service Provider receives, when due, a net amount (after payment of any Carbon Charge (including in respect of each additional amount)) that is equal to the full amount it would have received if the payment of Carbon Charge had not been made.

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## 18. Goods and services tax (GST)

### 18.1 Interpretation

In this clause 18:

- (a) words and phrases used in this clause 18 that are defined in the GST Act have the same meaning as in that Act except that:
  - (i) **GST** has the meaning provided in clause 1;
  - (ii) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
  - (iii) **Recipient** means a party who provides or is liable to provide consideration under this agreement for a supply;
- (b) unless otherwise expressly stated, all consideration to be provided under any other provision of this agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 18;
- (c) a reference to a supply is to a supply made under or in connection with this agreement;
- (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 18;
- (e) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (f) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input



tax credits to which the representative member of any GST group to which that entity may belong is entitled.

## **18.2 Reimbursements and similar payments**

Any payment or reimbursement required to be made under this agreement that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

## **18.3 GST payable**

Despite the other provisions of this agreement, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) any amount payable or consideration to be provided in accordance with any other provision of this agreement for that supply is exclusive of GST;
- (b) the Recipient must pay to the Supplier an additional amount equal to the amount of that GST (**GST Amount**);
- (c) the Supplier must issue a valid Tax Invoice to the Recipient in respect of that supply; and
- (d) the GST Amount must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid Tax Invoice for the supply to which the additional amount relates, whichever is the later.

## **18.4 Variation of GST**

If the GST Amount recovered by the Supplier from the Recipient under clause 18.3(a) for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an Adjustment Note within 14 days after the date of the adjustment event.

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## **19. Invoicing and payment**

### **19.1 Invoices**

On or before the 10th day of each Month, each party must deliver to the other party a written Tax Invoice or Adjustment Note (as required) (**Monthly Invoice**) setting out full details of the amounts payable by the other party under this agreement in relation to the previous Month. No Monthly Invoice is required to be delivered if no amounts are payable by the other party under this agreement in relation to the previous Month.

### **19.2 Due date**

- (a) Subject to clause 19.4, a party must pay the amount of any Monthly Invoice by the 25th day of the Month.

- (b) If the due date for any payment to be made pursuant to this clause 19 is not a Business Day, the due date for payment will be the nearest preceding Business Day.

### 19.3 Method of payment

- (a) Except as otherwise agreed or provided, all payments required to be made under this agreement must be tendered by way of direct transfer of immediately available funds to the bank account nominated:
  - (i) in the case of the Customer, in writing by the Customer to the Service Provider; and
  - (ii) in the case of the Service Provider, in writing by the Service Provider to the Customer.
- (b) Any payment tendered under this agreement after 2:00 pm in the local time of the bank branch from which payment is made will be taken to have been made on the next succeeding Business Day after the date on which payment was tendered, and if that date is after the relevant due date for payment, Interest will accrue under clause 34.1 accordingly.

### 19.4 Disputed invoices

- (a) If either party has a bona fide dispute in respect of part or all of an invoice:
  - (i) the disputing party must pay the amount shown on each invoice as the amount it owes, even if that party disagrees with it. A party may only withhold payment of an amount in the case of manifest error and must pay the remaining balance; and
  - (ii) the disputing party must notify the other party in writing within 12 Months after receipt of the invoice, specifying the amount in dispute and the reasons for the dispute.
- (b) Upon receipt of a notice under clause 19.4(a)(ii), the non-disputing party must investigate the invoice as soon as possible and if applicable make an adjustment on a subsequent invoice (including any interest paid in accordance with clause 34.1), or where there is no subsequent invoice, issue a cheque to the disputing party of the adjustment amount.
- (c) This clause 19.4 survives the termination or expiry of this agreement.
- (d) Either party may refer the Dispute for determination at any time in accordance with this agreement.

### 19.5 Metering error

If, at any time, any of the Metering Equipment is found to be out of service or registering inaccurately:

- (a) it must be adjusted immediately to read accurately; and/or
- (b) by an amount exceeding one percent at a reading corresponding to the average rate of flow for the period since the immediately preceding test, an adjustment must be made for any period of inaccuracy definitely known or agreed upon or, if not known or agreed upon, for 50% of the period since the last validation test (**Adjustment Period**). The quantity of Gas delivered during the Adjustment Period must be estimated:

- (i) by using the data recorded by any check-measuring equipment, if installed and accurately registering;
- (ii) if the check-measuring equipment is not installed or registering accurately, by correcting the error if the percentage of error is ascertainable by validation, test, or mathematical calculation; or
- (iii) if neither the method in clause 19.5(b)(i) nor the method in clause 19.5(b)(ii) is feasible, by estimating the quantity and/or quality delivered, based on previous deliveries under similar conditions during a period when the equipment was registering accurately.

## **19.6 Metering adjustment invoice**

If an adjustment is to be made under clause 19.5(b), then:

- (a) the adjustment comprises the difference (if any) between the total amount invoiced and the total amount that would have been invoiced in relation to the Adjustment Period had the Metering Equipment read accurately;
- (b) the party entitled to receive the adjustment must deliver to the other party a written Tax Invoice setting out full details of the adjustment; and
- (c) this clause 19 applies to the Tax Invoice as if it were a Monthly Invoice.

## **19.7 Maintenance of records**

The parties must keep and maintain proper books, records and documents including metering data relating to their billing and payment obligations under this agreement, and must retain all such records for a period of five years from their creation.

## **19.8 Final invoice**

Within 30 days following the NRSA End Date, the Service Provider must carry out a final reconciliation of the accounts between the Service Provider and the Customer and issue a final invoice in accordance with this clause 19.

## **19.9 Set-off**

Without limiting any other right the Service Provider may have under this agreement or otherwise at law, the Service Provider may deduct or set-off from payments to the Customer any amounts which the Customer owes to the Service Provider.

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## **20. Audit rights**

- (a) The Customer is entitled, by giving at least 5 Business Days' notice to the Service Provider to have an Independent auditor (**Auditor**) engaged by the Customer, at the Customer's expense, review the Service Provider's records and documents for the sole purpose of verifying the Customer's Facility Use Gas contribution.
- (b) The Service Provider must give reasonable assistance to the Auditor, including answering any reasonable questions or requests for explanation or

further information, provided, however, that nothing in this clause 20 obliges the Service Provider to assist the Auditor if:

- (a) doing so would cause the Service Provider to breach its confidentiality obligations under any document to which the Service Provider is a party; or
  - (b) the Auditor refuses to execute a confidentiality agreement on terms satisfactory to the Service Provider.
- (c) The Auditor will be engaged on the basis that the Auditor is not permitted to disclose to the Customer any information disclosed to the Auditor by the Service Provider other than the Customer's correct Facility Use Gas contributions.

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## 21. Default

### 21.1 Events of Default

An **Event of Default** occurs in respect of a party (**Defaulting Party**) if it commits:

- (a) a Financial Default; or
- (b) a Non-Financial Default.

### 21.2 Default Notice

- (a) If an Event of Default occurs, a party that is not the Defaulting Party (**Non-Defaulting Party**) may give the Defaulting Party a notice (**Default Notice**) stating particulars of the Event of Default and that it is a Default Notice under this clause 21.2.
- (b) Upon receipt of a Default Notice, the Defaulting Party has:
  - (i) in the case of a Financial Default, 7 Business Days to cure that Event of Default;
  - (ii) in the case of a Non-Financial Default that is capable of remedy, 30 Business Days to cure that Event of Default;
  - (iii) in the case of a Non-Financial Default that is not capable of remedy, 30 Business Days to:
    - A. take the steps and do the things that the Non-Defaulting Party, acting reasonably, requires to ensure that the Event of Default will not be repeated; and
    - B. pay the Non-Defaulting Party a sum agreed between the parties, to compensate the Non-Defaulting Party for the Event of Default and its consequences.
- (c) Each of the periods in clauses 21.2(b)(i), 21.2(b)(ii) and 21.2(b)(iii) is a **Cure Period**.
- (d) During each of the Cure Periods in clauses 21.2(b)(ii) and 21.2(b)(iii), the Defaulting Party may, within 10 Business Days of the receipt of a Default Notice, notify the Non-Defaulting Party of:

- (i) the actions required to remedy the Non-Financial Default or if the Non-Financial Default is not capable of remedy, the actions required to mitigate the effects of the Non-Financial Default;
- (ii) the earliest date by which the Defaulting Party reasonably anticipates that the Non-Financial Default may be remedied or if the Non-Financial Default is not capable of remedy, when the effects will be mitigated; and
- (iii) the program to be adopted by the Defaulting Party to achieve the outcome set out in clause 21.2(d)(ii),

**(Proposed Cure Plan).**

- (e) The Non-Defaulting Party must, within 5 Business Days of receipt of a Proposed Cure Plan, consult with the Defaulting Party to attempt to agree the Proposed Cure Plan (**Cure Plan**). The Cure Plan must set out the date by which the Non-Financial Default must be cured or if the Non-Financial Default is not capable of being cured, the date by which the effects of the Non-Financial Default will be mitigated and contain agreed actions to be taken by the Defaulting Party in relation to the Event of Default.
- (f) The Non-Defaulting Party is not obliged to agree the Cure Plan but will act reasonably in attempting to do so in accordance with clause 21.2(e).
- (g) If a Cure Plan is agreed by the parties, the Cure Period for the underlying Event of Default will be the relevant cure period agreed by the parties in the Cure Plan.
- (h) During the applicable Cure Period, the Defaulting Party must:
  - (i) where clause 21.2(b)(i) or 21.2(b)(ii) applies, diligently seek to remedy the relevant Event of Default; or
  - (ii) where clause 21.2(b)(iii) applies, take the steps described in clause 21.2(b)(iii) (as relevant),

and (in respect of a Non-Financial Default) must keep the Non-Defaulting Party informed on a regular basis (and at least weekly) of the progress of the Defaulting Party in doing so.

## **21.3 Remedies**

If:

- (a) an Event of Default to which clause 21.2(b)(i) or 21.2(b)(ii) applies is not cured within the applicable Cure Period; or
- (b) the parties, acting reasonably, do not agree the sum to be paid to the Non-Defaulting Party does not comply with clause 21.2(b)(iii) within the applicable Cure Period,

the Non-Defaulting Party may by notice in writing to the Defaulting Party (without prejudice to any of its other rights under this agreement or any Applicable Law) exercise any or any combination of the following remedies:

- (c) terminate this agreement;
- (d) suspend the obligations of the Non-Defaulting Party under this agreement until the Event of Default is cured or the Defaulting Party has complied with clause 21.2(b)(iii)A, as applicable, or the Non-Defaulting Party gives notice to

the Defaulting Party electing to terminate this agreement, without prejudice to any right to damages; or

- (e) sue the Defaulting Party for damages for that Event of Default and exercise any other available legal and equitable remedies (other than in respect of damages) including suing for specific performance, injunctive ruling or any other relief that it considers appropriate.

## **21.4 No termination while GTA is on foot**

The Service Provider agrees that, despite this clause 21, the Service Provider must not terminate this agreement unless the GTA has first been validly terminated in accordance with the GTA.

## **21.5 Effect of termination**

- (a) Nothing in this clause 21 in any way prejudices or limits any other rights or remedies of a party, whether under this agreement or otherwise at law, and whether against the other party or otherwise, in relation to any Event of Default or other default.
- (b) The termination of this agreement on any basis will not in any way prejudice or limit either party's liability to the other in respect of the events giving rise to the termination.

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## **22. Dispute resolution procedure**

### **22.1 Disputes generally**

Any Dispute must be resolved in accordance with this clause 22 and clauses 23 to 25.

### **22.2 Notice of Dispute**

Where a Dispute arises either party may give the other party written notice of the Dispute (**Notice of Dispute**). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied; and
- (c) set out the position which the party believes is correct.

### **22.3 Continue to perform**

Despite the existence of a Dispute, each party must continue to perform its obligations in accordance with this agreement.

### **22.4 Interlocutory relief**

Nothing in this agreement prevents a party from seeking urgent interlocutory injunctive or declaratory relief from a court.

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## 23. Senior negotiations

### 23.1 Notification

Where a Notice of Dispute is given under clause 22.2, the Dispute must be referred to the Chief Executive Officers (or equivalent) of the Customer and the Service Provider (**Senior Representatives**) for resolution by negotiation.

### 23.2 Attempt to resolve Dispute

If a Dispute is referred for resolution by negotiation under clause 23.1, then:

- (a) the Senior Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 20 Business Days after the date on which the notice under clause 23.1 is received (or such later date as the parties may agree); and
- (b) any agreement reached between the Senior Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

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## 24. Expert determination

### 24.1 Expert determination

If:

- (a) **(dispute unresolved by Senior Representatives)**: a Dispute which has been referred to the Senior Representatives for negotiation in accordance with clause 23.1 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 23.2(a); and
- (b) **(referral to expert)**: within 20 Business Days after the expiration of the period for negotiation referred to in clause 23.2(a) the parties agree, that the Dispute be referred to expert determination in accordance with this clause 24,

then those parts of the Dispute which remain unresolved will be referred to expert determination under clauses 24.2 to 24.6.

### 24.2 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 5 Business Days after the date on which a Dispute is referred to expert determination under clause 24.1, if the Customer and the Service Provider are unable to agree on an expert to determine the Dispute, the Customer and the Service Provider must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 24.2(c), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on both lists under clause 24.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the

person given the highest order of priority by the party that gave the notice under clause 23.1 will be appointed.

- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 23.1 must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 24.2(a), within 10 Business Days after the exchange of notices under clause 24.2(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an Independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 24.2 on the basis that the expert does not satisfy the requirements of clause 24.2(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this agreement will not constitute an arbitration agreement for the purposes of the Commercial Arbitration (National Uniform Legislation) Act (NT).
- (g) **(Expert Determination Agreement):** Once an expert is appointed, the Customer and the Service Provider must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

### 24.3 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

### 24.4 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Customer and the Service Provider unless, within 15 Business Days after receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 25.
- (b) **(Amendment to determination):** Upon submission by either party, the expert may amend the determination to correct:
  - (i) a clerical mistake;
  - (ii) an error from an accidental slip or omission;
  - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (iv) a defect in form.



## 24.5 Liability of expert

- (a) **(Liability of expert):** The parties agree
  - (i) that the expert will have no liability in connection with the expert determination, except in the case of fraud on the part of the expert; and
  - (ii) to indemnify the expert against any Claim made against the expert by any third person in connection with the expert's appointment to determine the Dispute, except in the case of fraud on the part of the expert.
- (b) **(Engagement):** The Customer and the Service Provider will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## 24.6 Costs

The Customer and the Service Provider must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

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## 25. Arbitration

### 25.1 Reference to arbitration

- (a) **(Dispute):** If:
  - (i) a Dispute has been referred to expert determination under clause 24, and:
    - A. a determination is not made within 30 Business Days of the expert's acceptance of the appointment; or
    - B. a notice of dissatisfaction is given in accordance with clause 24.4(a); or
  - (ii) the parties do not agree to refer a Dispute to expert determination under clause 24,then the Customer or the Service Provider may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 25.1(a), the Dispute will be referred to arbitration.

### 25.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 25 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 25.

- (b) **(Seat):** The seat of the arbitration will be Darwin, Northern Territory.
- (c) **(Language):** The language of the arbitration will be English.

### 25.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days after the Dispute being referred to arbitration in accordance with clause 25.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

### 25.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
  - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) any arbitration conducted in accordance with this clause 25 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
  - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (a)(i) and (a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
  - (i) any oral hearing must take place in Darwin, Northern Territory and all outstanding issues must be addressed at the oral hearing;
  - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 25.4(a) when determining the duration of the oral hearing;
  - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (v) not less than 5 Business Days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
  - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to paragraph (d)(ii);

- (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
  - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

## 25.5 Proportional liability

To the extent permitted by law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 25.5, have applied to any Dispute referred to arbitration in accordance with this clause 25.

## 25.6 Extension of ambit of arbitration proceedings

- (a) **(Extending disputes):** Where:
- (i) a Dispute between the parties to this agreement is referred to arbitration in accordance with this clause 25; and
  - (ii) there is some other Dispute also between the parties to and under this agreement (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 25.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## 25.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 25.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the Commercial Arbitration (National Uniform Legislation) Act (NT) on a question of law arising in connection with an arbitral award made pursuant to this clause 25.

## 25.8 Governing law of arbitration agreement

The law governing this arbitration agreement is the laws applying in the Northern Territory of Australia.

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## 26. Exclusions and limitations of liability

### 26.1 Excluded Loss

- (a) **(No liability of Customer):** Notwithstanding any other provision of this agreement (including the definition of Loss) but subject to clause 26.1(b), the Customer has no liability to the Service Provider (whether in contract, in tort or otherwise) for any Excluded Loss suffered or incurred by the Service Provider (or the Service Provider's Associates), howsoever arising in respect of any event or circumstance under or in relation to this agreement and regardless of whether a Claim for same is made under this agreement or otherwise.
- (b) **(Exceptions to no Customer liability):** The exclusion of liability of the Customer under clause 26.1(a) does not apply to:
- (i) liability arising from any criminal act or fraud on the part of the Customer or any of its Related Bodies Corporate or their respective officers or employees;
  - (ii) liability arising from any Wilful Misconduct on the part of the Customer or any of its Related Bodies Corporate or their respective officers or employees;
  - (iii) liability arising from any loss of or damage to third party property or injury to, disease or death of a natural person which has been caused or contributed to by the Customer or any of its Associates;
  - (iv) liability to pay the Service Provider the Charges (including any Charges that would have been payable by the Customer to the Service Provider under this agreement but for the termination of this agreement by the Service Provider for a Financial Default or Non-Financial Default of the Customer or the wrongful termination or repudiation of this agreement by the Customer);
  - (v) liability to pay the Service Provider any interest under clause 34.1; or
  - (vi) the extent that the parties cannot, by law, limit or exclude the relevant liability.
- (c) **(No liability of the Service Provider):** Notwithstanding any other provision of this agreement (including the definition of Loss), but subject to clause 26.1(d), the Service Provider has no liability to the Customer (whether in contract, in tort or otherwise) for any Excluded Loss suffered or incurred by the Customer (or the Customer's Associates), howsoever arising in respect of any event or circumstance under or in relation to this agreement and regardless of whether a Claim for same is made under this agreement or otherwise.
- (d) **(Exceptions to no Service Provider liability):** Subject to clause 26.2, the exclusion of liability of the Service Provider under clause 26.1(c) does not apply to:
- (i) the extent that such liability has arisen from any criminal act or fraud on the part of the Service Provider or its officers or employees;
  - (ii) the extent that such liability has arisen from any Wilful Misconduct on the part of the Service Provider or its officers or employees;

- (iii) the liability of the Service Provider under this agreement to pay the Customer any interest under clause 34.1; or
- (iv) the extent that the parties cannot, by law, limit or exclude the relevant liability.

## **26.2 Limitation of liability**

- (a) Notwithstanding any other provision of this agreement but subject to clauses 26.2(b) and 26.2(c), the aggregate liability of the Service Provider howsoever arising in respect of, under, or in connection with this agreement (whether in contract, in tort or otherwise) (including any liability of the Service Provider for Excluded Loss contemplated under clause 26.1(d)), will in no event exceed:
  - (i) in any 12 month period commencing on and from the Execution Date, an amount equal to 50% of the Charges for the Firm Nitrogen Removal Service for that period under this agreement, in aggregate; or
  - (ii) subject to clause 26.2(a)(i), an amount equal to 50% of the Charges for the Firm Nitrogen Removal Service for that period under this agreement, in respect of any single Claim or series of Claims arising out of the same event or circumstance,  
**(General Liability Limitation).**
- (b) The General Liability Limitation under clause 26.2(a)(i) and 26.2(a)(ii) will be reduced by the same proportion that the number of days in the period immediately prior to the NRSA End Date or the earlier termination of this agreement bears to a 365 day year, where that period is less than 12 months.
- (c) The General Liability Limitation under clause 26.2(a) does not apply to any liability of the Service Provider for or in respect of:
  - (i) any liability arising from any criminal act or fraud on the part of the Service Provider or its respective officers or employees; or
  - (ii) any liability arising from any Wilful Misconduct on the part of the Service Provider or its respective officers or employees.

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## **27. Confidential Information and disclosure**

### **27.1 Confidential Information and disclosure**

Subject to clauses 27.2, 27.3 and 27.4, neither party will disclose or permit the disclosure of the Confidential Information without the prior written consent of the other party.

### **27.2 Exceptions to Confidentiality**

Any party may disclose Confidential Information which:

- (a) at the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the party, is publicly known;
- (b) at the time when it is disclosed, is already known to the party through some independent means not involving breach of any confidentiality undertaking owed pursuant to clause 27.1;

- (c) after the time when it is disclosed or communicated to or created, ascertained, discovered or derived by the party, comes into the public domain otherwise, than as a result of any breach of the confidentiality undertaking owed pursuant to clause 27.1; or
- (d) is required to be disclosed by any Applicable Laws, judicial processes, any Authority, federal, state or local or the rules or regulations of any recognised stock exchange, to the extent so required, and the disclosing party will promptly notify the other party of that requirement prior to the disclosure.

### **27.3 Permitted disclosure**

Any party may disclose Confidential Information to:

- (a) its directors and employees;
- (b) its consultants, lawyers, auditors, potential equity investors, bona fide potential purchasers of the Nitrogen Removal Skid (in the case of the Service Provider), financial institution or rating agency to the extent required in relation to the financing of a party's business activities, bankers and financial advisers;
- (c) a Related Body Corporate (or any of its officers, employees, consultants, financiers, auditors, bankers or financial advisers or lawyers) of a party; or
- (d) any potential assignee of the rights and interests of a party under this agreement or a third party to the extent required for the purposes of any proposed sale of its share capital or any proposed sale of the share capital of a related body corporate or any relevant part of its business undertaking (including, in the case of the Service Provider, any sale of the Nitrogen Removal Skid),

to the extent those persons have a need to know the Confidential Information, provided that the disclosing party is responsible for ensuring those persons keep the Confidential Information confidential and that those persons comply with the confidentiality obligations of the disclosing party set out in this clause 27.

### **27.4 Disclosure by Service Provider**

The Service Provider may disclose:

- (a) Confidential Information to any shareholders of SGSP (Australia) Assets Pty Ltd; or
- (b) the Customer's Nomination for a NRSA Receipt Point for a Day to any relevant gas producers.

### **27.5 Injunctive relief**

Each party acknowledges that damages are not a sufficient remedy for a party for any breach of this clause 27 and such party and its Related Bodies Corporate are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the other party in addition to any other remedies that may be available to such other party at law or in equity.

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## **28. Assignment**

### **28.1 Assignment by Service Provider**

- (a) Except as expressly permitted by this agreement, the Service Provider must not assign any right, title, benefit or interest in, or transfer or novate any obligation, duty or liability under, this agreement to any person without:
- (i) the Customer's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - (ii) the proposed assignee, transferee or novatee:
    - A. having the technical, operational and financial resources to meet the Service Provider's obligations under this agreement;
    - B. entering into an agreement with the 'Transporter' under the GTA, on terms acceptable to the Customer, that will ensure the seamless operation of the GTA and this agreement; and
    - C. entering into a deed pursuant to which it agrees to assume, and be bound by and perform, the obligations, duties and liabilities of the Service Provider under this agreement.
- (b) The Service Provider may assign any right, title, benefit or interest in or transfer or novate any obligation, duty or liability under, this agreement without the Customer's consent if the proposed assignee, transferee or novatee:
- (i) is a Related Body Corporate of the Service Provider;
  - (ii) has the technical, operational and financial resources to meet the Service Provider's obligations under this agreement; and
  - (iii) enters into a deed pursuant to which it agrees to assume, and be bound by and perform, the obligations, duties and liabilities of the Service Provider under this agreement.

### **28.2 Financiers' securities**

The Service Provider may guarantee the obligations of SGSP (Australia) Assets Pty Ltd in favour of any financier under any financing arrangements of SGSP (Australia) Assets Pty Ltd.

### **28.3 Assignment by the Customer**

- (a) Subject to clause 28.3(b), the Customer must not assign any right, title, benefit or interest in, or transfer or novate any obligation duty or liability under, this agreement or otherwise dispose of all or any part of its interest in this agreement without:
- (i) the Service Provider's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - (ii) the proposed assignee, transferee or novatee:

- A. having the technical, operational and financial resources to meet the Customer's obligations under this agreement; and
  - B. entering into a deed pursuant to which it agrees to assume, and be bound by and perform, the obligations, duties and liabilities of the Customer under this agreement.
- (b) The Customer may assign any right, title, benefit or interest in, or transfer or novate any obligation duty or liability under, this agreement or otherwise dispose of all or any part of its interest in this agreement without the Service Provider's consent, if:
  - (i) it has provided the Service Provider with written details of the proposed transferee and the terms and conditions of the proposed transfer;
  - (ii) has the technical, operational and financial resources to meet the Service Provider's obligations under this agreement; and
  - (iii) the proposed transferee has agreed to enter into a deed pursuant to which it agrees to assume and be bound by and perform, the obligations, duties and liabilities of the Customer under the relevant agreements.

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## **29. Ongoing Support**

### **29.1 Refusal of Supply**

The Service Provider will not be required to supply the Nitrogen Removal Service to the Customer, and may suspend (completely or partially) provision of the Nitrogen Removal Service to the Customer if:

- (a) a Event of Insolvency occurs in respect of the Customer; or
- (b) after the Service Provider's request, the Customer fails within a reasonable period to establish or confirm the Customer's creditworthiness in accordance with clause 29.2,

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

### **29.2 Creditworthiness**

- (a) At any time during the term of this agreement, the Service Provider may request in writing, and if so requested the Customer must provide:
  - (i) its most recent audited financial statements (or if the Service Provider acting reasonably so requests, the Customer will also provide its most recent unaudited financial statements);
  - (ii) evidence of debt and/or corporate credit ratings; and
  - (iii) other information that the Service Provider reasonably requests to establish or confirm the Customer's creditworthiness.



- (b) All information the Customer provides for credit evaluation purposes will be used by the Service Provider solely for this purpose and subject to clause 27, will be held in confidence.
- (c) The Service Provider will establish credit limits based on the level of requested Nitrogen Removal Service and the Customer's creditworthiness as established by the Service Provider's analysis of the Customer's financial strength, taking into consideration (but in no way limited to) analysis of three (3) years of the Customer's audited financial statements demonstrating adequate financial strength to justify the amount of the credit the Service Provider is to extend to the Customer.

### 29.3 Adequate Assurance

- (a) If, in the Service Provider's reasonable opinion, one or more events have occurred that have caused or will cause a material adverse change in the Customer's financial standing or creditworthiness (or, if the Customer's net financial obligations under this agreement have been fully guaranteed or otherwise secured, one or more events have occurred that in the Service Provider's reasonable opinion have caused or will cause a material adverse change in the financial standing or creditworthiness of the guarantor or other party providing such security (each a **Guarantor**)) in a matter and to an extent that materially and adversely affects the Customer's ability to perform its financial or other obligations under this agreement, the Service Provider may request in writing that the Customer provide the Service Provider with one of the following:
  - (i) an irrevocable guarantee of the Customer's financial performance under this agreement issued by an entity acceptable to the Service Provider and in a form and substance reasonably satisfactory to the Service Provider;
  - (ii) a satisfactory irrevocable letter of credit in an amount equivalent to the Customer's net financial obligations under this agreement, which letter of credit must be issued by a financial institution with a long term senior unsecured debt rating of at least A- by Standard & Poors, A3 by Moody's or B from Fitch ICBA (each a **Letter of Credit Collateral**); or
  - (iii) other arrangements satisfactory to the Service Provider,(each, an **Adequate Assurance**).
- (b) If the Customer does not provide the Service Provider with Adequate Assurance within 14 Days of the Service Provider's request, the Service Provider may suspend the performance of any and all of their obligations under this agreement until the Customer has provided the requested Adequate Assurance.
- (c) The Service Provider may hold the Adequate Assurance for as long as it has a reasonable good faith belief that the Customer's ability to perform its financial or other obligations under this agreement is materially impaired.

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### 30. Change of control

The Customer must, as soon as practicable after a Change of Control of the Customer occurs, notify the Service Provider of:

- (a) details of the person obtaining Control; and
- (b) a description of that Change of Control of the Customer.

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### 31. Personal Property Securities Act

- (a) Each party (as **Grantor**) must co-operate with the other party (as **Secured Party**) to assist the Secured Party to register financing statements under the PPSA in respect of each PPSA Security Interest granted by the Grantor under this agreement and the Grantor agrees to, at such times as may be requested by a Secured Party to maintain any priority that can be obtained by registration at that time and as reasonably required by the Secured Party, obtain consents, sign and produce documents, get documents completed and signed, and supply information which the Secured Party asks for and considers reasonably necessary for the purposes of enabling the Secured Party to apply for any registration, or give any notification, in connection with the security interest. Unless otherwise agreed by all parties, no party is required to assist a Secured Party to perfect its PPSA Security Interest under the PPSA by any means other than registration of such financing statements.
- (b) Despite any other clause in this agreement or in any transaction in connection with this agreement, each party agrees that, to the extent permitted by Applicable Law:
  - (i) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - A. the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
    - B. sections 142 and 143 of the PPSA are excluded;
  - (ii) for the purposes of s115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3) of the PPSA in relation to this agreement (or any transaction in connection with it); and
  - (iii) if the PPSA is amended after the Execution Date to permit the Grantor and the Secured Party to exclude other provisions of the PPSA, the Grantor and the Secured Party may agree in writing not to comply with any of those provisions in relation to this agreement (or any transaction in connection with it).
- (c) To the extent permitted by Applicable Law, the Grantor waives its rights to receive:
  - (i) any notice required under any provision of the PPSA (including a notice of a verification statement in relation to security interests under this agreement (or any transaction in connection with it); and
  - (ii) any notice, or lapse of time, that is required by any other law before a Secured Party or Receiver exercises a right, power or

remedy under this agreement (or any transaction in connection with it),

however, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other Applicable Law.

- (d) Everything that a party is required to do under this clause 31 is at that party's expense.

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## 32. Representations, reliance and warranties

### 32.1 Customer's representations and warranties

The Customer represents and warrants that:

- (a) **(power to execute and perform)**: it has the power to execute, deliver and carry out its obligations under this agreement and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(validity)**: this agreement constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(legality)**: the execution, delivery and carrying out of its obligations under this agreement does not violate any law to which the Customer is subject;
- (d) **(no trust relationship)**: except as stated in this agreement, it is not the trustee or responsible entity (as defined in the Corporations Act) of any trust nor does it hold any property subject to or impressed by any trust; and
- (e) **(licence and permits)**: the Customer will have at all times all licences and permits required by law regarding dealing with Gas delivered at the NRSA Receipt Point and received at the NRSA Delivery Point;
- (f) **(NRSA Receipt Point)**: the Customer will ensure that the person who delivers the Gas on its account at the NRSA Receipt Point will at all times have the right or obligation to deliver it;
- (g) **(NRSA Delivery Point)**: the Customer will ensure that the person to whom the Gas is delivered on its account under this agreement at the NRSA Delivery Point will at all times have the right to receive it; and
- (h) **(NRSA Delivery Point arrangements)**: the Customer will ensure that the necessary upstream and downstream Gas supply or transportation arrangements will at all times be in place so that its scheduled quantities and nominated quantities of Gas can be received and delivered by the Service Provider.

### 32.2 Service Provider's representations and warranties

The Service Provider represents and warrants that:

- (a) **(power to execute and perform)**: it has the power to execute, deliver and carry out its obligations under this agreement and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and carrying out of its obligations under the agreement to which it is a party does not and will not violate any law or any

document or agreement to which it is a party or which is binding on it or any of its assets;

- (c) **(validity)**: the agreement constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(necessary licences)**: it will obtain, or holds and will continue to hold all Approvals in order to lawfully execute, deliver and carry out its obligations under this agreement; and
- (f) **(no trust relationship)**: except as stated in this agreement, it is not the trustee or responsible entity (as defined in the Corporations Act) of any trust nor does it hold any property subject to or impressed by any trust.

### **32.3 Repetition of representation and warranties**

Each representation and warranty given by the Customer or the Service Provider under this agreement:

- (a) **(date of agreement)**: is made on the Execution Date; and
- (b) **(repetition)**: will be deemed to be repeated each day during the period from the Execution Date to the expiry or termination of this agreement,

with reference to the facts and circumstances then subsisting.

### **32.4 Implied warranties**

To the fullest extent permitted by law, except as expressly stated in this agreement, the parties agree that any warranty that might otherwise be implied by law, including with regards to the fitness of the Gas for any particular purpose and as to its merchantability, is excluded from, and forms no part of, this agreement.

### **32.5 Notification by party**

Each party will immediately notify the other party if it becomes aware that any representation or warranty made by it in this agreement (including each representation and warranty in this clause 32) is, or is likely to become, untrue or incorrect to any extent.

### **32.6 No representation or reliance**

- (a) Except as expressly stated in this agreement, each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement.
- (b) Except as expressly stated in this agreement, each party acknowledges and confirms that it has not entered into this agreement in reliance on any representation or other inducement by or on behalf of the other party.

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## 33. Notices and other communications

### 33.1 Operational Communications

- (a) Any emergency operational communications given by or on behalf of either party may be by telephone or other instantaneous means of communication. The parties will ensure that logs are kept in which persons giving and receiving emergency operational communications record brief details of their substance and timing.
- (b) Operational communications for the submission of manual Nominations and general operational enquiries are to be communicated through the following means:
- (i) by telephone on: 1300 334 954 or such other number as may be notified from time to time;
  - (ii) by email at: pipelines@jemena.com.au or such other email address as may be notified from time to time;
  - (iii) by facsimile: to be advised; or
  - (iv) such other method satisfactory to both parties, to recipients notified by the parties to each other from time to time.

### 33.2 Formal notices

All communications (including advices, notices, consents, approvals, requests and demands) under this agreement:

- (a) must be addressed as follows (or as otherwise notified by that party to the other party from time to time):

**if to the Customer:**

Name: [Insert]  
Physical Address: [Insert]  
Postal Address: [Insert]

Fax: [Insert]  
Email: [Insert]  
For the attention of: [Insert]

**if to the Service Provider:**

Name: Jemena Northern Gas Pipeline Pty Ltd  
Physical Address: 567 Collins Street, Melbourne Victoria  
Postal Address: 567 Collins Street, Melbourne Victoria  
Fax: (02) 9867 7455  
Email: bob.boesten@jemena.com.au  
For the attention of: Bob Boesten

- (b) are subject to clause 33.3.

### 33.3 Notice requirements

- (a) Any communication (except operational communications under clause 33.1, including nominations and notifications complying with clause 6) in connection with this agreement:
- (i) **(in writing)**: must be in writing;
  - (ii) **(addressed)**: must be addressed as specified in clause 33.2;
  - (iii) **(signed)**: must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent or authorised signatory of, that party. Each party consents to the use by the other party of electronic signatures;
  - (iv) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address, of the addressee, under clause 33.2; and
  - (v) **(taken to be received)**: are taken to be received by the addressee at the address of the addressee under clause 33.2:
    - A. in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9:00 a.m. on the next Business Day;
    - B. in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
    - C. in the case of email, when the email (including any attachment) has been recorded as sent in the sender's email records provided that where an "out of office" or "delivery notification failure" reply or similar response is delivered to the computer from which the email was sent, the email will not be taken to be received and the sender must use an alternative method of sending the notice in accordance with this clause 33.3.
- (b) A party may change its address for notice by delivering notice to the other party in the manner provided for above.

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## 34. Miscellaneous

### 34.1 Interest on overdue amounts

- (a) **(Interest)**: If a party fails to pay any amount payable by that party to the other party within the time required under this agreement, then it must pay Interest on that amount:
- (i) from the date on which payment was due and payable until the date on which payment is made;
  - (ii) calculated on daily balances at the Overdue Rate; and

- (iii) capitalised monthly.
- (b) **(Sole entitlement)**: The amount specified in this clause 34.1 will be a party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

## 34.2 Governing law

This agreement is governed by, and must be construed according to, the laws applying in the Northern Territory of Australia.

## 34.3 Jurisdiction

For the purposes only of proceedings allowed under clause 22.4, the parties irrevocably:

- (a) **(jurisdiction)** submit to the non-exclusive jurisdiction of the courts of the Northern Territory, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) **(waiver of objection to jurisdiction)** waive any objection they may now or in the future have to the venue of any court proceedings, and any Claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within clause 34.3(a).

## 34.4 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

## 34.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in the form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

## 34.6 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this agreement will survive the rescission, termination or expiration of this agreement, including any provision in connection with:
  - (i) each party's rights to set-off and recover money (including any Charges);
  - (ii) confidentiality or privacy;
  - (iii) any indemnity given in accordance with this agreement;
  - (iv) any exclusion or limitation on liability; and
  - (v) any entitlement, liability, right or obligation arising prior to or on rescission, termination or expiry of this agreement.

- (b) **(Interpretation):** No provision of this agreement which is expressed to survive the rescission, termination or expiry of this agreement will prevent any other provision of this agreement, as a matter of interpretation, also surviving the rescission, termination or expiry of this agreement.
- (c) **(Survival of rights and obligations):** No right or obligation of either party will merge on the completion of any transaction contemplated by this agreement. All rights and obligations under this agreement survive the execution and delivery of any transfer or other document which implements any transaction contemplated by this agreement.

### **34.7 Waiver**

- (a) **(Writing):** A waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to exercise or enforce, a delay in the exercise or enforcement of, or the partial exercise or enforcement of, a right provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) **(Payment not a waiver):** Payment under this agreement will not constitute a waiver of any rights of the Customer or the Service Provider under this agreement in respect of such payment.

### **34.8 Consents, approvals and directions**

- (a) **(Consent):** A consent or approval required under this agreement from a party may not be unreasonably withheld or delayed, unless this agreement expressly provides otherwise.
- (b) **(Nature of approval):** By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.
- (c) **(Writing):** A consent or approval given by a party under this agreement is only effective if it is given or confirmed in writing by that party.

### **34.9 Amendments**

This agreement may only be varied by an agreement executed by or on behalf of each party.

### **34.10 Expenses**

Except as otherwise expressly provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.



### 34.11 Severance

If, at any time, a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this agreement; or
- (b) that provision under the law of any other jurisdiction.

### 34.12 Counterparts

This agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same contract.

### 34.13 Indemnities

- (a) **(Indemnity continues)**: Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives the termination, expiration or completion of this agreement.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this agreement.

### 34.14 Proportionate liability

The operation of the Proportionate Liability Act (NT) (and to the extent possible in law, any similar legislation of a State or Territory that may be applicable) is excluded in relation to all and any rights, obligations or liabilities of either party under this agreement whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise.

### 34.15 Indices no longer available

- (a) If:
  - (i) a publication which contains a rate or index used in this agreement ceases to be published for any reason; or
  - (ii) such a rate or index ceases to exist for any reason,the parties will select a comparable rate or index, with adjustments as necessary or appropriate, to be used in place of such rate or index that maintains the intent and economic effect of the original rate or index. If the parties fail to agree on such a rate or index, the issue must be resolved in accordance with clause 22, and the relevant arbitral tribunal will select the published rate or index, or a combination of rates or indices, with adjustments as necessary or appropriate, that most nearly preserves the original economic balance established by the parties.
- (b) If any rate or index used in this agreement is not published for a particular date, but the publication containing such rate or index continues to be published and the rate or index itself continues to exist, then the parties must

use the published rate or index in effect for the date such rate or index was most recently published as the rate or index prior to such date, unless otherwise provided in this agreement.

- (c) If an incorrect value is published for any rate or index used in this agreement and such error is corrected and published within one year of the date of the publication of such incorrect rate or index, then such corrected rate or index will be substituted for the incorrect rate or index and any calculations involving such rate or index will be recalculated. The parties will take any necessary actions based upon these revised calculations, including adjustments of amounts previously invoiced and/or paid.

## Schedule 1 – Nitrogen Removal Services and Charges

### 1 Firm Nitrogen Removal Service

<b>General details</b>	
Start Date	First Day of the NRSA Services Term
End date	NRSA End Date
MDQ (GJ/Day)	[insert] GJ/Day
NRMDQ (GJ/Day)	[insert] GJ/Day + FUG
NRSA Receipt Point pressure	Minimum: 5000 kPag Maximum: 9650 kPag MAOP: 10200 kPag
Associated Service	Firm Forward Haul Transportation Service under Annexure A of the GTA
<b>Charges</b>	
NRSA Tariff	\$0.7430 (\$2017) per GJ/Day - \$0.7848 (\$2020)
Firm Charge	NRSA Tariff x MDQ
Authorised Overrun Charge	See clause 5.5
Minimum Service Charge	Nil
Indexation	<p>Unless otherwise specified, all Charges are quoted in 2015 dollars, excluding GST and will adjusted on each Review Date as follows:</p> $T_r = T_b \times \left[ 1 + \left( \frac{CPI_r - CPI_b}{CPI_b} \right) \right]$ <p>Where:</p> <p>Tr = relevant Charge in this section, applicable from Review Date</p> <p>Tb = relevant base Charge specified in this section</p> <p>CPIr = CPI for quarter ended 31 December immediately before relevant Review Date</p> <p>CPIb = CPI published for the quarter ending 31 December 2014.</p> <p>Review Date = Annually, 1 January each year.</p>

## 2 As-Available Nitrogen Removal Service

<b>General details</b>	
Start Date	First Day of the NRSA Services Term
End date	NRSA End Date
MDQ (GJ/Day)	[insert] GJ/Day
NRMDQ (GJ/Day)	[insert] GJ/Day + FUG
NRSA Receipt Point pressure	Minimum: 5000 kPag Maximum: 9650 kPag MAOP: 10200 kPag
Associated Service	As-Available Forward Haul Transportation Service under Annexure B of the GTA
<b>Charges</b>	
NRSA Tariff	\$0.7430 (\$2017) per GJ/ Day – Reflect 130%?
As-Available Charge	NRSA Tariff x ADQ
Authorised Overrun Charge	See clause 5.5
Minimum Service Charge	Nil
Indexation	<p>Unless otherwise specified, all Charges are quoted in 2015 dollars, excluding GST and will adjusted on each Review Date as follows:</p> $T_r = T_b \times \left[ 1 + \left( \frac{CPI_r - CPI_b}{CPI_b} \right) \right]$ <p>Where:</p> <p><math>T_r</math> = relevant Charge in this section, applicable from Review Date</p> <p><math>T_b</math> = relevant base Charge specified in this section</p> <p><math>CPI_r</math> = CPI for quarter ended 31 December immediately before relevant Review Date</p> <p><math>CPI_b</math> = CPI published for the quarter ending 31 December 2014.</p> <p>Review Date = Annually, 1 January each year.</p>

**Schedule 2 - Expert Determination Agreement**

# Expert Determination Agreement

Northern Gas Pipeline Nitrogen Removal Services Agreement

[ ]  
[#insert party name]

[ ]  
[#insert party name]

[ ]  
Expert

## Expert Determination Agreement made on

**Parties** [insert party name and address] (insert party name)

[insert party name and address] (insert party name)

[insert name and address of Expert agreed between the parties or appointed pursuant to clause 24.2 (Selection of expert) of the NRSA (**Expert**)

### Recitals

- A. The background to the Nitrogen Removal Services is set out in the NRSA.
- B. On [insert], [the Parties agreed / (insert party name) chose] that the matter described in [insert] be determined by an Expert appointed under clause 24.2 (Selection of expert) of the NRSA.
- C. In accordance with clause 24.2 of the NRSA, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the NRSA.

### Operative provisions

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## 1. Definitions

### 1.1 NRSA definitions

Unless otherwise expressly defined, expression used in this Agreement have the meanings given to them in the NRSA.

### 1.2 Definitions

**Agreement** means this expert determination agreement and includes all schedules, exhibits, attachments and annexures to it.

**Code of Conduct** means the code of conduct set out in section 2 of Schedule 2 to this Agreement.

**Matter** means a dispute under, arising out of, or in connection with the NRSA and referred to expert determination under clause [insert relevant clause reference] of the NRSA.

**NRSA** means the document entitled "Nitrogen Removal Services Agreement" between the Customer and the Service Provider dated [insert date].

**Party** means [insert party names].

**Rules** means the "Rules for Expert Determination Process" set out in Schedule 2 to this Agreement.

**Schedule of Fees and Disbursements** is contained in Schedule 3 to this Agreement.

### 1.3 Interpretation

In this Agreement:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other genders;
- (c) **(agreement and schedule references)**: a reference to:
  - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
  - (ii) a section is a reference to a section of a Schedule to this Agreement;
- (d) **(agreement as amended)**: a reference to this Agreement or to any other deed, agreement or instrument includes a reference to this Agreement or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Northern Territory, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: unless the Customer is expressly required to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the Customer, means that the Customer can exercise that power, right or remedy in its absolute and unfettered discretion and the Customer has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:

- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
- (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the word “remedy” or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome; and
- (s) **(no bias against draftsman)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

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## 2. Appointment of Expert

- (a) **(Parties to appoint Expert)**: The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Agreement of Conditions)**: The Parties agree that:
  - (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination; and
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) **(Independence and bias)**: If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

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## 3. Confidentiality

- (a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.
- (b) No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person except:
  - (i) with the prior written consent of both Parties;
  - (ii) as may be required by Law;
  - (iii) for the purpose of subsequent arbitration; or
  - (iv) to the extent necessary to enforce the Expert's determination.



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## 4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the NRSA, as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

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## 5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

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## 6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

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## 7. Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the laws applying in the Northern Territory, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Northern Territory, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

**Schedule 1 - The Matter**

*[Description of matter to be inserted.]*

## Schedule 2 - Rules for Expert Determination Process

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### 1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

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### 2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the NRSA and this Agreement, including these Rules and the Code of Conduct.
  - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
  - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
  - (d) The Expert must disclose to both Parties all information and documents received.
  - (e) If a Party fails to make a written submission, the Expert may continue with the process.
  - (f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
- 

### 3. Written Submissions

- (a) Within 5 Business Days after the date this expert determination process begins, the Party who gave notice under clause 24.1 (Expert determination) of the NRSA (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
  - (b) Within 5 Business Days after the statement in section 3(a) is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
  - (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.
  - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
- 

### 4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Darwin, Australia.
- (b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
  - (i) may be accompanied at a conference by legal or other advisers; and
  - (ii) subject to the terms of this Agreement and the NRSA, will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

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## 5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the NRSA, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting section 2(c) of this Agreement, the Expert must:
  - (i) inform the Parties of:
    - A. any relationship or interest with the Parties or their respective Associates;
    - B. any interest the Expert has in the matters in dispute; and
    - C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstance; and
  - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

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## 6. The Determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
  - (i) determine the Matter between the Parties; and
  - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
  - (i) be in writing stating the Expert's determination and giving reasons;

- (ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and
  - (iii) meet the requirements of the NRSA.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause [24.4(a)] of the NRSA.

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## **7. Costs**

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

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## **8. Modification**

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

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## **9. Proportionate Liability**

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination

**Schedule 3 - Schedule of Fees and Disbursements**

*[Note: Expert's fees and disbursements to be inserted.]*

**Signed** as an agreement.

*[Note: Execution Blocks to be inserted.]*

## Schedule 3 – Gas specifications

### 1. NRSA Gas Specification

The NRSA Gas Specification is:

- (a) the specifications for “fuel gas” imposed under the Petroleum and Gas (Production and Safety) Act 2004 (Qld) which adopts the specification set out in Australian Standard “AS 4564 – specification for general purpose natural gas” (2011) (as amended below); and
- (b) any additional parameters lawfully required by the APA Group for receipt of gas at the connection between the Pipeline and the Carpentaria Gas Pipeline.

Characteristics and components	Units	Limit	
Gross heating value	MJ/sm <sup>3</sup>	Minimum	33.00
		Maximum	42.00
Wobbe Index	MJ/sm <sup>3</sup>	Minimum	44.00
		Maximum	51.00
Hydrocarbon dewpoint	Deg C	Maximum	2.0°C at 3500 kPa gauge
Water Content	mg/sm <sup>3</sup>	Maximum	80.00
Nitrogen	mol %	Maximum	11.00
CO <sub>2</sub>	mol %	Maximum	0.90
Total Inerts	mol %	Maximum	12.00
H <sub>2</sub> S	ppm(wt)	Maximum	10.00
Total Sulphur	mg/sm <sup>3</sup>	Maximum	50.00
Oxygen	mol %	Maximum	0.20
Mercury	mg/sm <sup>3</sup>	Maximum	0.20
Solid particulate size	Microns	Maximum	10.00
Methanol	mg/sm <sup>3</sup>	Maximum	1.00
Glycols	mg/sm <sup>3</sup>	Maximum	1.00
Radioactivity	Bq/sm <sup>3</sup>	Maximum	8000.00

Notes:

- 1. Other inerts includes noble gases and gases which do not contribute to the heating value of the gas, but excludes Nitrogen, Carbon Dioxide and Oxygen.

#### CONTAMINANTS

The gas shall not contain-

- (a) materials, dust, and other solid or liquid matter, waxes, gums, gum forming constituents, and unsaturated or aromatic hydrocarbons to an extent which might cause damage to, or interfere with the proper operation of, pipes, meters, regulators,



- control systems, equipment or appliances or which might cause the gas to be harmful or toxic to persons having contact with it in normal work operations or usage;
- (b) unsaturated or aromatic hydrocarbons to an extent that causes unacceptable sooting; or
- (c) other substances to the extent that they cause damage to, or problems in operation of, pipelines or appliances or that cause the products of combustion to be toxic, or hazardous to health, other than substances that are usually found in natural gas combustion products.

## 2. Pipeline Gas Specification

The Pipeline Gas Specification is:

- (a) the specifications for “fuel gas” imposed under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) which adopts the specification set out in Australian Standard “AS 4564 – specification for general purpose natural gas” (2011) (as set out below); and
- (b) any additional parameters lawfully required by the APA Group for receipt of gas at the connection between the Pipeline and the Carpentaria Gas Pipeline.

### SPECIFICATION LIMITS

Characteristics and components	Limit	
	Wobbe Index	Minimum
	Maximum	52.0 MJ/m <sup>3</sup>
Gross heating value	Maximum	42.3 MJ/m <sup>3</sup>
Oxygen	Maximum	0.2 mol%
Hydrogen sulphide	Maximum	5.7 mg/m <sup>3</sup>
Total sulphur	Maximum	50 mg/m <sup>3</sup>
Water content	Maximum	Dewpoint 0°C at the highest MAOP in the relevant transmission system (in any case, no more than 112.0 mg/m <sup>3</sup> )
Hydrocarbon dewpoint	Maximum	2.0°C at 3500 kPa gauge
Total inert gases	Maximum	7.0 mol%
Oil	Maximum	20 mL/TJ

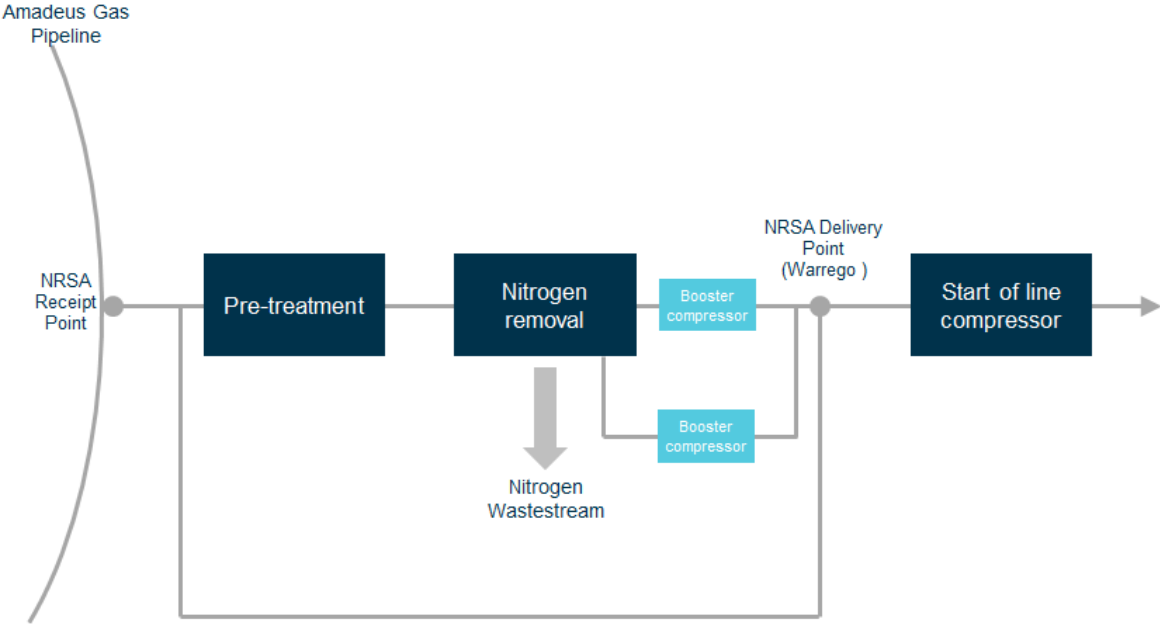
### CONTAMINANTS

The gas shall not contain-

- (a) materials, dust, and other solid or liquid matter, waxes, gums, gum forming constituents, and unsaturated or aromatic hydrocarbons to an extent which might cause damage to, or interfere with the proper operation of, pipes, meters, regulators, control systems, equipment or appliances or which might cause the gas to be harmful or toxic to persons having contact with it in normal work operations or usage;

- (b) unsaturated or aromatic hydrocarbons to an extent that causes unacceptable sooting;  
or
- (c) other substances to the extent that they cause damage to, or problems in operation of, pipelines or appliances or that cause the products of combustion to be toxic, or hazardous to health, other than substances that are usually found in natural gas combustion products.

**Schedule 4 – Layout diagram**



**Signed** as an agreement.

By [Customer] in the presence of its duly authorised representative:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised representative

By **JEMENA NORTHERN GAS PIPELINE PTY LTD** ABN 12 607 928 790 in the presence of its duly authorised representative:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised representative