



## **CONFIDENTIALITY AGREEMENT**

## CONFIDENTIALITY AGREEMENT

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- A. This Confidentiality Agreement is made between the party with the name, address and ABN set out in Item 1 of Schedule A (**Other Party**) and the Epic entity with the name, address and ABN set out in Item 2 of Schedule A (**Epic**).
- B. This Confidentiality Agreement sets out the terms upon which the Parties have agreed to disclose to each other Confidential Information and the obligations of the recipient of such information to keep the information confidential.

### 1. DEFINITIONS

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In this Agreement, unless the contrary intention appears:

**Confidential Information** means:

- (a) where the Disclosing Party is Epic, the Epic Confidential Information; and
- (b) where the Disclosing Party is the Other Party, the Other Party Confidential Information.

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

**Disclosing Party** means:

- (a) in respect of the Epic Confidential Information, Epic; and
- (b) in respect of the Other Party Confidential Information, the Other Party.

**Disclosing Party Group** means:

- (a) in respect of the Epic Confidential Information, the Epic Energy Group; and
- (b) in respect of the Other Party Confidential Information, the Other Party Group.

**Epic Confidential Information** means all information (whether in written or electronic form or in any other media) which is disclosed to the Other Party or its Representatives by or on behalf of the Epic Energy Group, whether orally or in writing, or which has been derived or produced, whether in whole or in part, from information so disclosed, or which is observed by the Other Party or its Representatives in the course of their interactions with the Epic Energy Group and includes, without limitation, any information relating to the activities, assets, business, contracts, transactions, processes, plans and procedures of any member of the Epic Energy Group and irrespective of whether that information was disclosed before, on or after the date of this Agreement.

**Epic Energy Group** means:

- (a) each entity set out in Schedule 2 to this Agreement including any associated trusts; and
- (b) any Related Body Corporate of any of the above entities.

**Other Party Confidential Information** means all information (whether in written or electronic form or in any other media) which is disclosed to Epic or its Representatives by or on behalf of the Other Party Group, whether orally or in writing, or which has been derived or produced, whether in whole or in part, from information so disclosed, or which is observed by Epic or its Representatives in the course of their interactions with the Other Party Group and includes, without limitation, any information relating to the activities, assets, business, contracts, transactions, processes, plans and procedures of any member of the Other Party Group and irrespective of whether that information was disclosed before, on or after the date of this Agreement.

**Other Party Group** means the Other Party and each of its Related Bodies Corporate.

**Party** means any party to this Agreement.

**Recipient** means:

- (a) in respect of any Epic Confidential Information, the Other Party; and
- (b) in respect of the Other Party Confidential Information, Epic.

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

**Representative** means, in relation to a Party:

- (a) a Related Body Corporate of that Party; and
- (b) a director, officer or employee of that Party or a Related Body Corporate of that Party, and in relation to Epic also includes any member of the Epic Energy Group or director, officer, trustee, investment manager or employee of a member of the Epic Energy Group.

**Specified Purpose** has the meaning set out in Item 3 of Schedule A.

## **2. CONFIDENTIALITY**

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- 2.1 The Recipient acknowledges that the Confidential Information is valuable to the Disclosing Party Group and agrees to keep the Confidential Information confidential and secret in accordance with this Agreement.
- 2.2 The Recipient may only use or reproduce the Confidential Information for the Specified Purpose or for a purpose to which the Disclosing Party has given its prior written consent.
- 2.3 The Recipient must not disclose the Confidential Information to any person except in accordance with this Agreement or with the Disclosing Party's prior written consent.

- 2.4 The Recipient must take proper and effective precautions to prevent persons from accessing any of the Confidential Information in the possession or control of the Recipient or its Representatives.
- 2.5 The Parties agree to keep confidential the terms of this Agreement and the fact discussions are taking place between them relating to the Specified Purpose.

### **3. PERMITTED DISCLOSURE - REPRESENTATIVES**

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- 3.1 To the extent required for the Specified Purpose the Recipient may disclose the Confidential Information to a Representative of the Recipient.
- 3.2 The Recipient must ensure any such Representative does not do anything inconsistent with the Recipient's obligations under this Agreement and complies with clause 2 as if references in that clause to the Recipient were to the Representative.
- 3.3 The Recipient must ensure that each such Representative is notified of the confidential nature of the Confidential Information and is provided with a copy of this Agreement.
- 3.4 The Recipient may disclose the Confidential Information to a legal adviser, accounting adviser, insurer, financier or other reputable adviser of the Recipient where required in connection with the Specified Purpose but must ensure such persons are advised that such information must be treated as confidential.
- 3.5 If requested by the Disclosing Party, the Recipient must notify the Disclosing Party of the name and (in the case of a natural person) position title of each Representative and person referred to in clause 3.4 to whom Confidential Information has been disclosed.

### **4. DISCLOSURE REQUIRED BY LAW**

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- 4.1 The Recipient (or a Representative to whom Confidential Information has been disclosed in accordance with clause 3) may disclose the Confidential Information to the extent required by law or by court order but the Recipient must notify the Disclosing Party about the circumstances which require disclosure as soon as it or the Representative become aware of those circumstances.
- 4.2 A Party or its Representatives may disclose the terms of this Agreement and the fact discussions are taking place between the Parties relating to the Specified Purpose to the extent required by law or by court order but the Party must notify the other Party about the circumstances which require disclosure as soon as it becomes aware of those circumstances.
- 4.3 The Recipient (or in the case of clause 4.2, the Party compelled (or whose Representatives are compelled) to make disclosure) must use its best endeavours to delay or withhold disclosure

(whether by the Recipient or the Representative) to the extent that it is lawfully able to do so and it must use its best endeavours to restrict distribution or further disclosure of the information disclosed pursuant to this clause 4 to the fullest extent possible.

## **5. CIRCUMSTANCES IN WHICH CONFIDENTIALITY OBLIGATIONS DO NOT APPLY**

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- 5.1 The Recipient is not required to keep confidential any Confidential Information which is or becomes available generally to the public other than where the information so became available due to the act or omission of the Recipient or its Representatives.
- 5.2 The Recipient is not required to keep confidential any Confidential Information to the extent that:
- (a) such Confidential Information was known by the Recipient or a Representative thereof (other than due to disclosure in breach of an obligation of confidence) prior to the disclosure of that Confidential Information by or on behalf of a member of the Disclosing Party Group; or
  - (b) the Recipient or a Representative thereof obtains such Confidential Information from a third party who lawfully discloses such Confidential Information to the Recipient or Representative on a non-confidential basis,
- provided nothing in this clause 5.2 authorises disclosure or use of Confidential Information which would breach an obligation of confidence which arose other than under this Agreement.

## **6. BREACH**

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- 6.1 The Recipient must notify the Disclosing Party immediately if it becomes aware of any of its Representatives using (or that they may have been using) the Confidential Information other than for the Specified Purpose or otherwise than as permitted by this Agreement or that there has or may have been an unauthorised access to or disclosure of Confidential Information.
- 6.2 The Recipient acknowledges that damages are not a sufficient or adequate remedy for any breach of this Agreement and that the Disclosing Party or any other member of the Disclosing Party Group is entitled to specific performance or injunctive relief as a remedy for any breach or anticipated breach, in addition to any other remedies to which the Disclosing Party Group is entitled.
- 6.3 The Recipient indemnifies and will keep each member of the Disclosing Party Group indemnified against all losses and damages suffered and costs and expenses incurred by each such member due to or in connection with:
- (a) a breach by the Recipient of this Agreement; and

- (b) any act or omission by any Representative which, if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this Agreement.

## **7. RETURN**

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- 7.1 If requested by the Disclosing Party, and subject to this clause 7, the Recipient must return all documents, including copies of documents relating to or forming part of the Confidential Information, received by the Recipient or permanently delete or destroy the Confidential Information and provide a certification to the Disclosing Party that the Confidential Information has been destroyed or deleted.
- 7.2 To the extent that any computer back-up procedures of the Recipient's computer systems automatically create copies of the Confidential Information (**Back-up Copies**), the Recipient may retain any Back-up Copies in its archival or back-up computer storage for the period it normally archives backed-up computer records. Any Back-up Copies will be subject to the provisions of this Agreement until they are destroyed, and must not, except as permitted by this Agreement, be accessed by the Recipient during any period of archival or back-up storage.
- 7.3 Each Party may retain any of the Confidential Information it is required to retain by law, regulation, for corporate governance purposes, as necessary to support any advice given or that is held in accordance with automatic electronic back-up or archiving systems. Nothing in clause 7.1 requires the return or destruction of:
  - (a) any directors' papers, minutes of board meetings or any committee of such board prepared or produced in connection with the Specified Purpose;
  - (b) any legal advice, legal opinions or due diligence reports prepared for the Recipient or its Representatives in connection with the Specified Purpose;
  - (c) documents required for corporate governance and to support any advice given; or
  - (d) any other document required to be retained by law.

## **8. NO REPRESENTATIONS OR WARRANTIES**

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- 8.1 Nothing in this Agreement obliges the Disclosing Party to disclose any particular information to the Recipient and the Disclosing Party has an absolute discretion as to the information which it chooses to disclose.
- 8.2 No member of the Disclosing Party Group makes any representation or gives any warranty as to the accuracy, completeness, reliability or suitability of the Confidential Information or that the Confidential Information may be used in any given way or to achieve any given result. The Disclosing Party Group is under no obligation to notify the Recipient or provide further

information to the Recipient should a member of the Disclosing Party Group become aware that any Confidential Information is inaccurate or out of date, has changed or is incomplete.

- 8.3 The Recipient must, and agrees with the Disclosing Party that it will, make its own independent assessment of the accuracy, completeness, reliability and suitability of the Confidential Information and its own determination of whether the Confidential Information is appropriate to be used for any given purpose, including the Specified Purpose. The Recipient will rely upon the Confidential Information at its own risk.
- 8.4 To the maximum extent permitted by law, the Disclosing Party and its Representatives disclaim all liability for any loss or damage suffered by the Recipient or any other person arising from using or relying on in any manner the Confidential Information, whether the loss or damage arises because of negligence, default, misrepresentation or some other cause. To the maximum extent permitted by law, the Recipient releases (and must ensure that each Representative of the Recipient releases) the Disclosing Party and its Representatives from all such liability and the Disclosing Party holds this release for itself and on trust for each of its Representatives.

## **9. RIGHTS TO INFORMATION**

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- 9.1 The Recipient acknowledges that:
- (a) the Confidential Information constitutes valuable and proprietary information and that this Agreement does not limit any rights that members of the Disclosing Party Group may have under trade secret, copyright, patent or other laws;
  - (b) the Confidential Information and all rights (including intellectual property rights) in the Confidential Information disclosed by the Disclosing Party Group are and will remain the exclusive property of the Disclosing Party Group; and
  - (c) the rights in any intellectual property developed with reference to the Confidential Information remain with the Disclosing Party Group.
- 9.2 No rights in the Confidential Information, other than the right to use the Confidential Information for the Specified Purpose to the extent and in the manner permitted by this Agreement, are granted or to be implied from this Agreement. In particular, no licence is granted under any patent, invention, discovery, copyright or other intellectual property right.

## **10. TERM**

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- 10.1 This Agreement terminates on the date that is two years from the date of this Agreement or the date that the parties enter into a further agreement which contains provisions expressly acknowledging they supersede the terms of this Agreement, whichever occurs first.

- 10.2 Each indemnity is a continuing obligation, separate and independent of the other obligations of the Recipient and survives the termination of this Agreement.

## **11. MISCELLANEOUS**

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- 11.1 The Disclosing Party holds the benefit of this Agreement and the Recipient's obligations under this Agreement on trust for each member of the Disclosing Party Group. However the Disclosing Party may agree to an amendment to this Agreement without being required to obtain the consent of the other members of the Disclosing Party Group or its Representatives.
- 11.2 This Agreement is governed by the laws of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of South Australia.
- 11.3 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers and remedies of the Parties provided by law and in equity independently of this Agreement.
- 11.4 This Agreement may be executed by or on behalf of the Parties by affixing electronic signatures to this document. If executed by electronic method, an electronic copy of this Agreement duly executed by a Party will be taken to be an original.
- 11.5 This Agreement may be executed in any number of counterparts and for and on behalf of the Parties on separate counterparts but is not effective until each Party has executed at least one counterpart. Each counterpart constitutes the agreement of each Party who has executed and delivered that counterpart. Each counterpart will constitute an original of this Agreement but the counterparts together constitute one and the same instrument.
- 11.6 Where this Agreement is executed on behalf of a Party by a person described as authorised representative or authorised officer then that person represents and warrants they are duly authorised by that Party to execute this Agreement.

## **12. INTERPRETATION**

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In this Agreement, unless a contrary intention appears:

- 12.1 any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this Agreement;
- 12.2 the singular includes the plural and vice versa and a reference to a gender includes all other genders;
- 12.3 a person includes an individual, corporation, firm, partnership, joint venture, unincorporated body, government and governmental authority or instrumentality;

- 12.4 a reference to a person includes that person's successors, permitted substitutes and permitted assigns;
- 12.5 a reference to a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this Agreement;
- 12.6 a reference to this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
- 12.7 a reference to legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- 12.8 where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- 12.9 the words 'include' and 'including' and similar expressions, when introducing a list of items, do not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- 12.10 a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

**EXECUTED AS AN AGREEMENT**

**Executed by Epic Energy South Australia Pty Ltd** by its duly authorised representative in the presence of:

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Witness signature

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Authorised Representative signature

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Witness full name  
(BLOCK LETTERS)

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Authorised Representative full name and title  
(BLOCK LETTERS)

***[Other party to complete one of the following execution blocks]***

**Executed by [insert name of other party]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Director signature

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Director/Secretary signature

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Director full name  
(BLOCK LETTERS)

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Director/Secretary full name  
(BLOCK LETTERS)

**Executed by [insert name of other party] by**  
its duly authorised officer in the presence of:

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Officer signature

\_\_\_\_\_  
Witness full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Officer full name and title  
(BLOCK LETTERS)

## SCHEDULE A

Item	Subject Matter	Details
1.	Name, Address and ABN of Other Party	
2.	Name, Address and ABN of Epic entity	Epic Energy South Australia Pty Ltd  ABN 54 068 599 815  Level 6, 70 Franklin Street,  Adelaide SA 5000
3.	Specified Purpose	The discussions between the Parties regarding a possible business or contractual relationship concerning gas transportation on the Moomba to Adelaide Pipeline or the South East Pipeline or both.
4.	Date of Agreement	

## **SCHEDULE B – EPIC ENERGY GROUP**

- Epic Energy South Australia Pty Ltd ABN 54 068 599 815
- QS Maps Holdings No 4. Pty Ltd ABN 23 163 278 939
- QS Maps Holdings No. 3 Pty Ltd ABN 38 163 278 500
- QS Maps Holdings No. 2 Pty Ltd ABN 51 163 277 370
- QS Maps Holdings No. 1 Pty Ltd ABN 32 163 277 290
- The Trustee for Australian Retirement Trust ABN 60 905 115 063
- Australian Retirement Trust Pty Ltd ABN 88 010 720 840
- The Trustee for QSuper Investments Trust ABN 80 747 699 196
- QSuper Investment Holdings Pty Ltd ACN 153 817 120
- QIC Limited ACN 130 539 123
- QIC Private Capital Pty Ltd ACN 076 279 528
- Epic Energy Power Holdings No 1 Pty Limited ABN 55 631 662 318
- Epic Energy Power Holdings No 2 Pty Limited ABN 61 631 663 155
- Timboon West Holdco Pty Ltd ABN 43 622 625 094
- Timboon West Wind Farm Pty Ltd ABN 85 608 348 287
- Yawong Holdco Pty Ltd ABN 56 622 625 147
- Yawong Wind Farm Pty Ltd ABN 90 614 422 856
- Mannum Solar Farm Pty Ltd ACN 620 610 371
- PA Power Microgrid 1 Pty Ltd ACN 635 323 410
- Mannum Stage 2 HoldCo Pty Ltd ACN 635 866 250
- Mannum Stage 2 SubCo Pty Ltd ACN 635 868 496