

Confidentiality Agreement

between

Epic Energy South Australia Pty Limited ACN 068 599 815

and

[INSERT name of other party]

between **Epic Energy South Australia Pty Limited ACN 068 599 815** of 26 High Street Dry Creek SA 5094 (**Epic**)

and **[INSERT name, ACN (if a company) and address of other party]**

Recitals

- A The Parties to this Agreement intend to discuss a possible business or contractual relationship.
- B Each Party will disclose certain Confidential Information to the other Party in the course of the discussions.
- C In consideration of each Party disclosing Confidential Information to the other, the Parties agree to keep the Confidential Information of the other Party confidential and to only use and disclose the Confidential Information of the other Party in accordance with this Agreement.

Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means these terms and conditions and includes any schedules or annexures to these terms and conditions;

Confidential Information of a Disclosing Party means:

- (a) the following information, regardless of its medium or form, whether it is marked in any way as confidential, and whether the Recipient became aware of it before or after the date of this Agreement, namely:
 - (i) all information that is by its nature confidential;
 - (ii) information that is designated by the Disclosing Party as confidential; and
 - (iii) information that the Recipient knows, or ought to know, is confidential;
- (b) the fact that the Parties will have or are having discussions about a possible business or contractual relationship, and the substance of those discussions; and
- (c) all notes or other records based on, derived from or containing any of the information in paragraphs (a) – (b), made by the Recipient or its Personnel,

and without limiting paragraphs (a) – (c) includes any specific information detailed in Item 2 of the Schedule, but does not include information that (whether before or after the date of this Agreement):

- (d) was lawfully received by the Recipient from a third party free of any obligation of confidence at the time of its disclosure; or
- (e) is public knowledge (and has become so otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom the Recipient disclosed the information);

Disclosing Party means, in respect of a Recipient, the Party who discloses or makes available its Confidential Information to that Recipient or whose Confidential Information otherwise becomes known to that Recipient;

Improvements means any advancements, creations, modifications, discoveries and developments to Confidential Information or other material of a Disclosing Party developed or acquired by, for or on behalf of the Recipient of that Confidential Information;

IP means all intellectual property rights under statute, common law or equity in relation to inventions (including patents), copyright, moral rights, registered and unregistered trade marks, registered designs, circuit layouts, confidential information (including trade secrets and know how), and any application or right to apply for registration of any of those rights, and all rights of a similar nature to any of those rights that may subsist anywhere in the world (including Australia);

Law means all statutes, regulations, standards, by-laws, ordinances, subordinate legislation, industry codes of conduct and any government order, decree or other instrument;

National Gas Rules is defined in the Schedule to the National Gas (South Australia) Act 2008 (SA);

Party means a party to this Agreement;

Personnel means, in relation to a Party, that Party's employees, agents and contractors;

Pipelines Access-Arbitration Regime means the arbitration regime for access disputes under the National Gas Rules;

Purpose has the meaning in Item 1 of the Schedule;

Recipient means a Party who obtains Confidential Information of the other Party;

Related Entity has the meaning given to that term by section 9 of the *Corporations Act 2001* (Commonwealth).

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Agreement and references to this Agreement include any recital, schedule or annexure;
 - (iii) a statute, ordinance, code or other Law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (v) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (vi) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (b) unless expressly stated, no party enters into this Agreement as agent for any other person (or otherwise on their behalf or for their benefit);

- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
- (f) where there are two or more persons in a party each are bound jointly and severally; and
- (g) 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.

2 Use of Confidential Information

Each Recipient must:

- (a) keep the Confidential Information of the Disclosing Party confidential;
- (b) use the Confidential Information of the Disclosing Party solely (and only to the extent necessary) for the Purpose; and
- (c) not copy any Confidential Information of the Disclosing Party except as necessary (and only to the extent necessary) for the Purpose.

3 Security of Confidential Information

- (a) Each Recipient must establish and maintain reasonable security measures to safeguard all Confidential Information from unauthorised access, use, theft, loss, modification, damage, reproduction and disclosure.
- (b) Before providing an item of Confidential Information, the Disclosing Party may impose conditions for its safeguard, such as specific confidentiality protocols. The Recipient will not be deemed to have accepted those conditions unless it expressly confirms in writing that the conditions are accepted. For the avoidance of doubt, the Disclosing Party is under no obligation to provide the item of Confidential Information to the Recipient, including where the Recipient has not agreed to those conditions.

4 Permitted Disclosure

4.1 Disclosure to Recipient's Personnel

A Recipient may disclose Confidential Information of the Disclosing Party to those of its Personnel who, having regard to the Purpose:

- (a) have a need to know (and only to the extent that each has a need to know) the Confidential Information;
- (b) are aware that Confidential Information must be kept confidential; and
- (c) have agreed in writing with the Recipient to comply with the terms of this Agreement as if they were a party to it.

4.2 Disclosure to third parties

A Recipient may only disclose Confidential Information of the Disclosing Party:

- (a) to third parties who, having regard to the Purpose:
 - (i) have a need to know (and only to the extent that each has a need to know) the Confidential Information;
 - (ii) are aware that Confidential Information must be kept confidential; and
 - (iii) have agreed in writing with the Recipient to comply with the terms of this Agreement as if they were a party to it; and
- (b) after obtaining the express written consent of the Disclosing Party to each such disclosure.

4.3 Disclosure required by Law

- (a) A Recipient may disclose Confidential Information as required by Law provided the Recipient:
 - (i) provides written notice to the Disclosing Party immediately upon becoming aware of any such anticipated or required disclosure giving full details of the anticipated or required disclosure; and
 - (ii) cooperates fully with the Disclosing Party, and takes all steps reasonably requested by the Disclosing Party, at the Disclosing Party's cost, to (or to enable the Disclosing Party to) oppose or restrict such disclosure.
- (b) If disclosure cannot be avoided, the Recipient must to the extent permitted by Law:
 - (i) consult with the Disclosing Party before disclosure as to the form and content of any disclosure;
 - (ii) disclose Confidential Information of the Disclosing Party only to the extent reasonably necessary to comply with the relevant Law;
 - (iii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information;
 - (iv) follow any reasonable directions of the Disclosing Party concerning the disclosure;
 - (v) notify the third person that the information is confidential information of the Disclosing Party; and
 - (vi) use all reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

4.4 Obligations

Each Recipient must, at its expense:

- (a) ensure that all persons to whom it discloses Confidential Information in accordance with clauses 4.1, 4.2 and 4.3 keep the Confidential Information confidential; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual unauthorised disclosure of Confidential Information by the Recipient or by any of its Personnel or a third party to whom the Recipient disclosed Confidential Information.

4.5 Use and disclosure for the purpose of the Pipelines Access-Arbitration Regime

The Parties agree that notwithstanding any other provision of this Agreement, where Epic is the Recipient, Epic may use and disclose that Confidential Information for the purposes of any access and arbitration procedures under the Pipelines Access-Arbitration Regime.

4.6 No other disclosure

Except as permitted under clauses 4.1, 4.2, 4.3 and 4.5, a Recipient may not disclose Confidential Information to any person.

5 Return of Confidential Information

- (a) Each Recipient must immediately, upon receiving written notice from the Disclosing Party, and at the Disclosing Party's option:
 - (i) return to the Disclosing Party;
 - (ii) destroy and certify in writing to the Disclosing Party the destruction of; or
 - (iii) destroy and permit the Disclosing Party to witness the destruction of,

the relevant Confidential Information described in that notice that is in the possession or control of the Recipient or any of its Personnel.
- (b) Clauses 5(a) and 8.2 do not apply to Confidential Information in:
 - (i) any directors' papers, minutes of board meetings or any committee of such board, of the Recipient, prepared by or on behalf of the Recipient in connection with the Purpose;
 - (ii) any legal advice, legal opinions or due diligence reports prepared by or on behalf of the Recipient in connection with the Purpose;
 - (iii) any archived electronic files created and maintained solely for back-up purposes; and
 - (iv) any other document required to be retained by the Recipient by Law (and then only as necessary for the purpose of compliance with such Law).

6 Intellectual Property

6.1 No transfer of any interest

The Parties acknowledge that:

- (a) all IP in any Confidential Information and materials of the Disclosing Party provided to a Recipient is owned by the Disclosing Party, or is licensed to the Disclosing Party (other than by the Recipient); and
- (b) this Agreement does not transfer any right, title or interest in any such IP to the Recipient.

6.2 No Improvements

A Recipient must not make any Improvements, except as prior agreed by the Parties in writing.

6.3 Ownership of Improvements

The Parties acknowledge and agree that, notwithstanding clause 6.2 and without affecting any other right or obligation of a Party under this Agreement:

- (a) all IP in any Improvements will automatically vest, upon creation, in the Disclosing Party, and the Recipient hereby assigns by way of present assignment of future rights all IP in any Improvements to the Disclosing Party; and

- (b) the Recipient must provide the Disclosing Party with all documentation and assistance (including all moral rights consents) that is reasonably required by the Disclosing Party in order to effect the assignment described in this clause 6.3.

7 Disclaimer and quality of information

7.1 Disclaimer

Each Recipient:

- (a) acknowledges that any Confidential Information of the Disclosing Party provided to or otherwise made available to the Recipient has not been verified or checked by the Disclosing Party or independently audited; and
- (b) agrees that it must make its own assessment of the Confidential Information of the Disclosing Party, and satisfy itself as to the currency, accuracy, reliability and completeness of that information.

7.2 Quality of information

Each Recipient agrees that the Disclosing Party does not:

- (a) make or give any representation, assurance or warranty (express or implied) that any or all of the Confidential Information of the Disclosing Party is or will be current, accurate, reliable or complete or that any statement as to future matters will prove correct;
- (b) represent that the assumptions on which any forecast is based are accurate, complete or reasonable; and
- (c) (except so far as liability under any statute cannot be excluded) accept responsibility arising in any way for errors in, or omissions from, the Confidential Information, or in negligence; and
- (d) accepts liability for any loss or damage suffered by any person as a result of that person or any other person placing any reliance on any Confidential Information.

8 Termination

8.1 Notice of Termination

Either Party may terminate this Agreement at any time with immediate effect by giving written notice to the other party.

8.2 Return of Confidential Information

Subject to clause 5(b), on termination of this Agreement each Recipient's right to retain and use Confidential Information of the Disclosing Party ceases and the Recipient must immediately, at the Disclosing Party's option:

- (a) return to the Disclosing Party;
 - (b) destroy and certify in writing to the Disclosing Party the destruction of; or
 - (c) destroy and permit the Disclosing Party to witness the destruction of,
- all Confidential Information in the possession or control of the Recipient or any of its Personnel.

8.3 Accrued rights and remedies

Termination of this Agreement does not affect any accrued rights or remedies the Disclosing Party may have.

9 Continuing obligations

The obligations of confidentiality under this Agreement will continue to apply to the Recipient (in addition to any permitted assignee) after termination of this Agreement.

10 Indemnity and relief

10.1 Recipient's indemnity

Each Recipient indemnifies the Disclosing Party, and the Disclosing Party's Related Entities and Personnel (the **Indemnified**) against all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable legal fees and disbursements and costs in investigation, litigation, settlement, judgement, interest, fines and penalties) that the Indemnified or any of them may sustain or incur as a result, directly or indirectly, of:

- (a) a breach of the Recipient's obligations under this Agreement; or
- (b) where Confidential Information of the Disclosing Party is disclosed to a third party by or because of an act or omission of the Recipient, any act or omission by that third party which if it had been done or omitted by the Recipient would be a breach of the Recipient's obligations under this Agreement.

10.2 Injunctive relief

Each Recipient acknowledges that:

- (a) the Recipient's confidentiality obligations under this Agreement are reasonable and necessary to protect the Disclosing Party;
- (b) damages are not an adequate remedy if the Recipient breaches its confidentiality obligations under this Agreement; and
- (c) the Disclosing Party may apply for injunctive relief if the Recipient breaches, or threatens to breach, or the Disclosing Party believes that the Recipient is likely to breach its obligations of confidentiality under this Agreement.

11 General

11.1 Waiver

The failure of a Party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

11.2 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement. Satisfactory evidence of execution of this Agreement will include evidence by facsimile, photocopy or other electronic copy by email, of execution of the relevant party and in such case the executing party undertakes to provide the other party with an original of the executing party's counterpart as soon as reasonably practicable after execution.

11.3 Governing Law

This Agreement is governed by the Laws applying in South Australia and the Parties submit to the exclusive jurisdiction of the courts of South Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

Executed as an Agreement

Signed for and on behalf of **Epic Energy South Australia Pty Limited ACN 068 599 815** by its duly authorised representative:

Witnessed by:

Signature of Authorised Representative

Signature of Witness

Name of Authorised Representative

Name of Witness

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

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

Schedule

1 Purpose

The discussions between the Parties regarding a possible business or contractual relationship in respect of gas transportation on the Moomba to Adelaide Pipeline and South East Pipeline.

2 Confidential Information

[Insert and complete the following if applicable - Without limiting the meaning of Confidential Information under this Agreement, Confidential Information of [Insert relevant Party name] includes: [Insert]]