



LNG Services Agreement

Date

This agreement is dated on the date it is signed by the last party to do so.

Parties

APA	APA VTS Australia (Operations) Pty Limited
<i>ACN</i>	083 009 278
<i>Address for service</i>	Level 25, 580 George Street, Sydney NSW 2000
	<u>Copy to:</u> General Manager, Customer and Contract Management, 121 Wharf Street, Spring Hill Qld 4000 or as notified by APA to Shipper from time to time
<i>Facsimile</i>	[*]
<i>APA's Representative</i>	[*]
<i>Email</i>	[*]

Shipper	[Customer Name]
<i>ABN/ACN</i>	[*]
<i>Address for service</i>	[*]
<i>Phone</i>	[*]
<i>Shipper's Representative</i>	[*]
<i>Email</i>	[*]

Recitals

- A. APA is the operator of the Storage Facility and provides certain LNG Services to Market Participants and non-Market Participants.
- B. The parties have agreed that APA will supply and the Shipper will acquire LNG Services on the terms and conditions of this agreement.

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Details

Storage Facility	APA's LNG storage facility situated at Dandenong, Victoria, which is an "LNG storage facility" under the DWGM Rules.	
Jurisdiction	Victoria	
Commencement Date	The date on which APA advises Shipper that Shipper's LNG Stock in the Storage Facility equals the Storage Capacity	
Termination Date	[*]	
Firm Vaporisation Capacity	[*] GJ (or [*] tonnes, using conversion factor of 54.9 GJ per tonne)	
Base Storage Capacity	[*] GJ (or [*] tonnes, using conversion factor of 54.9 GJ per tonne)	
Supplementary Storage Capacity	[*] GJ (or [*] tonnes, using conversion factor of 54.9 GJ per tonne)	
Rates	Firm Vaporisation Rate	\$[*] per GJ
[Note: these Rates are GST exclusive and are escalated in accordance with clause 7.3]	Contingency Vaporisation Rate	\$[*] per GJ
	Overrun Rate	\$[*] per GJ
	Supplementary Storage Rate	\$[*] per GJ
Liquefaction Charge	[*]	
[Note: this Charge is GST exclusive]		
Rate Set Date	[*]	
Credit Support	[*]	
Liability Cap	[*]	

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Special Conditions

[*]

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Signing page

EXECUTED as an agreement

Executed by **APA VTS Australia (Operations) Pty Limited** by its Authorised Representative:

Name of Authorised Representative

Authorised Representative Signature

Position of Authorised Representative

By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of **APA VTS Australia (Operations) Pty Limited**.

Date

Executed by **[Customer entity]** by its Authorised Representative:

Name of Authorised Representative

Authorised Representative Signature

Position of Authorised Representative

By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of **[Customer entity]**.

Date

Standard Conditions

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1. Definitions and interpretation

1.1 Definitions

In this agreement, unless the context otherwise requires:

Act means the *Gas Industry Act 2001* (Vic).

Additional Quantities has the meaning given in clause 5.6(c).

AEMO means the Australian Energy Market Operator.

APA's Relevant Costs means costs incurred by APA or a Related Body Corporate of APA as a result of it owning or operating the LNG Storage Facility or any part of it, providing Services under this Agreement or facilitating the Shipper to participate in relevant energy markets.

Authority means:

- (a) any national, federal, state, provincial, territory or local government (and all agencies, authorities, departments, ministers or instrumentalities or any of them);
- (b) any administrative body, judicial body, public tribunal, commission, corporation, authority, agency or instrumentality, which has jurisdiction or authority in respect of this agreement; and
- (c) without limiting or being limited by paragraphs (a) or (b), AER, AEMO, their successor or replacement entities and any other entities authorised under legislation from time to time to regulate, operate or administer the operations of gas pipelines, LNG storage facilities or gas markets.

BOC means BOC Limited (formerly BOC Gases Australia Limited) ACN 000 029 729.

BOC Agreement means the agreement between BOC and Gas Transmission Corporation Pty Ltd (the predecessor in title to APA) dated 17 May 1995 as amended or varied.

Business Day means a day other than Saturday, Sunday or a day that has been proclaimed to be a public holiday in the Melbourne metropolitan area.

Calendar Year means each period of 365 consecutive days commencing at the start of the Gas Day on 1 January, provided however, that any Calendar Year which contains a date of 29 February will consist of 366 consecutive days.

Calendar Year Quarter means a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October of a Calendar Year.

Capacity Holders means a Market Participant or any other person that is a party to an LNG Services Agreement and is entitled to capacity in the Storage Facility at the relevant time, and includes the Shipper.

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Change in Law means a new Law or Impost, or a change to an existing Law or Impost, which:

- (a) takes effect after the date of this agreement; and
- (b) directly results in an increase or decrease in APA's Relevant Costs by more than a trivial amount,

except to the extent that it imposes new, or changes existing, income or capital gains taxes.

Charge means the Firm Vaporisation Charge, the Contingency Vaporisation Charge, the Supplementary Storage Charge, the Excess Quantity Charge, the Overrun Charge and the Liquefaction Charge.

Consequential Losses means any of the following, however arising:

- (a) loss or damage which does not arise directly or naturally from a breach of this agreement;
- (b) indirect, incidental, special, remote or unforeseeable loss or damage;
- (c) direct or indirect loss of revenue, profit, income, bargain, opportunity or anticipated savings;
- (d) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
- (e) direct or indirect loss or damage incurred or suffered by a third party.

Contingency Quantity has the meaning given in clause 5.5(a).

Contingency Vaporisation Charge:

- (a) for a Gas Day, is the amount in dollars calculated by multiplying the Contingency Vaporisation Rate by the relevant quantity of LNG vaporised for Shipper or on Shipper's account on the Gas Day under the Contingency Vaporisation Service; and
- (b) for a month, is the aggregate of the Contingency Vaporisation Charges for each Gas Day in the month.

Contingency Vaporisation Service means the services provided by APA to Shipper in accordance with clause 5.4(d).

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

CPI means the Consumer Price Index (All Groups Index for the Weighted Average Eight Capital Cities) as published from time to time by the Australian Bureau of Statistics for any quarter. If the CPI ceases to be published or the basis upon which that index is calculated

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is changed to such a material extent that it is no longer appropriate to be used (**CPI Event**), Shipper and APA must meet to endeavour to agree upon another appropriate index or indices with the intention that neither party will be materially disadvantaged or benefited by such substitution. If APA and Shipper are unable to agree within 30 Business Days of the CPI Event, the matter must be referred as a dispute for resolution under clause 15.

Details means the section of this agreement headed “Details”.

DWGM Beginning of Gas Day Price, for a Gas Day, means the Market Price at the commencement of the Scheduling Horizon for that Gas Day.

DWGM Rules means the Declared Wholesale Gas Market Rules contained in Part 19 of the National Gas Rules.

Escalation Factor means $CPIa \div CPIb$, where:

- (a) CPIa is the CPI published for the Calendar Year Quarter immediately preceding the relevant Adjustment Date; and
- (b) CPIb is the CPI published for the Calendar Year Quarter immediately preceding the Calendar Year Quarter the subject of CPIa,

except that, if CPIb is greater than CPIa (**Deflation Date**), then the Escalation Factor means 1 and will remain as 1 for future Adjustment Dates until such time that CPIa for the Calendar Year Quarter immediately preceding the future Adjustment Date is greater than CPIb at the Deflation Date, at which time CPIb on that future Adjustment Date will be deemed to be the value of CPIb at the Deflation Date and the above formula will apply on that basis to determine the Escalation Factor for that Calendar Year Quarter.

Excess Quantity has the meaning given in clause 5.4(e).

Excess Quantity Charge:

- (a) in respect of LNG supplied by APA under clause 5.4(e)(ii) on a Gas Day, means the amount in dollars equal to the sum of:
 - (i) the average DWGM Beginning of Day Gas Price over the preceding 30 Gas Days plus a service fee of 20% of that average DWGM Beginning of Day Gas Price; *plus*
 - (ii) the Supplementary Storage Rate \div 12,
per GJ of LNG supplied by APA under clause 5.4(e)(ii);
- (b) for a month, is the aggregate of the Excess Quantity Charges for all Gas Days in that month.

Financial Adjustment means an adjustment in the amounts payable by Shipper to APA under this agreement, a lump sum payment of compensation or another form of adjustment for the Net Financial Effect resulting from a Change in Law and required to put APA and its

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Related Bodies Corporate in the position they would have been in had it not been for the Change in Law.

Firm Vaporisation Charge, for a month, means the amount in dollars calculated as follows:

$$\text{FVC} = \text{FVR} \times \text{FC} \div 12$$

where:

FVC is the Firm Vaporisation Charge for the month

FVR is the Firm Vaporisation Rate

FC is the Firm Vaporisation Capacity

Firm Vaporisation Service means the services provided by APA to Shipper on a firm basis in accordance with clause 5.4.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances, which is beyond the reasonable control of a party, which by the exercise of due diligence that party is not reasonably able to prevent or overcome and which has the effect of preventing the party from performing an obligation under this Agreement, including (provided that they meet the foregoing criteria):

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any other applicable Laws, orders, rules or regulations of any government or other competent authority;
- (e) embargo, inability to obtain any necessary materials, equipment facilities, power or water shortage, lack of transportation;
- (f) significant pipeline breakage or significant breakdown of the Storage Facility and/or the BOC facility at Hammond Road, Dandenong; and
- (g) accident or other damage to machinery, pipeline, the Storage Facility, or the making of emergency repairs to such machinery, pipeline, or the Storage Facility;
or
- (h) any other event beyond the reasonable control of APA which prevents or limits APA's performance of its obligations under this agreement.

Gas has the same meaning as in the Act.

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GJ means gigajoules and has the meaning given in rule 202 of the National Gas Rules.

Gas Bulletin Board means the gas bulletin board published by AEMO which, until otherwise advised by APA, is accessible at <https://aemo.com.au/energy-systems/gas/gas-bulletin-board-gbb/data-portal>.

Gas Day means a “gas day” as defined in the DWGM Rules.

Good Operating Practice means the exercise of that degree of skill, diligence and foresight consistent with the safe and prudent operation of an LNG storage facility and the vaporisation of LNG into natural gas:

- (a) that would be accepted by a significant proportion of the providers of services in Australia equivalent to the LNG Services provided under this agreement, under conditions comparable to those applicable to the parties, taking into account factors such as the relative size, function, age and technological status of each party's facilities and applicable Laws, regulations or codes; and
- (b) that would comply with any minimum standards applicable under this agreement and with applicable Law including the DWGM Rules.

Hourly Liability Cap means an amount per hour calculated in accordance with the following formula:

$$A \times B \div C$$

where:

- A** is the lesser of the total net auditable financial loss suffered in the relevant hour by all Capacity Holders as a direct result of APA's failure to provide the LNG Services in accordance with this agreement or \$50,000;
- B** is the amount of LNG scheduled by AEMO to be vaporised from the Storage Facility for the Shipper in respect of the relevant hour; and
- C** is the amount of LNG scheduled by AEMO to be vaporised for all Capacity Holders in the relevant hour.

Impost means any royalty (whether based on value, profit or otherwise), tax, duty, excise, levy, fee, rate or charge, imposed by Law or by any Authority, however described.

Insolvency Event means the happening of any of the following events in relation to a party:

- (a) an application is made to a court for winding up order or such an order is made;
- (b) an application is made to a court for an order appointing a liquidator, or provisional liquidator, or one of them is appointed whether or not under an order;

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- (c) a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them other than for the purposes of a solvent reconstruction;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent, or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) a body corporate is or makes a statement from which it may reasonably be deduced by the other party that the body corporate is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act;
- (g) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator or controller is appointed to a body corporate;
- (h) a controller is appointed in respect of any part of the property of the body corporate;
- (i) either party becomes insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in such an event; or
- (j) anything having a substantially similar effect to any of the events specified in (a) to (i) above happens under any Law of any applicable jurisdiction.

Law means the common law (including equity), current and future Acts of the Parliament of the Commonwealth of Australia, or of the Parliament of the Jurisdiction, and related regulations, by-laws and other subordinate legislation, and the requirements of authorities.

Liquefaction Priority Rules means the rules set out in clause 5.3.

LNG has the same meaning as in the DWGM Rules.

LNG Services means the services set out in clause 5.1 and, where used in relation to a Capacity Holder other than the Shipper, substantially similar services under its LNG Services Agreement.

LNG Services Agreement means this agreement and any other agreement substantially in the form of this agreement between a Market Participant and APA.

LNG Stock means “LNG stock” as defined in the DWGM Rules.

LNG Storage Capacity means “LNG storage capacity” as defined in the DWGM Rules.

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LNG Storage Capacity Register means the register of LNG Storage Capacity entitlement required to be kept by rule 281(5) of the DWGM Rules.

Losses means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description (including, without limitation, liabilities, losses, damages, costs or expenses arising under contract, tort (including negligence), at common law, in equity, under statute or otherwise) arising out of or connected with the LNG Services, this agreement or any breach by APA of its obligations under this agreement.

Market Participant has the same meaning as in the DWGM Rules.

Market Price means "market price" as defined in the DWGM Rules.

MHQ, in respect of an hour on a Gas Day, means a quantity of LNG calculated as follows:

$$\text{MHQ} = \text{FVC} \div \text{AFC} \times \text{FMHQ}$$

where

MHQ is the MHQ in GJ

FVC is the Firm Vaporisation Capacity in GJ

AFC is the aggregate of the firm vaporisation capacities for all Capacity Holders for the Gas Day, calculated by subtracting the 'Uncontracted Capacity Outlook' capacity amount in GJ (as published on the Gas Bulletin Board) from 131,760 GJ (being the maximum firm vaporisation capacity of the facility)

FMHQ is 5,490 GJ (or 100 tonnes, using conversion factor of 54.9 GJ per tonne)

National Gas Law means the *National Gas (Victoria) Law* applicable in Victoria in accordance with the *National Gas (Victoria) Act 2008* (Vic).

National Gas Rules has the same meaning as defined in the National Gas Law.

Net Financial Effect means the net financial effect of a Change in Law on APA's Relevant Costs, taking into account any offsetting benefits and adverse effects directly or indirectly connected to the Change in Law and costs which are otherwise reimbursable by Shipper to APA under this agreement.

Operating Schedule means "operating schedule" as defined in the DWGM Rules.

Overrun Charge:

- (a) for a Gas Day on which there is no Threat to System Security, is the amount in dollars calculated by multiplying the Overrun Rate by the Contingency Quantity for that Gas Day; and

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- (b) for a month, is the aggregate of the Overrun Charges for all Gas Days in that month.

Regulatory Change has the meaning given in clause 16(a).

Related Bodies Corporate has the same meaning as in section 50 of the Corporations Act.

Scheduling Horizon means "scheduling horizon" as defined in the DWGM Rules.

Shipper's LNG Stock means that LNG Stock held from time to time on account of the Shipper by APA in the Storage Facility.

Storage Capacity means the Base Storage Capacity *plus* the Supplementary Storage Capacity, and where used in relation to a Capacity Holder other than the Shipper, means the quantity of LNG Storage Capacity allocated to that other Capacity Holder.

Storage Facility means APA's LNG storage facility situated at Dandenong, which is an "LNG storage facility" under the DWGM Rules.

Supplementary Storage Charge, for a month, means the amount in dollars calculated as follows:

$$\text{SSC} = \text{SSR} \times \text{SC} \div 12$$

where:

SSC is the Supplementary Storage Charge for the month

SSR is the Supplementary Storage Rate

SC is the Supplementary Storage Capacity

Term means the period from the Commencement Date to the Termination Date, subject to early termination in accordance with this agreement.

Termination Date means the date specified in the Details.

Threat to System Security means any event or circumstance, or combination of events or circumstances, resulting in AEMO taking the measures described in rule 343(1)(c) of the National Gas Rules in relation to the Storage Facility.

Vaporisation Service means a Firm Vaporisation Service or Contingency Vaporisation Service, which is provided by APA to Shipper in accordance with clause 5.4.

Wilful Misconduct means an intentional breach of either a material provision of this agreement or of a Law in respect of a party's obligations under this agreement, committed with reckless disregard for the consequences and in circumstances where the party in breach knows or ought to know that those consequences would likely result from the

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breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

Year means each period of 365 consecutive Gas Days commencing on the Commencement Date or the anniversary of the Commencement Date (as the case may be), provided that any period that includes a date of 29 February will be of 366 consecutive Gas Days.

1.2 Details

Subject to clause 1.1, terms used in the Details (such as **Commencement Date** and **Jurisdiction**) have the meaning set out in the Details.

1.3 Interpretation

In this agreement, unless the context requires otherwise:

- (a) headings are only for convenience and do not affect interpretations;
- (b) words in the singular include the plural and the other way around;
- (c) words of one gender include any gender;
- (d) if a word or phrase is defined, another grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression indicating a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a governmental agency;
- (f) a reference to a party to this agreement includes that party's executors, administrators, successors and permitted assigns;
- (g) a promise or agreement of 2 or more persons binds them jointly and individually;
- (h) a promise or agreement in favour of 2 or more persons is for the benefit of them jointly and individually;
- (i) a reference to a paragraph, clause, sub-clause, party, annexure, attachment, exhibit or Schedule is a reference to a paragraph, clause or sub-clause of, and a party, annexure, attachment, exhibit and Schedule to, this agreement and a reference to this agreement includes any annexure, attachment, exhibit or Schedule;
- (j) a reference to a thing (including, but not limited to, a right) includes any part of that thing;
- (k) a reference to a right includes a remedy, power, authority, discretion or benefit;

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- (l) a reference to a regulatory instrument, including legislation, code, rule and order includes any amendment to that regulatory instrument, any consolidation or replacement of it, and any subordinate legislation made under it;
- (m) a reference to an agreement other than this agreement includes an undertaking, agreement, deed or legally enforceable arrangement or understanding, whether or not in writing;
- (n) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (o) examples are descriptive only and not exhaustive;
- (p) a provision of this agreement must not be construed against a party solely because the party was responsible for preparing this agreement or that provision;
- (q) a reference to a body, other than a party to this agreement (including, but not limited to, an association, authority, corporation, body corporate or institution), whether statutory or not:
 - (i) which ceases to exist;
 - (ii) is reconstituted, renamed or replaced; or
 - (iii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which serves substantially the same purposes or has the same powers or functions;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (s) where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Standards

In this agreement, terminology used to describe units is, unless otherwise stated, in accordance with:

- (a) Australian Standard AS ISO- 1000 - 1998 'The International System of Units (SI) and its Application'; and
- (b) the Commonwealth Weights and Measures (National Standard) Amendment Act 1984 No. 77 and regulations made under that act.

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1.5 Inconsistency

If any provision in this agreement is necessarily inconsistent with any provision of the DWGM Rules, the DWGM Rules prevail to the extent of the inconsistency provided that the provisions in this agreement are otherwise to be given full force and effect.

1.6 Enforcement Rights

The rights of the parties under this agreement must be construed as being subject to and limited by Chapter 5 of the Corporations Act.

1.7 Special Conditions

The Special Conditions (if any) form part of the main body of this agreement.

1.8 Precedence

To the extent of any inconsistency between the Details, the Special Conditions and the Standard Conditions, the following order of precedence applies:

- (a) Details;
- (b) Special Conditions; and
- (c) Standard Conditions.

1.9 Rounding

In this agreement:

- (a) all quantities in GJ are rounded to the nearest whole GJ;
- (b) rates or tariffs for the purposes of calculating the Charges are rounded to 6 decimal places;
- (c) the Escalation Factor is rounded to 8 decimal places; and
- (d) all invoicing amounts are rounded to 2 decimal places.

2. Term

2.1 Commencement

- (a) All clauses of this agreement except clauses 1, 3, 4, 5, 7.5 and 11 come into full force and effect on the date of this agreement.
- (b) Clauses 1, 3, 4, 5, 7.5 and 11 of this agreement come into full force and effect on and from the start of the Gas Day on the Commencement Date.

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2.2 Termination

Subject to earlier termination of this agreement under clause 13, this agreement expires on the Termination Date.

3. APA'S obligations

- (a) Subject to:
 - (i) Shipper and AEMO complying with their respective obligations under the DWGM Rules; and
 - (ii) Shipper complying with this agreement in all material respects,APA agrees to supply the LNG Services in accordance with this agreement.
- (b) APA must operate and maintain the Storage Facility and perform the LNG Services to the standard of and in accordance with Good Operating Practice.

4. Shipper's capacity and stock

4.1 Entries in LNG Storage Capacity Register

During the Term, APA must maintain the following information in the LNG Storage Capacity Register in respect of the Shipper:

- (a) the Storage Capacity; and
- (b) the quantity of Shipper's LNG Stock.

4.2 Opening Shipper's LNG Stock

As at the start of the first Gas Day of the Term, the quantity of Shipper's LNG Stock to be recorded by APA in the LNG Storage Capacity Register will be the lesser of:

- (a) the quantity of the Shipper's LNG Stock (if any) immediately prior to the start of the first Gas Day of the Term; and
- (b) the Storage Capacity.

If the Shipper's LNG Stock immediately prior to the start of the first Gas Day of the Term is greater than the Storage Capacity, then APA will vaporise the excess in accordance with clause 5.4.

4.3 Shipper's LNG Stock

- (a) In the absence of manifest error, the quantity of Shipper's LNG Stock at any time (whether before or after the Commencement Date) is the quantity as recorded in the LNG Storage Capacity Register.

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- (b) If an error in the LNG Storage Capacity Register is identified, APA must correct the relevant information in LNG Storage Capacity Register as soon as reasonably practicable.

5. LNG Services

5.1 LNG Services

- (a) APA must, subject to this agreement and in accordance with the DWGM Rules:
 - (i) make the Storage Facility available to enable the Shipper to store LNG to the extent of the Storage Capacity;
 - (ii) unless otherwise instructed by the Shipper, instruct BOC to liquefy Gas into the LNG Storage Facility in accordance with the BOC Agreement. Subject to the BOC Agreement, APA will instruct BOC to commence liquefaction the day following vaporisation of Shipper's LNG Stock pursuant to clause 5.4;
 - (iii) allocate LNG to the Shipper in accordance with clause 5.3;
 - (iv) vaporise LNG from the Storage Facility in accordance with clause 5.4; and
 - (v) allocate the vaporised LNG to the Shipper in accordance with clause 5.6 and any directions given by AEMO.

5.2 Liquefaction

APA's obligations under clause 5.1 to instruct liquefaction of Gas and to allocate LNG are subject to the Shipper:

- (a) being a Market Participant at the relevant time; and
- (b) making available to APA at the Storage Facility a corresponding quantity of Gas in accordance with the DWGM Rules.

5.3 Liquefaction Priority Rules

- (a) APA will allocate any LNG supplied by BOC into the Storage Facility in the following descending order of priority.

Priority 1: APA BOC account up to the account capacity

Priority 2: APA operational account up to the account capacity

Priority 3: Market Participants to the extent they hold any unused Storage Capacity

- (b) On each Gas Day, APA will first fully exhaust all requests of the highest priority before proceeding to fulfil requests of next level of priority in accordance with the order of priority set out in paragraph (a).

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- (c) If, on a Gas Day, there is insufficient liquefaction capacity to fulfil all requests of a level of priority (having fulfilled all requests of a higher priority), then the remaining liquefaction capacity will be allocated to requests of the level of priority on a pro rata basis (in proportion to each requesting participant's used Storage Capacity of that priority level).

5.4 Vaporisation Services

- (a) Subject to paragraphs 5.4(b) and 5.4(c), on a Gas Day, APA must vaporise quantities of LNG from the Storage Facility in accordance with:
 - (i) the scheduling instructions it receives from AEMO in accordance with rule 284(2) of the DWGM Rules; and
 - (ii) any other procedures agreed between APA and AEMO from time to time, on a firm basis and without interruption, except as permitted by this agreement.
- (b) Where the scheduling instructions APA receives under paragraph 5.4(a)(i) are for the vaporisation of quantities of LNG which are outside of the operating parameters of the Storage Facility, APA will use reasonable endeavours to comply with the scheduling instructions.
- (c) Notwithstanding anything else contained in this agreement, APA is not obliged to vaporise a quantity of LNG in aggregate in excess of 100 tonnes per hour.
- (d) Quantities of LNG, in excess of:
 - (i) the Firm Vaporisation Capacity, vaporised on a Gas Day; or
 - (ii) the MHQ, vaporised in any hour on a Gas Day,by APA under clause 5.4(a), will be deemed to be vaporised under the Contingency Vaporisation Service unless APA agrees otherwise.
- (e) If, in relation to a Gas Day, APA receives instructions from AEMO to vaporise, on account of the Shipper, a quantity of LNG in excess of the Shipper's LNG Stock (**Excess Quantity**), then:
 - (i) the Shipper is deemed to have offered to purchase from APA a quantity of LNG up to the Excess Quantity;
 - (ii) APA may vaporise a quantity of LNG (not exceeding the Excess Quantity) in excess of the Shipper's LNG Stock; and
 - (iii) if APA vaporises LNG under paragraph 5.4(e)(ii), then in addition to complying with its obligations under clause 7, the Shipper must pay to APA the applicable Excess Quantity Charge.

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5.5 Overrun Charge and adjustment of Firm Vaporisation Capacity

If, on any Gas Day:

- (a) quantities of LNG are vaporised by APA under the Contingency Vaporisation Service (**Contingency Quantity**);
- (b) the relevant Contingency Quantity was caused or contributed to by Shipper; and
- (c) on that Gas Day, there is no Threat to System Security,

then:

- (d) Shipper must pay the Overrun Charge in respect of that Contingency Quantity;
- (e) unless Shipper can demonstrate to APA's reasonable satisfaction that the cause of the Contingency Quantity was a genuine mistake by the Shipper, APA may by written notice to Shipper determine that the Firm Vaporisation Capacity for the remainder of the Term will be increased by an amount equal to the Contingency Quantity; and
- (f) if APA provides a notice to Shipper under paragraph (e), the Firm Vaporisation Capacity will increase by an amount equal to the Contingency Quantity for the remainder of the Term.

5.6 Vaporisation allocations

Allocations of vaporised quantities of natural gas and LNG will be performed by APA on a Gas Day on the following basis:

- (a) LNG vaporisations will be allocated in accordance with the final AEMO daily Operating Schedule.
- (b) In the event that two or more Capacity Holders have identically priced bids for the Gas Day, APA will allocate vaporised quantities of natural gas and LNG to those Capacity Holders on the following basis:
 - (i) First – vaporised quantities will be allocated to the Capacity Holders up to their respective firm vaporisation capacities for the Gas Day. If the vaporised quantities are not sufficient to meet all Capacity Holders' firm vaporisation capacities for the Gas Day, then the vaporised quantities will be allocated among those Capacity Holders pro rata on the basis of their respective firm vaporisation capacities for the Gas Day.
 - (ii) Second – vaporised quantities will be allocated to the Capacity Holders as Contingency Quantity pro rata on the basis of their respective Storage Capacities, up to their respective Storage Capacities.
- (c) In the event that AEMO directs APA under section 91BC of the National Gas Law to vaporise quantities of natural gas and LNG in excess of quantities the subject of bids received by AEMO from Market Participants on that Gas Day (**Additional**

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Quantities), vaporised Additional Quantities will be allocated to the Capacity Holders as Contingency Quantity pro rata on the basis of their respective Storage Capacities, up to their respective Storage Capacities.

5.7 Allocation agent

The Shipper authorises APA to act as the allocation agent on behalf of the Shipper in relation to Gas receipts and withdrawals from the Storage Facility.

5.8 Maintenance

If APA believes that it is necessary to carry out works, repairs or maintenance on or affecting the Storage Facility and:

- (a) APA uses reasonable endeavours to carry out such works, repairs or maintenance so as to minimise, so far as is practicable, disruption to the LNG Services to the Shipper; or
- (b) such works, repairs or maintenance are required to:
 - (i) protect the operational integrity or safe operation of the Storage Facility; or
 - (ii) comply with any applicable Laws, rules, regulations or directions of any government or other competent authority,

APA may, without liability to the Shipper, suspend the provision of any part of the LNG Services to the Shipper to the extent necessary to carry out the works, repairs or maintenance, provided that APA gives the Shipper as much notice of any expected suspension as is reasonably practicable.

5.9 Authorisation to AEMO

The Shipper must promptly authorise AEMO, in such form as AEMO reasonably requires, to disclose to APA on a real-time basis the quantities of Gas scheduled by AEMO on account of the Shipper in respect of the Declared Wholesale Gas Market on each Gas Day during the Term.

6. Ownership of facilities

The Shipper does not acquire any right to, title to, or interest in the Storage Facility or any part of it pursuant to this agreement.

7. Charges

7.1 Manner of Determining Charges

As from the Commencement Date, the Shipper must pay to APA each month:

- (a) the Firm Vaporisation Charge;

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- (b) the Liquefaction Charge;
- (c) the Contingency Vaporisation Charge;
- (d) the Overrun Charge;
- (e) the Supplementary Storage Charge;
- (f) the Excess Quantity Charge; and
- (g) any other amount payable by the Shipper to APA under this agreement.

7.2 Firm Vaporisation Charge

- (a) Subject to paragraph (b), Shipper must pay the Firm Vaporisation Charge to APA irrespective of the quantity of LNG vaporised for or on behalf of Shipper under this agreement.
- (b) If during a month APA fails to vaporise for or on behalf of Shipper the quantities of LNG required to be vaporised for or on behalf of Shipper under the Firm Vaporisation Service and the failure to vaporise is as a result of:
 - (i) a Force Majeure Event affecting APA; or
 - (ii) the negligence, Wilful Misconduct or breach of this agreement by APA, then any Firm Vaporisation Charge for that month must be reduced as determined by APA (acting reasonably) having regard to the proportion of the month in which APA fails to vaporise quantities of LNG for or on behalf of Shipper as a result of the events outlined in paragraphs (i) - (ii).

7.3 Adjustment of Rates

Each Rate is adjusted, on 1 January, 1 April, 1 July and 1 October in each Calendar Year commencing on the first such date to occur after the Rate Set Date (each an **Adjustment Date**), by multiplying it by the Escalation Factor. The adjusted amounts apply, from the commencement of the Gas Day on the Adjustment Date, until further adjusted on the next Adjustment Date..

7.4 Liquefaction Charge

- (a) The Liquefaction Charge, for each month, means the amount in dollars calculated as follows:

$$LC = (A \times 1.05) \times B$$

where:

LC is the Liquefaction Charge for the month

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- A** is the amount, in \$/GJ equivalent, of all costs and charges invoiced by BOC to APA under the BOC Agreement directly relating to the liquefaction of Gas in connection with that month (unless otherwise recovered under this agreement)
- B** is the amount of LNG liquefied in the month on behalf of the Shipper (including any LNG liquefied to replace LNG supplied by APA under clause 5.4(e)(ii))
- (b) APA will provide Shipper with an estimate of the Liquefaction Charge prior to the Commencement Date.
- (c) The Shipper may at all reasonable times, by giving reasonable prior written notice to APA, request evidence substantiating APA's calculation of the Liquefaction Charge. For the avoidance of doubt, nothing in this clause 7.4(c) requires APA to disclose information which is confidential pursuant to the BOC Agreement.
- (d) If there is a change in the inputs, index and/or basis for calculating "A" in clause 7.4(a) above, APA will advise the Shipper of the new \$/GJ rate for "A" as soon as reasonably possible.

7.5 Billing and Payment

- (a) On or before the 15th day of each month, APA will invoice the Shipper for the Firm Vaporisation Charge and Supplementary Storage Charge payable by the Shipper in respect of that month.
- (b) On or before the 2nd day of each month, APA will invoice the Shipper for the Contingency Vaporisation Charge, Overrun Charge, Excess Quantity Charge and Liquefaction Charge payable by the Shipper in respect of the preceding month.
- (c) The Shipper must pay the invoices issued under paragraphs (a) and (b) within 10 days of receipt.
- (d) If the Shipper disputes an invoice, the Shipper may, at any time within 10 Business Days of receiving the invoice, notify APA that it disputes the invoice, identifying the disputed amount and giving reasons why it disputes the invoice. The Shipper must pay the undisputed amount when it is due. The parties agree to meet in good faith and to use all reasonable endeavours to resolve the dispute. Upon resolution of the dispute, the Shipper must promptly pay any amounts which it has been determined that it is liable to pay.
- (e) If at any time a party claims that the Shipper has been overcharged or undercharged, then the parties will agree to meet in good faith to determine the amount of the overcharging or undercharging (as the case may be). The party liable to pay the agreed amount must pay that amount within 10 days of that amount being determined.

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- (f) A party liable to make a payment under this agreement must also pay interest on any unpaid sum for the period from the date the payment is due to the date of payment at a rate equal to the aggregate of 2% and the Westpac Banking Corporation's overdraft rate applicable at that time. Interest accrues on daily balances and is payable on demand.

7.6 GST

- (a) Notwithstanding any other provision in this agreement, if a party (**Supplier**) makes a supply to another party (**Recipient**) under or in connection with this agreement on which GST is imposed (except where the supply is specifically described in this agreement as 'GST Inclusive'):
 - (i) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
 - (ii) the amount by which the GST Exclusive Consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST Exclusive Consideration is payable or to be provided and the Supplier must provide the Recipient with a Tax Invoice with respect to such supply.
- (b) Words or expressions used in this clause 7.6 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 7.6.

7.7 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

7.8 Carbon Costs

- (a) This clause applies if APA or a Related Body Corporate of APA incurs any Carbon Costs in respect of the services to be provided by APA under this agreement or APA's business operations insofar as they relate to those services.
- (b) In addition to any other amounts due or payable to APA under this agreement, the Shipper must pay to APA all Carbon Costs incurred by APA or a Related Body Corporate of APA related to the services provided by APA under this agreement or APA's business operations insofar as they relate to those services, as reasonably determined and apportioned by APA.
- (c) APA must:

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- (i) include in each invoice to the Shipper; and
- (ii) provide to the Shipper information substantiating,

the amount of the costs, charges and expenses determined and apportioned by APA under paragraph 7.8(b).

- (d) For the purposes of this clause 7.8:

Carbon Costs means:

- (i) the costs APA (or a Related Body Corporate) incurs in meeting any obligation imposed on APA by any Carbon Scheme or variation of the Carbon Scheme from time to time;
- (ii) the costs of any permits to be surrendered or applied under a Carbon Scheme by APA (or a Related Body Corporate);
- (iii) the costs of APA (or a Related Body Corporate) incurred as a result of a new or varied tax or tax credit under the Carbon Scheme;
- (iv) the costs of APA (or a Related Body Corporate) undertaking activities to abate or sequester greenhouse gas emissions to avoid or reduce an obligation under a Carbon Scheme; and
- (v) similar or related costs that APA (or a Related Body Corporate) is required to pay to another person under a contract,

to the extent that cost is incurred in respect of the exploration, extraction storage, use, recovery, production, transportation, consumption, supply or sale of Gas in connection with this Agreement.

Carbon Scheme means any Law or regulation of the Commonwealth of Australia or of a State or Territory of Australia or any requirement or condition of a licence, permit, governmental consent or approval with respect to the production or emission of, or to reduce, limit, cease, prevent or offset, greenhouse gas emissions, including without limitation any carbon pricing mechanism.

7.9 Change in Law

- (a) The parties must, in accordance with this clause 7.9, make a Financial Adjustment based on the Net Financial Effect experienced by APA or a Related Body Corporate as a consequence of any Change in Law.
- (b) If a Change in Law occurs, APA must give written notice (**Change in Law Notice**) to Shipper of:
 - (i) details of the Change in Law and its effect on APA's Relevant Costs;
 - (ii) APA's estimate of the Net Financial Effect of complying with the Change in Law; and

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- (iii) the timing and details of APA's proposed Financial Adjustment.
- (c) APA's proposed Financial Adjustment under paragraph (b)(iii) applies unless:
 - (i) the parties otherwise agree; or
 - (ii) Shipper objects in writing within 20 Business Days of the date of the Change in Law Notice, in which case the matter is deemed to be a dispute referred by Shipper for resolution in accordance with clause 15 and the date of the objection is deemed to be the date of the Dispute Notice for that purpose.
- (d) APA must use reasonable endeavours to mitigate any increase in APA's Relevant Costs arising from any Change in Law.

8. Confidentiality

8.1 No Disclosure

This agreement and all information exchanged between the parties under this agreement is confidential to them and may not be disclosed to any person except:

- (a) the disclosure, use or reproduction of information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the party who wishes to disclose, use or reproduce the information or any person to whom that party has disclosed the information;
- (b) the disclosure of information by a party (or by a person to whom that party has disclosed the information) to:
 - (i) an employee or officer of the party or a Related Body Corporate of the party; or
 - (ii) a legal or other professional adviser, auditor or other consultant of the party or a Related Body Corporate of the party, who requires the information for the purposes of this agreement, or for the purpose of advising the party in relation to this agreement;
- (c) the disclosure of information by a party to a Related Body Corporate for the purposes of good corporate governance of the corporate group of which it is a member;
- (d) the disclosure, use or reproduction of information with the consent of the person or persons who provided the relevant information;
- (e) the disclosure, use or reproduction of information to the extent required by Law or by a lawful requirement of:
 - (i) any government authority having jurisdiction over a party or its Related Bodies Corporate; or

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- (ii) any stock exchange having jurisdiction over a party or its Related Bodies Corporate;
- (f) the disclosure, use or reproduction of information if strictly and necessarily required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism relating to this agreement or for the purpose of advising a person in relation thereto;
- (g) the disclosure, use or reproduction of information which is trivial in nature;
- (h) the disclosure of information which is required to protect the safety of personnel or equipment;
- (i) the disclosure, use or reproduction of information by or on behalf of a party to the extent reasonably required in connection with the party's financing arrangements (as the case may be), investment in a party or a disposal of a party's assets;
- (j) the disclosure of information to any regulatory authority having jurisdiction over a party, pursuant to the DWGM Rules or otherwise;
- (k) the disclosure, use or reproduction of information of an historical nature in connection with the preparation and giving of reports under the DWGM Rules; or
- (l) the disclosure, use or reproduction of information as an unidentifiable component of an aggregate sum.

8.2 Disclosure to Certain Parties

In the case of a disclosure under clauses 8.1(b), 8.1(c), 8.1(f) or 8.1(i) prior to making the disclosure the party who wishes to make the disclosure must inform the proposed recipient of the information that it is confidential information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provision of this clause 8 and does not use the information for any purpose other than that permitted under clause 8.1.

9. Compliance with law

The parties must comply with all applicable Laws including the DWGM Rules in the exercise of their rights and the performance of their obligations under this agreement.

10. Warranties

10.1 Rights Necessary to Supply the LNG Services

APA represents and warrants that as at the date of this agreement and for the Term of this agreement it has all rights necessary to supply the LNG Services.

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10.2 Acquisition of LNG Services for Shipper's own benefit

The Shipper represents and warrants that it is acquiring the LNG Services for its own use and benefit and not for the use or benefit of another Market Participant.

11. Exclusions and limitations of APA'S liability

11.1 Non-excludable conditions

- (a) This clause 11 does not exclude or limit the application of any statutory provision (including a provision of the *Competition and Consumer Act 2010*) where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any part of this clause to be void.
- (b) APA excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void.

11.2 Consequential Losses

To the extent permitted by Law:

- (a) each party excludes any and all liability for Consequential Losses; and
- (b) each party releases and holds the other party harmless from and against any and all liability for Consequential Losses.

The exclusions of liability in this clause 11.2 do not apply to Shipper's liability for any Charges, Carbon Costs or other payments pursuant to clause 7.

11.3 Limitation of liability for APA's Losses

- (a) To the extent permitted by Law:
 - (i) APA's liability for Losses is limited in the manner set out in paragraphs 11.3(b), (c) and (d) below; and
 - (ii) the Shipper releases and holds APA harmless from and against any and all liability in excess of the limits set out in paragraphs 11.3(b), (c) and (d) below.
- (b) APA shall have no liability for any Losses where:
 - (i) APA has complied with Good Operating Practice in performing the LNG Services; or
 - (ii) BOC fails to liquefy Gas into the Storage Facility in accordance with the BOC Agreement.

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- (c) APA's aggregate liability to Shipper in respect of this agreement for Losses shall not exceed the Liability Cap.
- (d) Subject to paragraph (c), to the extent that any Losses are caused by APA's failure to provide the LNG Services in accordance with this agreement, APA's liability to the Shipper in respect of any hour during which APA fails to provide those services is limited to the Hourly Liability Cap.

11.4 Shipper's liability

Shipper shall have no liability to APA for any Losses suffered by APA to the extent that Shipper did not cause or contribute to those Losses.

12. Force Majeure Event

12.1 General Position

Subject to clause 12.2, non-performance by a party of any obligation or condition required by this agreement to be performed by that party due to a Force Majeure Event affecting that party:

- (a) will be excused during the time and to the extent that performance is prevented, wholly or in part, by a Force Majeure Event; and
- (b) will not to that extent give rise to any liability to the other party for any losses or damages arising out of, or in any way connected with such non-performance.

12.2 Payment or Notification

A Force Majeure Event will not relieve a party from liability to pay monies due to the other party (including the Shipper's obligation to pay the Charges) or to give any notice which may be required to be given pursuant to this agreement.

12.3 Actions Taken in the Case of a Force Majeure Event

Subject to clause 12.4, if either party seeks relief from performance of an obligation or condition under this agreement due to a Force Majeure Event, the party must:

- (a) as soon as reasonably practicable after becoming aware of the Force Majeure Event, give notice to the other party of the occurrence of the event or circumstance claimed to be a Force Majeure Event;
- (b) as soon as reasonably practicable but in any event within 2 Business Days of becoming aware of the Force Majeure Event, give notice to the other party of:
 - (i) full particulars relating to the event or circumstances and the cause of such failure to perform; and

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- (ii) an estimate of the period of time required to remedy such failure to perform;
- (c) exercise reasonable efforts to mitigate or remove the effects of the event or circumstance but excluding any measures which are not commercially feasible for that party; and
- (d) give notice immediately to the other party upon termination of the event or circumstance of the Force Majeure Event.

12.4 Industrial Disturbance

Neither party will, by virtue of clause 12.3, be required against the will of such party, to adjust or settle any strike, lockout or other industrial disturbance.

12.5 Termination for prolonged Force Majeure Event

If a party invokes this clause 12 and the same Force Majeure Event prevents or inhibits the performance of any obligation or condition required to be performed under this agreement for a period of 12 months then the parties must consult to decide what action should be taken to carry out the intentions of this agreement. If the parties are unable to agree within 7 days of the expiry of that 12 month period that the Force Majeure Event can reasonably be resolved, then either party may terminate this agreement by giving to the other not less than 2 months prior written notice to that effect. From the date termination takes effect neither party is under any further obligation to the other in respect of matters arising after that time.

13. Termination

13.1 Defaults may lead to Termination

- (a) Where:
 - (i) a party defaults in due and punctual payment of any money at the time and in the manner prescribed under this agreement;
 - (ii) a party defaults in the performance of any of its other material promises or obligations under this agreement; or
 - (iii) there is an Insolvency Event in relation to a party,
then that party is in default and the non-defaulting party may at its option at any time after becoming aware of any such default, give written notice to the defaulting party stating:
 - (iv) it intends to terminate this agreement; and
 - (v) the cause for terminating this agreement.

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- (b) The defaulting party has 10 Business Days after the service of that notice in which to remedy or remove the cause or causes stated in the notice for terminating this agreement.
- (c) If within those 10 Business Days, the defaulting party does remove or remedy the cause or causes:
 - (i) the notice of default is deemed to be withdrawn; and
 - (ii) this agreement will continue in full force and effect.
- (d) If at the end of those 10 Business Days, the defaulting party does not so remedy or remove the cause or causes, then the non-defaulting party may immediately terminate this agreement by further notice in writing.

13.2 Effects of Termination

- (a) The termination rights set out in this clause are in addition to and not in substitution for any other rights and remedies available to the parties (including any rights and remedies which but for the inclusion of this clause would not have been available to the parties whether pursuant to this agreement, at Law, in equity or otherwise).
- (b) Notwithstanding any other provision of this agreement, clauses 1, 11, 13.3, 15, 17, 18, 19, 20, 21 and 22 continue to apply following termination or expiry of this agreement.
- (c) Notwithstanding any other provision of this agreement, clause 8 continues to apply following termination or expiry of this agreement for a period of 5 years.

13.3 Accrued rights and remedies

Termination of this agreement will be without prejudice to any accrued rights or remedies of either party as at the date of termination.

13.4 Shipper's rights after termination

- (a) If, upon termination of this agreement under clause 2.2 or 13.1, the Shipper's LNG Stock exceeds zero (0), then without limiting any other rights of the Shipper in respect of the Shipper's LNG Stock, APA will allow the Shipper 14 days after the termination of this agreement to transfer the Shipper's LNG Stock out of the Storage Facility; and
- (b) If, 14 days after the termination of this agreement, the Shipper does not transfer the Shipper's LNG Stock out of the Storage Facility, APA will take charge of the Shipper's LNG Stock at APA's sole discretion and at no cost to APA.

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14. Assignment

14.1 Assignment generally

- (a) Subject to paragraph 14.1(b), a party may not assign or otherwise transfer ('assign') its rights or obligations under this agreement except where it has the other party's written consent, which consent will not be unreasonably withheld where the assignee:
 - (i) is technically and financially capable of performing the assigned rights or obligations; and
 - (ii) covenants in favour of the non-assigning party to be bound by the terms of this agreement.
- (b) If APA sells the Storage Facility to a third party, it may assign its rights and obligations under this agreement without the consent of the Shipper, provided that the third party covenants to the Shipper that it will be bound by the terms of this agreement.

14.2 Assignment not restricted on securities

Nothing in this clause prevents either party from pledging, mortgaging, encumbering or assigning by way of security its rights under this agreement, provided that the chargee or mortgagee must acknowledge in writing to the other party that upon it realising its charge or mortgage, it will be bound by the terms of this agreement.

15. Dispute

- (a) If a dispute arises in respect of this agreement, a party must not commence legal proceedings in relation to the dispute (except proceedings seeking interlocutory relief) unless and until it complies with the procedures set out in this clause 15.
- (b) A party may refer a dispute for resolution under this clause 15 by written notice to the other parties (**Dispute Notice**).
- (c) The following representatives of the parties must promptly meet on a without prejudice basis to endeavour to resolve the dispute:
 - (i) the Representatives of the parties set out in the Details (or their nominee), within 10 Business Days of the date of the Dispute Notice; and
 - (ii) failing resolution under paragraph (i), a more senior representative of each party, within a further 10 Business Days.
- (d) The parties must act in good faith and use reasonable endeavours to resolve the dispute in all meetings conducted in accordance with paragraph (c).
- (e) Paragraph (a) ceases to apply to the dispute if another party fails to participate in the procedures set out in this clause 15.

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- (f) Despite the existence of a dispute, the parties must continue to perform their obligations under this agreement.

16. Change in nature of market

- (a) If the DWGM Rules, the National Gas Rules or the Act are changed in a way that materially affects the operation of any provision of this agreement (**Regulatory Change**), the parties will renegotiate in good faith, any terms of this agreement which are no longer operational, or no longer operate as originally intended by the parties.
- (b) From the occurrence of the Regulatory Change to the date upon which any renegotiation referred to in paragraph (a) comes into effect:
 - (i) nothing in this agreement obliges APA to provide LNG Services, or provide LNG Services in a manner or upon terms, that would place APA in breach of the Law; and
 - (ii) APA will not be liable to Shipper for any act or omission in breach of this agreement if the act or omission is required by, or reasonably incidental to ensure APA's compliance with, the Regulatory Change, provided that APA acts in good faith and treats like Capacity Holders equitably.

17. Credit Support

- (a) If the Details set out Credit Support, Shipper must provide that Credit Support prior to the Commencement Date.
- (b) If APA acting reasonably, determines that a material adverse change has occurred in respect of Shipper which affects Shipper's ability to be able to meet its financial obligations under this agreement, on a written request from APA, Shipper must procure Credit Support (if Credit Support is not set out in the Details) (as applicable) for the benefit of APA. For this purpose of this clause 17, a Shipper which has credit rating of not less than BBB- issued by Standard & Poor's or not less than Baa3 issued by Moody's or which provides a parent company guarantee satisfactory to APA (acting reasonably) issued by an entity with such credit rating will be considered to be able to meet its financial obligations under this agreement.
- (c) If the Shipper has provided Credit Support, APA may, provided there has been an increase in the Shipper's Charges under this agreement, by written notice to Shipper request that the Shipper provide additional Credit Support.
- (d) APA may suspend the provision of the LNG Storage Services without notice or liability to Shipper, where Shipper fails to provide Credit Support (or additional Credit Support as the case may be) satisfactory to APA within 15 Business Days of a written request from APA under this clause 17.

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- (e) Without limiting APA's other rights under this agreement or at Law, if Shipper is in breach of this agreement then APA may have immediate recourse to Credit Support, without notice to Shipper.
- (f) If this clause 17 ceases to apply or APA determines that Credit Support is no longer required, it will release it and return it to the Shipper.

18. Scope of agreement

18.1 Variation or departure to be in writing

To be of force or effect:

- (a) any variation, modification or waiver of any provision of the agreement; or
 - (b) consent to any departure by any person from any provisions of this agreement,
- must be consistent with the DWGM Rules and must be confirmed in writing and signed by the parties.

19. Prohibition, effectiveness and severability

19.1 Prohibition and Effectiveness

Any provision of, the application of any provision of, or the exercise of any right, power, authority, discretion or remedy ('power') under or in respect of this agreement which is prohibited in any jurisdiction:

- (a) is, in that jurisdiction, ineffective only to the extent of that prohibition; and
- (b) does not affect the effectiveness of that provision or power in any other jurisdiction or of the remaining provisions or powers in that or any other jurisdiction.

19.2 Severability

- (a) Each provision in this agreement will be read down to the extent necessary to ensure that this agreement is effective to the greatest possible extent.
- (b) If, notwithstanding clause 19.2(a) a provision of this agreement is still ineffective:
 - (i) if the provision would be effective if a word or words were deleted, that word or those words must be deleted; and
 - (ii) in any other case, the whole provision must be deleted,

and the remaining provisions must be construed and applied so as to be effective to the greatest possible extent.

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20. Notices

20.1 Service

A notice, demand, consent or other communication (**Notice**) given or made under this agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number, or email address, set out in clause 20.2 or the address, fax number or email address (as applicable) last notified by the intended recipient to the sender after the date of this agreement; and
- (c) is duly served, given or made when delivered, received or left at the fax number, address or email address referred to in paragraph (b). If delivery occurs on a day which is not a business day in the place to which the Notice is sent or is later than 4 pm at that place, the Notice is taken to be duly served, given or made at the commencement of business on the next business day in that place.

20.2 Address for notices

Unless otherwise notified by the party, each party's address for notices is the address set out at the front of this agreement.

21. Governing law

21.1 Victorian Law

This agreement must be read and construed according to the laws of Victoria. The parties submit to the jurisdiction of the courts of Victoria and of any courts having jurisdiction to hear appeals from those courts in any matter arising out of:

- (a) this agreement; or
- (b) any alleged breach of any of the terms of this agreement.

21.2 Service of Notices

Without preventing any other mode of service, any document in an action (including, but not limited to any writ of summons or other originating process, any notice initiating any arbitral process or any third party notice) may be served on any party by it being delivered to or left for that party at its address for service of notices under clause 20 of this agreement.

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22. Waiver

The failure of a party at any time to insist on performance of any obligation under this agreement of the other party is not a waiver of its rights:

- (a) to insist on performance of, or claim damages for breach of, that obligation; or
- (b) at any other time to insist on performance of that or any other obligations of the other party under this agreement,

unless that party acknowledges in writing that the failure is a waiver of its rights under this clause.

23. Costs and stamp duty

23.1 Costs and Expenses

Each party bears its own legal and other costs and expenses incurred in connection with the negotiation, preparation and execution of this agreement, except for stamp duty.

23.2 Stamp Duty

The Shipper bears all stamp duty payable or assessed in connection with this agreement.

24. Further assurances

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

25. Counterparts

This agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

26. Attorneys

Each attorney who purports to execute this agreement on behalf of a party declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney purports to execute this agreement.

27. Other rights preserved

Except as otherwise expressly provided in this agreement, the rights, powers and remedies under this agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by Law or equity.

LNG Services Agreement

28. Entire agreement

This agreement:

- (a) contains the entire agreement between the parties with respect to its subject matter as at the date of this agreement;
- (b) sets out the only conduct relied on by the parties; and
- (c) supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

SAMPLE