

ENVESTRA ACCESS ARRANGEMENT – PART C



VICTORIAN DISTRIBUTION SYSTEM

TERMS

AND

CONDITIONS

2 June 2008

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1 Definitions and Interpretations

1.1 Definitions:

Where these Terms and Conditions form an Agreement or are incorporated by reference into an Agreement, and where a word or phrase is capitalised in that Agreement it has:

- (a) *the definition given to that word or phrase in the Access Arrangement; or*
- (b) *if the word or phrase is not defined in the Access Arrangement, the definition given to that word or phrase below.*

When 1.1(a) applies, and where the definition given to a word or phrase in the Access Arrangement refers to the Terms and Conditions, those references to the Terms and Conditions are to be read as references to the Agreement.

1.2 Interpretation

- (a) In this Agreement, unless the context requires another meaning a reference:
 - (1) to the singular includes the plural and vice versa;
 - (2) to a gender includes all genders;
 - (3) to a document (including this Agreement and a Regulatory Instrument) is a reference to that document (including any Appendices, Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (4) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (5) to a party means a party to this Agreement;
 - (6) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
 - (7) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
 - (C) where that person ceases to exist, is reconstituted, renamed or replaced, or where its powers or functions are transferred to another body, a reference to the body which replaces it or which serves substantially the same purpose or has the same powers or functions;

- (8) to a law:
 - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
- (9) to proceedings includes litigation, arbitration and investigation;
- (10) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (11) to time is to Melbourne time;
- (12) to Haulage Reference Tariff D, Haulage Reference Tariff V or Haulage Reference Tariff M includes a reference to a new Haulage Reference Tariff introduced pursuant to the Reference Tariff Policy which supplements or replaces Haulage Reference Tariff D, Haulage Reference Tariff V or Haulage Reference Tariff M respectively and related terms shall be construed accordingly; and
- (13) the word including or includes means including, but not limited to, or includes, without limitation.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) Headings are for convenience only and do not affect interpretation.
- (d) If a payment or other act must (but for this clause 1) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.
- (e) If a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (f) This Agreement may not be construed adversely to a party only because that party was responsible for preparing it.
- (g) A promise or agreement by 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 thing (including, but not limited to, a right) includes any part of that thing.
- (j) A reference to a right includes a remedy, power, authority, discretion or benefit.

2 Compliance with Regulatory Instruments

2.1 Regulatory Instruments to take precedence

In the event of any inconsistency between:

- (a) a party's obligations or rights under a Regulatory Instrument; and
 - (b) its obligations or rights under this Agreement,
- its obligations and rights under the Regulatory Instrument shall take precedence to the extent of the inconsistency.

2.2 Parties must comply with Regulatory Instruments

Notwithstanding any other provision of this Agreement, each party will comply with the obligations imposed on that party by the Regulatory Instruments.

2.3 Parties must co-operate

Each party will:

- (a) give to the other party all reasonable assistance; and
 - (b) co-operate with the other party,
- so as to allow that other party to comply with any obligations imposed upon that other party under this Agreement or by a Regulatory Instrument.

2.4 Preservation of rights

Nothing in this Agreement will limit any right either party may have under a Regulatory Instrument unless the Regulatory Instrument permits that right to be limited by agreement, and this Agreement directly or indirectly limits that right.

2.5 Waiver of Compliance

- (a) Notwithstanding clauses 2.1 (Regulatory Instruments to take precedence) to 2.4 (preservation of rights) (inclusive), if:
 - (1) a party has been excused from strict compliance with any aspect of a Regulatory Instrument; or
 - (2) the application of a Regulatory Instrument to a party has been varied,by express written consent from the Authority responsible for enforcing that aspect of the Regulatory Instrument, the relevant party will not be obliged under this Agreement to comply with that aspect of the Regulatory Instrument to the extent of the consent.
- (b) A party who has received a written consent described in clause 2.5(a) must provide to the other party a copy of any such consent if that consent is in the reasonable opinion of the party receiving the consent likely to affect the performance of either party's obligations under this Agreement.

2.6 Regulatory Relief

For the purposes of this Agreement, a party shall not have breached the terms of a Regulatory Instrument if it has acted:

- (a) under the direction of a relevant Authority; or
- (b) in accordance with the terms of any relief from compliance granted in writing by a relevant Authority.

3 Customer Relationship

- (a) Notwithstanding the existence of any Deemed Contract, the parties agree that the Service Provider will provide the Distribution Services to the User in respect of each Customer except to the extent that:
 - (1) the User notifies the Service Provider that the User and the Customer have entered into an agreement under which the User does not provide or procure Distribution Services for the Customer; and
 - (2) the Service Provider and the Customer have entered into an agreement (other than a Deemed Contract) under which the Service Provider provides Distribution Services to the Customer.
- (b) If at any time a Customer contracts for the same Distribution Services from both the Service Provider and the User, the Service Provider and the User will use their reasonable endeavours to implement the contractual relationship desired by the Customer.
- (c) Without limiting clause 3(b), this Agreement will not apply in respect of a Customer to the extent that and for so long as there is an inconsistent contract between a Customer and the User or the Service Provider as at the Commencement Date, or between a Customer, the User and the Service Provider after the Commencement Date.

4 Distribution Services

4.1 Provision of Distribution Services

- (a) Subject to the User providing or substituting credit support as required under clause 7.8, the Service Provider will provide to the User in relation to each Customer the Distribution Services in accordance with:
 - (1) good gas industry practice; and
 - (2) the terms and conditions of this Agreement.
- (b) In respect of each Customer, this Agreement applies:
 - (1) from and including the date that the User requests (or is deemed under clause 4.2 to have requested) the provision of the Distribution Services in respect of the Customer (or any later date nominated by the User in any such request); and

- (2) subject to clause 12 (term and termination), until and including the earlier of the dates described in clause 4.3(a).

4.2 Deemed request for Distribution Services

The User shall be deemed to have requested the Service Provider to provide Distribution Services in respect of a Customer while the User is the FRO for that Customer's DSP.

4.3 Cessation of provision of Distribution Services

The Service Provider shall cease to provide the Distribution Services to the User in respect of a Customer upon the first to occur of:

- (a) the time at which the User ceases to be the FRO for the Customer's DSP;
- (b) the date agreed between the User and the Service Provider for the purposes of this clause on which the Customer ceases to, or ceases to be entitled to, receive Supply in respect of that DSP, which may or may not include Disconnection; or
- (c) the date on which the Service Provider, following request from the User, removes its Metering Installation relating to the Customer's DSP.

4.4 Entitlement to refuse Service

- (a) Nothing in this Agreement requires the Service Provider to provide Distribution Services or to Supply in respect of a Customer in circumstances where a Regulatory Instrument requires or permits the Service Provider to refuse to provide Distribution Services or Supply.
- (b) The Service Provider is not obliged to provide Distribution Services if the Gas which the User seeks to inject into or withdraw from the Distribution System:
 - (1) does not meet the Specifications; or
 - (2) contains any material or has properties that the Service Provider reasonably believes may be deleterious to the Distribution System or to the operation of the Distribution System.
- (c) The Service Provider is not obliged to provide the Distribution Services if the User has not made payment of monies due under this Agreement:
 - (1) within 7 days of receipt of a notice of default issued by the Service Provider under clause 12.2(a); and
 - (2) has not issued a notice of dispute under clause 14.2 in relation to that payment.

4.5 Suspension for supplier of last resort

The obligations of the Service Provider under this Agreement are suspended for so long as a person other than the User is acting as the "supplier of last resort" in respect of the User under section 34 of the GIA.

4.6 Conditions of supply

- (a) The User does not (and must not represent to any other person that the User or any other person can) acquire any right or title to, or interest in, the Distribution System or any part of the Distribution System under this Agreement.
- (b) The Service Provider does not dedicate any particular portion of the Distribution System to the Distribution Services provided to the User.
- (c) The Service Provider is not responsible for purchasing or arranging the transportation of Gas to a Transfer Point on behalf of the User.
- (d) If the relevant portion of the Distribution System is capable of delivering a Quantity of Gas to a Distribution Supply Point that exceeds Customer MHQ for that Distribution Supply Point, the Service Provider may agree with the User to allow withdrawal of that Quantity of Gas at a Distribution Supply Point and the Service Provider shall not unreasonably withhold such approval.
- (e) The Service Provider may co-mingle Gas injected into the Distribution System by the User with Gas injected into the Distribution System by any other person.
- (f) The User acknowledges and accepts that the Gas delivered to a Customer at a Distribution Supply Point may not match the quality of the Gas injected into the Distribution System by the User.

4.7 The User's obligations/Capacity Management

Unless otherwise agreed in advance with the Service Provider, the User must:

- (a) to the extent that such matters are within the User's reasonable control, take all reasonable actions to ensure that the volume or pressure of Gas delivered to a Transfer Point does not exceed the physical design capabilities of the Metering Installation at that Transfer Point, as advised to the User by the Service Provider;
- (b) pay for any damage caused to the Distribution System, where, and to the extent that, the Distribution System has been damaged as a result of the failure of the User to comply with clause 4.7(a). To the extent that any damage caused to the Distribution System is attributable to two or more causes, one of which is the failure by the User to comply with clause 4.7(a), payment for such damage will be apportioned accordingly;
- (c) ensure that Gas injected into the Distribution System complies with the Specifications; and
- (d) except where the Service Provider has entered into an agreement with the User under clause 4.6(d), ensure that each of its Customers does not withdraw a Quantity of Gas at a Distribution Supply Point in any hour which exceeds its Customer MHQ at that Distribution Supply Point.

4.8 Title to Gas

At all times, the User must ensure it has title to Gas it causes to be injected into the Distribution System and the User indemnifies the Service Provider and holds

it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Service Provider in consequence of any breach by the User of this condition.

4.9 Custody and control of Gas

- (a) Custody and control of Gas injected into the Distribution System at a Transfer Point by the User passes to the Service Provider at that Transfer Point.
- (b) The Service Provider ceases to have custody and control of Gas when it is withdrawn from the Distribution System at a Distribution Supply Point.

4.10 Unaccounted for Gas

- (a) The User accepts risk of loss of all Gas injected by it into the Distribution System and the Service Provider is not liable to the User for Unaccounted for Gas other than as provided for in this clause 4.10.
- (b) The parties acknowledge that, in accordance with the Distribution System Code a Reconciliation Amount will be calculated and that the Service Provider and the User will be notified of the Reconciliation Amount.
- (c) The party liable to pay the Reconciliation Amount must pay the Reconciliation Amount to the other party within 30 days of being notified of the Reconciliation Amount.
- (d) If a Reconciliation Amount is not paid in full in accordance with this clause 4.10, the party who has failed to make the payment must pay interest on the outstanding amount from the day that the Reconciliation Amount was due for payment until payment in full of the Reconciliation Amount plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

5 Connection

- (a) If the User receives a request for Connection from a prospective Customer, the User must submit to the Service Provider a Connection Request in respect of the prospective Customer without delay, but no later than the next Business Day following receipt of the prospective Customer's request for Connection.
- (b) The User will provide to the Service Provider any information reasonably required by the Service Provider for the purposes of effecting the Connection. Without limiting the information required from a User under this clause 5(b), such information will include the information described in clause 9.4(a) (Customer details) and clause 9.5 (new Distribution Supply Point information).

6 Disconnection and Interruption of Customer

6.1 Disconnection and Curtailment

- (a) The User acknowledges that in addition to the Service Provider's rights under clauses 6.2 and 6.3 the Service Provider may:
 - (1) Disconnect; or
 - (2) Curtail or Interrupt,
a Distribution Supply Point in an Emergency or in accordance with the Distribution System Code and any other applicable Regulatory Instruments.
- (b) If the Service Provider can choose which Distribution Supply Points it will Curtail, Interrupt or Disconnect, or the order in which it can Curtail, Interrupt or Disconnect Distribution Supply Points, then such decisions will be made by the Service Provider, having regard to the relevant circumstances.
- (c) Where practicable, the Service Provider will notify the User which Distribution Supply Points it will Curtail, Interrupt or Disconnect and the order in which it proposes to Curtail, Interrupt or Disconnect those Distribution Supply Points prior to the Curtailment, Interruption or Disconnection.

6.2 Disconnection at the request of the User

- (a) The User may request, in a Disconnection Request, the Service Provider to Disconnect a Customer's Distribution Supply Point.
- (b) Subject to this clause 6.2, if the User provides a Disconnection Request to the Service Provider, the Service Provider will Disconnect the Distribution Supply Points specified in the Disconnection Request on the later of:
 - (1) the time specified in the Disconnection Request; and
 - (2) the soonest practicable time, which must be no more than 2 Business Days from the date of receipt by the Service Provider of the Disconnection Request.

If the Service Provider receives a Disconnection Request after 3 p.m. on any day, it will be deemed to have been received on the next Business Day.

- (c) Subject to clause 6.2(d), if the Service Provider does not Disconnect the Customer or has not made a reasonable attempt to Disconnect the Customer in the time specified in clause 6.2(b), the Service Provider will from that time waive the Charges in respect of the provision of the Distribution Services in respect of the Customer, and be liable to pay to the User the costs incurred by the User in connection with the consumption of Gas by the Customer, provided that:
 - (1) this will not render the Service Provider the retailer of the Customer; and

- (2) the User has exercised all reasonable endeavours to recover the relevant Charges and consumption costs and has been unable to recover those costs directly from the Customer.

If the User subsequently recovers from the Customer all or any part of any amount which the Service Provider has waived or paid under this clause 6.2(c), the User must promptly pay that recovered amount to the Service Provider.

- (d) The Service Provider may refuse to Disconnect a Distribution Supply Point where the Service Provider reasonably considers that:
 - (1) such Disconnection would be detrimental to the health or safety of any person (including the Customer) or the security of the Distribution System; or
 - (2) the User has issued a Disconnection Request in breach of the Regulatory Instruments.

In the case of clause 6.2(d)(1), the Service Provider will use reasonable endeavours to remove or mitigate the risk of detriment. In each case under clause 6.2(d), the Service Provider must notify the User of the reasons for its refusal to Disconnect without delay.

- (e) Where the Service Provider refuses to Disconnect a Customer on any of the grounds set out in clause 6.2(d), the User will continue to be liable for the Charges in respect of the provision of the Distribution Services in respect of the Customer and the consumption of Gas by the Customer.
- (f) By providing a Disconnection Request to the Service Provider, the User represents and warrants to the Service Provider that the User:
 - (1) is entitled to make a request for Disconnection under its Retail Contract with the Customer and under any applicable Regulatory Instruments; and
 - (2) it has complied with the procedures for Disconnection prescribed in that contract and any other procedures under the Regulatory Instruments.
- (g) The User shall indemnify the Service Provider against all Claims arising from, or incurred by or made or brought against the Service Provider as a consequence of any Disconnection by the Service Provider of a Customer pursuant to a Disconnection Request, except to the extent that the Claim arises from the negligent or reckless act or omission of the Service Provider or from any breach or non-observance by the Service Provider of this Agreement or the Regulatory Instruments.

6.3 Disconnection at the request of a Customer

- (a) If a Customer requests the Service Provider to Disconnect the Customer, the Service Provider must Disconnect the Customer in accordance with the Distribution System Code and notify the User of the request.
- (b) If the User receives from a Customer a request for Disconnection, the User must pass on to the Service Provider that request in a Disconnection

Request as soon as reasonably practicable, in which case clause 6.2(d) will apply.

6.4 Reconnection or restoration of Supply

- (a) Subject to clause 6.4(b), the Service Provider must Reconnect and restore Supply to the affected Distribution Supply Point:
 - (1) when required to do so under the Regulatory Instruments, following Disconnection, Curtailment or Interruption; and
 - (2) when requested by the User in a form reasonably required by the Service Provider, following Disconnection at the request of the User.
- (b) The Service Provider may refuse to Reconnect or restore Supply to a Distribution Supply Point where the Service Provider is permitted by the Regulatory Instruments to do so or where in the Service Provider's opinion it is unsafe to do so.
- (c) The User will provide to the Service Provider any information reasonably required by the Service Provider in connection with the Reconnection or restoration of Supply to a Distribution Supply Point.

6.5 Assistance

The User must give to the Service Provider any assistance that the Service Provider reasonably requests in relation to the Curtailment, Interruption, Disconnection or, Reconnection of Customers or the restoration of Supply to Customers.

7 Payment and invoicing for services

7.1 Charges

- (a) The User shall pay the Charges to the Service Provider.
- (b) The User shall pay the Service Provider the Charges in respect of each Customer for the entire period after the Commencement Date during which the Service Provider provides Distribution Services to the User in respect of the Customer in accordance with this Agreement.
- (c) Subject to clause 7.4(d), the obligation of the User to pay the Charges to the Service Provider will not be affected by any failure of a Customer to pay the User in respect of the Distribution Services under the Retail Contract.
- (d) The User acknowledges and agrees that the Service Provider will be entitled to render an invoice to the User for any Charges incurred by or on behalf of the User where the Service Provider has been unable to carry out or complete the relevant Distribution Services as a result of any act or omission of the User or the Customer. Any such Charges will be invoiced and payable in accordance with this clause 7.

7.2 Retail Service Charges

- (a) The Service Provider shall pay the User fair and reasonable fees in respect of any Retail Services provided by the User to the Service Provider at the request of the Service Provider.
- (b) The User may render an invoice to the Service Provider upon the provision of any Retail Services.
- (c) An invoice issued under clause 7.2(b) shall be in a format determined by the User and must contain sufficient information as is reasonable to allow the Service Provider to assess the accuracy of the charges specified in the invoice.
- (d) If the Service Provider receives an invoice from the User the Service Provider must pay the User the aggregate amount stated in the invoice not later than 14 days after having received the invoice.
- (e) If the Service Provider disputes the fairness or reasonableness of the charge for Retail Services or otherwise disputes its obligation to pay all or part of that invoice, the dispute will be resolved in accordance with the procedure set out in clause 7.7.
- (f) If an invoice is not paid in full in accordance with this clause 7.2, the Service Provider must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 7.7) from the day that the invoice was due for payment until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable from the date that the invoice was due to be paid and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

7.3 GST

- (a) For the purposes of this clause 7.3:
 - (1) terms defined in the GST Act have the same meaning in this clause 7.3 unless provided otherwise.
 - (2) **Adjustment Note** includes any document or record accepted by the Commissioner of Taxation as an adjustment note.
 - (3) **GST** includes any replacement or subsequent similar tax.
 - (4) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - (5) **Tax Invoice** includes any document or record accepted by the Commissioner of Taxation as a tax invoice.
- (b) If GST is or will be imposed on a taxable supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement does not already include an amount in respect of GST on the supply:
 - (1) increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
 - (2) otherwise recover from the recipient the amount of that GST.

All GST payable shall be payable at the time any payment to which it relates is payable.

- (c) The recovery of any amount in respect of GST by the supplier under this Agreement is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- (d) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:
 - (1) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
 - (2) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
- (e) Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

7.4 Distribution Services - Invoicing, Payment and Interest

- (a) The Service Provider may render invoices no more frequently than twice per month. Subject to clauses 7.4(b) and 7.4(e) the Service Provider will use its best endeavours to render invoices to the User in respect of Distribution Services on the same Business Days of each month or such other invoicing period as agreed between the Service Provider and the User.
- (b) The Service Provider may at any time render invoices for Distribution Services provided to the User at any time while a person was a Customer if the Distribution Services were obtained as a result of the Customer's or the User's fraud or the use of Gas otherwise than in accordance with the Regulatory Instruments.
- (c) Invoices issued under this clause 7.4 shall be in a format determined by the Service Provider and must contain sufficient information as is reasonable to allow the User:
 - (1) to assess the accuracy of the Charges specified in each invoice; and
 - (2) to comply with its obligation under the Regulatory Instruments in relation to the provision to the Customer of information concerning such Charges.
- (d) Subject to clause 7.5(c), if the Service Provider has undercharged or not charged a User for Distribution Services provided in respect of a Customer, the Service Provider may recover the amount undercharged or not charged to the User, however the User will not be obliged to pay such charges to the extent that the User is precluded from recovering those costs from the relevant Customers by operation of the Regulatory Instruments.
- (e) The Charges for Haulage Reference Services included in an invoice for Distribution Services must only be in relation to Customers whose meters were due to be read in the period of the invoice, or in relation to the correction or substitution of previous Meter Readings relating to earlier invoicing periods. All other Charges for Distribution Services will be

invoiced after provision of the Distribution Service unless otherwise agreed by the parties or required by the Regulatory Instruments.

- (f) Subject to clause 7.4(g) and clause 7.5, an Actual Meter Reading in respect of a Customer's Distribution Supply Point shall be evidence of Gas Supplied to a Customer and shall be the basis for determining the Charges.
- (g) Charges may be based upon Estimated Meter Readings. Estimated Meter Readings shall be determined by reference to the method set out in the Regulatory Instruments or, if there is no such method, by reference to prior billing history or subsequent Meter Readings or any other method agreed between the parties.
- (h) Where the Actual Meter Reading becomes available subsequent to the issuing of an invoice based on an Estimated Meter Reading in accordance with clause 7.4(g), the Charge must be adjusted in accordance with clause 7.5.
- (i) Subject to clause 7.7 (disputed invoices), the User must pay the amount specified in each invoice rendered to it in accordance with this Agreement within 10 Business Days after the day on which the invoice is received (or deemed to be received) by the User.
- (j) All payments made under this clause 7.4 shall be made by way of deposit into a bank account nominated by the Service Provider, or in a manner otherwise agreed between the User and the Service Provider.
- (k) If an invoice is not paid in full in accordance with this clause 7.4, the User must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 7.7) from the day that the invoice was due for payment until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

7.5 Adjustment of Invoices

- (a) Subject to clause 7.5(b), an incorrect charge, or the omission of a charge in an invoice rendered under this Agreement must be rectified by the party rendering the invoice in a subsequent invoice to rectify the error or omission. Causes of error or omission may include, but are not limited to:
 - (1) meter tampering or bypass; or
 - (2) defective meters or defective Meter Readings; or
 - (3) errors or omissions by VENCORP in its provision of data to the Service Provider; or
 - (4) errors or omissions in the billed Gas consumption of a Customer; or
 - (5) differences between Estimated Meter Readings or Substituted Meter Readings and Actual Meter Readings obtained after the invoice is issued; or
 - (6) amounts imposed or adjusted by an Authority.

- (b) An adjusted invoice issued under clause 7.5(a) must include, or be accompanied by, an explanation of the reason why the adjusted invoice is being issued.
- (c) An alteration to an invoice to reflect an adjustment under clauses 7.5(a)(2), 7.5(a)(3), 7.5(a)(4) or 7.5(a)(5) must not be made where the User is precluded by the Regulatory Instruments from recovering the adjusted Charges from its Customers, except in the case where the incorrect charge arises as a result of an act or omission of the User (or its agent) or a Customer.

7.6 GSL Payments

- (a) If the Service Provider is required to pay a Customer in accordance with a Regulatory Instrument for a failure by the Service Provider to satisfy a Guaranteed Service Level, the Service Provider may notify the User that it wishes to make the payment of the required amount through the User, in which case:
 - (1) the Service Provider must notify the User of the amount owing to the Customer;
 - (2) the User must pay that amount to the Customer or credit that amount to the Customer as soon as practicable, in accordance with the User's Customer invoicing procedures; and
 - (3) subject to clause 7.6(b), the Service Provider must credit that amount to the next invoice that it issues to the User under this Agreement.
- (b) If:
 - (1) the User receives notification of a matter and the User delays in passing on that notification to the Service Provider; and
 - (2) as a result of that delay, the Service Provider is required to make a payment to a Customer as a result of failing to satisfy a Guaranteed Service Level,
 then the User must either:
 - (i) reimburse the Service Provider for the payment made to the Customer; or
 - (ii) if requested by the Service Provider, on behalf of the Service Provider, pay the required payment to the Customer or credit that amount to the Customer's next bill,
 and the Service Provider is not required to reimburse or credit the User for that amount.
- (c) A User must notify a Service Provider where it is aware that the Service Provider is required to make a Guaranteed Service Level payment to a Customer under the Regulatory Instruments.
- (d) The Service Provider must notify the User where it makes a Guaranteed Service Level payment directly to a Customer under the Regulatory Instruments.

7.7 Disputed invoices

- (a) A party in receipt of an invoice (“**Disputing Party**”) must notify the party which issued the invoice (“**Invoicing Party**”) not less than 2 Business Days before the due date for payment of an invoice under clauses 7.2 or 7.4 (“**Notice of Dispute**”) if it disputes its obligation under this Agreement to pay all or part of that invoice (“**Disputed Invoice**”) and must include in that notice its grounds for disputing the Disputed Invoice and the amount disputed.
- (b) Unless the Disputing Party gives a Notice of Dispute to the Invoicing Party, the Disputing Party must pay the Disputed Invoice in full, subject to its right to seek a subsequent adjustment under clause 7.5 (adjustment of invoices) or to dispute the amount of the invoice under clause 7.7(d) after the invoice has been paid in full.
- (c) If the Disputing Party notifies the Invoicing Party of a Disputed Invoice under a Notice of Dispute, the parties will seek to resolve that dispute in accordance with clause 7.7(d), and the Disputing Party will be required to pay, by the due date for payment under clause 7.2 or 7.4, the amount of the invoice not genuinely disputed by the Disputing Party.
- (d) Any dispute as to an invoice shall be resolved in accordance with this clause and neither party may refer the dispute to the dispute resolution procedure under clause 14 until the parties have satisfied paragraph (1) of this clause 7.7(d) and, if applicable, paragraph (2) of this clause 7.7(d).

The Invoicing Party will:

- (1) discuss with the Disputing Party any queries that the Disputing Party may have in relation to an invoice; and
- (2) if it receives a reasonable request in writing from the Disputing Party within 10 Business Days after receipt of the invoice setting out the grounds giving rise to the request, conduct an internal review of the invoice within 10 Business Days after receipt of the request, and report its findings to the Disputing Party as soon as practicable after completion of that review.

If the matter is not resolved within 2 Business Days from the receipt by the Disputing Party of the Invoicing Party’s report under clause 7.7(d)(2), either party may refer it to dispute resolution under clause 14.

- (e) If, following the resolution of a dispute in accordance with clause 7.7(d) or clause 14, it is determined that the amount that is properly due to the Invoicing Party in relation to that invoice is:
 - (1) more than the amount already paid by the Disputing Party, then the Disputing Party must pay within 3 Business Days to the Invoicing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the underpayment;
 - (2) less than the amount already paid by the Disputing Party, then the Invoicing Party must pay within 3 Business Days to the Disputing Party the difference between the amount already paid and the

amount determined to be payable, together with interest on that amount for the period of the overpayment.

- (f) Interest on the difference payable under clause 7.7(e) shall be calculated at the Default Rate applicable on the first day of each month, capitalised on the first day of each month and calculated on actual days elapsed and a 365 day year for each day after that invoice was due to be paid up to and including the date the difference and any accrued interest payable under this clause 7.7(f) (if any) is paid.
- (g) Unless the parties otherwise agree, no party may set off or deduct any money which it owes to the other party against any money which the other party owes to the first party.
- (h) The payment by the Disputing Party of all or part of an invoice from the Invoicing Party (whether or not that invoice was disputed by the Disputing Party at the time) will not preclude the Disputing Party from subsequently challenging its liability to pay that invoice in accordance with this clause 7.7 or a part of that invoice (unless the challenge relates to a dispute which has already been finally determined in accordance with this clause 7.7).

7.8 Credit Support – Bank Guarantee

- (a) The Service Provider may request the User to procure an undertaking under clause 7.8(b) only if, at the time of the request, any of the following apply:
 - (1) the User cannot demonstrate:
 - (A) that it has an unqualified:
 - (i) Standard & Poor’s credit rating of at least BBB-; or
 - (ii) Moody’s credit rating of at least Baa3; or
 - (iii) Fitch credit rating of at least BBB-,
(an “**Acceptable Credit Rating**”); or
 - (B) that the performance of the User’s payment obligations under clause 7 of this Agreement are guaranteed (on terms acceptable to the Service Provider) by another entity who has an Acceptable Credit Rating (“**Guarantor**”); or
 - (2) within the previous 12 months, (or where the Commencement Date occurs within the previous 12 months, since the Commencement Date) the User has failed to pay in full:
 - (A) 5 invoices within the required time limit for payment; or
 - (B) 3 consecutive invoices within the required time limit for payment; or
 - (C) 1 invoice within 25 days of the due date; or
 - (3) any undisputed amounts owing by the User to the Service Provider in respect of the provision of Distribution Services in the period prior to the Commencement Date, are not paid in full within 30 days of the Commencement Date; or

- (4) VENCorp calls upon any credit support provided by the User or its Guarantor to VENCorp under the MSO Rules; or
 - (5) the User ceases to be registered with VENCorp under the MSO Rules; or
 - (6) where the User purchases energy under an agreement from a person registered with VENCorp under the MSO Rules, and that person issues a notice of default to the User under that agreement, provided that nothing in clause 7.8(a)(2) or 7.8(a)(3) shall permit the Service Provider to require a Bank Guarantee under clause 7.8(b) where the User has failed to pay the invoice or invoices or a relevant part of the invoices due to a bona fide dispute under clause 7.7.
- (b) The Service Provider may require the User to provide a Bank Guarantee to secure payment of the Charges and the User must provide the Bank Guarantee to the Service Provider within 7 days of receipt of notice from the Service Provider as to the amount of the Bank Guarantee required.
 - (c) The amount of the Bank Guarantee will be determined by the Service Provider after having regard to the User's average monthly Charges and payment history, provided that the Bank Guarantee shall not exceed the Service Provider's reasonable estimate of three months average Charges (calculated by reference to a twelve month period) ("**Required Bank Guarantee Amount**") payable by the User under this Agreement.
 - (d) The Service Provider may require the User to increase the amount of the Bank Guarantee where the Service Provider's reasonable estimate of three months average Charges, calculated by reference to the immediately preceding twelve month period, is greater than the amount of the Bank Guarantee. The User must, within 10 Business Days of receipt of a request from the Service Provider, increase the amount of the Bank Guarantee to the amount calculated under this clause 7.8(d).
 - (e) The User may request that the amount of the Bank Guarantee be decreased where the User's reasonable estimate of three months average Charges, calculated by reference to the immediately preceding twelve month period, is less than the amount of the Bank Guarantee. Where the Service Provider agrees that the amount of the Bank Guarantee should be reduced in accordance with this clause 7.8(e), the Service Provider must in conjunction with the User, do all things reasonably necessary to reduce the amount of the Bank Guarantee held by the Service Provider to the amount agreed by the Service Provider under this clause 7.8(e).
 - (f) The Service Provider may present the Bank Guarantee for payment, in whole or in part, by the relevant bank to secure payment of the outstanding Charges where the User fails to pay the Charges invoiced by the Service Provider under clause 7.4 provided that the User has not paid the outstanding Charges within 7 days of the receipt by the User of a notice of default issued by the Service Provider under clause 12.2(a).
 - (g) The User must within 7 days of the Service Provider informing the User in writing that the Bank Guarantee has been presented to the relevant bank for payment under clause 7.8(f), deliver to the Service Provider a further Bank

Guarantee for the Required Bank Guarantee Amount in substitution for the Bank Guarantee previously provided by the User and which has been presented by the Service Provider to the bank for payment in whole or in part.

- (h) Payment under the Bank Guarantee does not limit the Service Provider's rights under this Agreement or operate as a waiver by the Service Provider of the User's breach of this Agreement.
- (i) No later than 90 Business Days after termination of this Agreement, if the Bank Guarantee has not been presented under clause 7.8(f) the Service Provider must return the Bank Guarantee to the User if there are no further Charges payable under this Agreement.
- (j) At the end of 6 months after the date on which the Bank Guarantee was originally requested under clause 7.8(a), and at the end of any 6 month period thereafter (or as otherwise agreed by the parties), the User may request the release of the Bank Guarantee, and the Service Provider must release the Bank Guarantee, if the User shows that, at that date, none of the criteria identified in clause 7.8(a) apply.
- (k) The User must notify the Service Provider within 1 Business Day if the Service Provider becomes eligible to request a Bank Guarantee because of the operation of clauses 7.8(a)(1), (4), (5) or (6).

8 Information Exchange

8.1 Compliance with privacy laws

Each party agrees that:

- (a) any obligation under this Agreement to provide information is subject to any applicable laws (including the Regulatory Instruments) imposing obligations in respect of privacy, disclosure, use or confidentiality of information; and
- (b) it will hold any information which it receives under this Agreement in accordance with any requirements of this Agreement and any applicable laws (including the Regulatory Instruments) relating to privacy, disclosure, use or confidentiality of information.

8.2 Provision of information

- (a) To the extent permitted by law, and subject to any legislative, contractual or other obligations of confidentiality (including under the Regulatory Instruments), each party must use its reasonable endeavours to provide the other party at no cost and in a timely manner information or documentation which the other party reasonably requires to carry out its obligations under this Agreement or under the Regulatory Instruments.
- (b) For each Customer whose information is to be disclosed by the User to the Service Provider, the User must provide to that Customer on behalf of the Service Provider a privacy notice in such form as may be requested by the Service Provider from time to time for the purpose of the Service Provider

discharging its obligations under privacy laws and the Regulatory Instruments.

8.3 Use of information

Subject to clause 17 (confidentiality), a recipient may only use or disclose the information disclosed to it under clause 8.2:

- (a) for the purposes for which the information was provided by the party providing the information; or
- (b) to the extent that it is permitted to use or disclose the information under the law or any contractual obligation; or
- (c) in accordance with any guidelines issued by the Regulator.

8.4 Gas Interface Protocol

The parties acknowledge that the Gas Interface Protocol may apply to determine the method, format and content of notices or communications that are required to be provided by either party under this Agreement. The parties agree that where the Gas Interface Protocol does not prescribe a method, format or content for such notices or communications, the Service Provider may determine (acting reasonably) the method, format or content of such notices or communications.

8.5 Changes in information

If either party becomes aware of any material change in any of the information provided under clause 8.2, that party must notify the other party as soon as reasonably practicable of that change.

8.6 Accuracy of information

Each party must take all reasonable steps to ensure that all information which it provides to the other party (whether that information is generated by the first mentioned party or a third person) under this Agreement is accurate and complete.

9 Communications regarding Customers and System Data

9.1 Answering Calls

- (a) Subject to clause 9.1(c), and 9.1(h), if a Customer contacts the User by telephone about a Class A Inquiry or Class B Inquiry in the Service Provider's Distribution Area, the User must:
 - (1) transfer the Customer's telephone call to the Service Provider's Gas Leaks and Emergencies Number; and
 - (2) prior to transferring the Customer's telephone call to the Service Provider, advise the Customer of the Service Provider's Gas Leaks and Emergencies Number.
- (b) The User must not handle, deal with or advise on a Customer's enquiry regarding a Class A Inquiry or Class B Inquiry other than to the extent that

it is permitted to provide information to the Customer in the circumstances described in clause 9.1(c).

(c) If the User:

- (1) is informed by the Customer that the Customer has been unable to contact the Service Provider's Gas Leaks and Emergencies Number; or
- (2) believes on reasonable grounds that the Service Provider's Gas Leaks and Emergencies Number is not properly functioning; or
- (3) is informed by the Customer that the Customer declines to contact or (where appropriate) be transferred to the Service Provider,

then the User may provide the Customer with the information regarding that Class A Inquiry or Class B Inquiry that has been provided to the User by the Service Provider in accordance with clause 9.2. The User must not provide any other information regarding the Class A Inquiry or Class B Inquiry to the Customer.

- (d) The Service Provider will provide to the User a contact telephone number which the User must publish on its Customers' accounts as the "Gas Leaks and Emergencies Number". Until otherwise notified, the Service Provider advises the User that the Gas Leaks and Emergencies Number is: 1800 676 300.
- (e) The User must not call the Gas Leaks and Emergency Number or transfer a telephone call to the Gas Leaks and Emergency Number unless the User reasonably considers that the subject of the call comprises a Class A Inquiry or Class B Inquiry.
- (f) The User acknowledges and agrees that in accordance with the Gas Leaks and Emergencies Calls Protocol, the User must:
 - (1) provide to Customers supply and appliance faults contact telephone numbers; and
 - (2) publish on its Customers' accounts the "Supply and Appliance Faults Numbers" which may be a separate number for each of supply faults and appliance faults.
- (g) Subject to clause 9.1(h) and (i), if a Customer contacts the User about a Class C Inquiry in the Service Provider's Distribution Area, the User must:
 - (1) respond to the Class C Inquiry; or
 - (2) if the User, based upon the information provided to it by the Customer, reasonably believes that the Class C Inquiry relates to a fault in the Distribution System, provide the Service Provider with details of the Class C Inquiry in accordance with the Gas Leaks and Emergencies Calls Protocol to enable the Service Provider to comply with its obligations under the Regulatory Instruments.
- (h) The User must only provide a Customer with information regarding a Class C Inquiry or any other inquiry which relates to the Distribution System

(other than a Class A Inquiry or a Class B Inquiry) which the Service Provider has provided to the User under clause 9.2(a).

- (i) Nothing contained in this clause affects particular arrangements between the Service Provider, the User and any Customer regarding notification of and dealing with Class A Inquiries, Class B Inquiries, Class C Inquiries or other inquiries which relate to the Distribution System (other than a Class A Inquiry or a Class B Inquiry).

9.2 Provision of information concerning Class A Inquiries, Class B Inquiries and Class C Inquiries

- (a) The Service Provider must provide to the User information regarding Class A Inquiries, Class B Inquiries, Class C Inquiries and other inquiries which relate to the Distribution System which the Service Provider is required to provide to a Customer under the Distribution System Code.
- (b) Any information described in clause 9.2(a) is not required to distinguish between Class A Inquiries, Class B Inquiries, Class C Inquiries or other inquiries which relate to the Distribution System affecting Customers and Class A Inquiries, Class B Inquiries, Class C Inquiries or other inquiries which relate to the Distribution System affecting customers of other Retailers.
- (c) The User indemnifies the Service Provider against any liability to a Customer arising as a result of the User:
 - (1) providing information to the Customer other than the information described in clause 9.2(a); or
 - (2) not providing information to the Customer as required under clause 9.1(g).

9.3 Provision of information for planned Interruptions and Disconnections

- (a) The notification which the Service Provider sends out to Customers notifying them of any planned Interruptions or Disconnections which are not the subject of a Disconnection Request must bear the Service Provider's contact details and should state that any enquiries regarding planned Interruptions or such Disconnections should be directed to the Service Provider.
- (b) The Service Provider must provide to the User (or publish on its website) information which the Service Provider is required to provide to a Customer under the Distribution System Code in respect of planned Interruptions within the same time period as the information is required to be provided by the Service Provider to the Customer under the Distribution System Code.
- (c) If a Customer contacts the User about a planned Interruption or a Disconnection requested or proposed by a Service Provider, the User must:
 - (1) subject to paragraph (2), refer the Customer to the Service Provider; or

- (2) where the Customer informs the User that it declines to contact or (where appropriate) be transferred to the Service Provider, deal with the Customer itself.
- (d) Any information referred to in clause 9.3(b) in respect of planned Interruption must include information regarding specific premises where such information is readily available or otherwise must include at least information regarding the area in which the planned Interruption is to occur.

9.4 Customer Details

- (a) In respect of each Customer, the User must provide to the Service Provider the following details:
 - (1) name;
 - (2) contact name;
 - (3) telephone number;
 - (4) address for service of notices;
 - (5) site address for MIRN;
 - (6) MIRN;
 - (7) the estimated Quantity of, and the period over which, Gas is to be Supplied including estimated Customer MHQ and annual Quantity requirements ;
 - (8) for a typical 24 hour operation the estimated loads expected for each hour of that day ;
 - (9) details of any special circumstances (such as meter access restrictions) of which the Customer has informed the User or of which the User is otherwise aware, and which the Service Provider requires to assist it to comply with its obligations under the Regulatory Instruments; and
- (b) Information described in clause 9.4(a) must be provided in the following manner:
 - (1) on or before the Commencement Date, by an electronic transfer of the requisite details from the User's database;
 - (2) on a transaction by transaction basis or as the details described in clause 9.4(a) otherwise change; and
 - (3) by monthly electronic transfers of the requisite details from the User's database (or at any other agreed intervals) for the purpose of the reconciliation of information provided under this clause 9.4 with the equivalent information held by the Service Provider.

9.5 New Distribution Supply Points

The User must provide the following information to the Service Provider for each new Distribution Supply Point which the User wishes to be Connected:

- (a) Site address for MIRN;

- (b) the MIRN, if known;
- (c) contact details for the proposed Distribution Supply Point and Distribution Supply Point location at which Gas is to be Supplied to Customers;
- (d) the distance of the service entry point on the boundary of the premises of the Customer to be supplied by the new Distribution Supply Point from the nearest distribution main;
- (e) the distance of the service entry point on the boundary of the premises of the Customer to be Supplied by the new Distribution Supply Point from the proposed Metering Installation;
- (f) the estimated Quantity of, and period over which, Gas is to be Supplied including estimated Customer MHQ and annual Quantity requirements for any Customers of the User to be Supplied by the new Distribution Supply Point;
- (g) whether a Customer to be Supplied by the new Distribution Supply Point requests a Metering Installation or other connection equipment other than the standard Metering Installation or connection equipment;
- (h) prior to the Turn On of a Customer, the information as required under clause 9.4(a) and a Certificate of Compliance reference number and the name of the party who issued the Certificate of Compliance ; and
- (i) any other special requirement of a Customer to be Supplied by the new Distribution Supply Point.

9.6 Acceptance by the Service Provider

Once the User provides to the Service Provider the information required by clauses 9.4 and 9.5, the Service Provider must for those Customers it reasonably considers will be Tariff D Customers, use its best endeavours to agree with the User the Customer MHQ for that Customer and in all cases respond to the User in sufficient time to permit each party to comply with its obligations under any applicable Regulatory Instrument and otherwise within such time and manner as may be agreed between the Service Provider and the User.

9.7 Enquiries or Complaints relating to the User

- (a) If a person contacts the User about an enquiry or a complaint (other than a Class A Inquiry, Class B Inquiry, Class C Inquiry or other inquiry which relates to the Distribution System) and the enquiry or the complaint relates to the User, the User must deal with the enquiry or the complaint and the User is not required to notify the Service Provider.
- (b) If a person contacts the Service Provider about an enquiry or a complaint (other than a Class A Inquiry, Class B Inquiry, Class C Inquiry or other inquiry which relates to the Distribution System) and the enquiry or the complaint relates to the User, the Service Provider must:
 - (1) where the enquiry or complaint is made by telephone, transfer the person directly to the User's enquiry or complaint telephone number where practicable; or

- (2) otherwise, as soon as practicable, but no later than the next Business Day after receiving the enquiry or complaint, provide the User with the details of the enquiry or the complaint, including contact details of both the person making the enquiry or complaint and the person who received the enquiry or complaint. The Service Provider must provide to the User on request copies of any documents or written records (including in electronic format) relating to the enquiry or complaint.

The User will then be responsible for resolving the enquiry or the complaint and must attempt to resolve the enquiry or complaint expeditiously.

9.8 Enquiries or Complaints relating to the Service Provider

- (a) If a person contacts a Service Provider about an enquiry or a complaint and the enquiry or the complaint relates to the Service Provider, the Service Provider must deal with the enquiry or the complaint and is not required to notify the User.
- (b) If a person contacts a User about an enquiry or a complaint and the enquiry or the complaint relates to a Service Provider, the User must:
 - (1) where the enquiry or complaint is made by telephone, transfer the person directly to the Service Provider's enquiry or complaints telephone number where practicable; or
 - (2) otherwise, as soon as practicable, but no later than the next Business Day after receiving the enquiry or complaint, provide the Service Provider with the details of the enquiry or the complaint, including contact details of both the person making the enquiry or complaint and the person who received the enquiry or complaint. The User must provide to the Service Provider on request copies of any documents or written records (including in electronic format) relating to the enquiry or complaint.

The Service Provider will then be responsible for resolving the enquiry or the complaint and must attempt to resolve the enquiry or complaint expeditiously.

9.9 Ombudsman complaints

- (a) If a party to this Agreement (**First Party**) receives an Enquiry, Consultation, Complaint or Dispute or notice of an Enquiry, Consultation, Complaint or Dispute from the Ombudsman and the Enquiry, Consultation, Complaint or Dispute relates to an act or omission of the other party to this Agreement (**Second Party**):
 - (1) the First Party must:
 - (A) notify the Second Party as soon as reasonably practicable, setting out the details of the Enquiry, Consultation, Complaint or Dispute (as applicable), including any relevant time frames;
 - (B) consult in advance with, and use its best endeavours to take into account the interest of, the Second Party in preparing

- any response to any Enquiry, Consultation, Complaint or Dispute (as applicable);
 - (C) keep the Second Party informed of the progress of the Enquiry, Consultation, Complaint or Dispute (as applicable); and
 - (D) use its best endeavours to take account of the Second Party's interests in deciding what compensation is payable or in incurring costs because of the Enquiry, Consultation, Complaint or Dispute (as applicable);
- (2) the Second Party must:
- (A) as soon as practicable after receipt of the notification under clause 9.9(a)(1)(A) and in any case within sufficient time to permit the First Party to comply with its obligations to the Ombudsman, supply the First Party all information relevant to the Enquiry, Consultation, Complaint or Dispute (as applicable) which the Second Party would reasonably be expected to have, or have access to, as a User or the Service Provider (as applicable);
 - (B) provide all reasonable assistance that the Second Party could provide having regard to the nature of the Enquiry, Consultation, Complaint or Dispute (as applicable); and
 - (C) permit its employees, agents or sub-contractors to attend and provide information at any meeting, conference or interview convened by the Ombudsman to consider the case being investigated; and
- (3) both the First Party and the Second Party must use their best endeavours to resolve any Enquiry, Consultation, Complaint or Dispute (as applicable) as quickly as practicable in the circumstances provided, however, that neither the First Party nor the Second Party shall be prevented from defending any Enquiry, Consultation, Complaint or Dispute (as applicable).
- (b) Prior to the First Party settling any Consultation, Complaint or Dispute relating to an act or omission of the other party, the First Party must provide not less than 5 Business Days advance written notification to the Second Party of the terms of the proposed settlement and must take into consideration any views expressed by the Second Party.
- (c) If following an Enquiry, Consultation, Complaint or Dispute the First Party is required or agrees to compensate a person, then to the extent that such compensation relates directly to acts or omissions of the Second Party, the Second Party will, within 7 Business Days of receipt of notification from the First Party (which notification shall include a copy of the Ombudsman's Binding Decision if applicable) reimburse the First Party for such part of the compensation required to be paid by the First Party as relates directly to the acts or omissions of the Second Party, including reasonable disbursements incurred by the First Party, including the Ombudsman's case handling charges because of the Enquiry, Consultation, Complaint or Dispute.

- (d) Subject to clause 9.9(b), nothing in this clause prevents the First Party from settling any Enquiry, Consultation, Complaint or Dispute.
- (e) In this clause 9.9, the terms “**Enquiry**”, “**Consultation**”, “**Complaint**” and “**Dispute**” mean any enquiry, question, consultation, discussion, written or verbal expression of dissatisfaction, dispute or disagreement (as applicable) arising from a person in relation to the Customer, the User or the Service Provider which the Ombudsman receives, facilitates, investigates or resolves.

9.10 Assignment of and Changes in Reference Tariffs

- (a) The Service Provider must assign a Reference Tariff to a Distribution Supply Point at which Gas is or may be withdrawn by or in respect of a Customer and notify the User of the Reference Tariff assigned to that relevant Distribution Supply Point in accordance with the Reference Tariff Policy.
- (b) Where the Regulator advises the Service Provider that changes to Reference Tariffs have been verified as compliant by the Regulator, the Service Provider must notify the User of any changes that will occur to Reference Tariffs in accordance with the Reference Tariff Policy.
- (c) If the Service Provider requests, the User must notify each affected Customer of any change in the Reference Tariff that has been verified as compliant by the Regulator in accordance with the Reference Tariff Policy.
- (d) The User must notify the Service Provider within 3 days if it is informed by a Customer of a change in the circumstances, use, consumption, demand characteristics or connection characteristics of the Customer which may result in the Customer no longer satisfying the conditions relating to the Service Provider’s Reference Tariff applying to that Customer.
- (e) The User must advise the Service Provider as soon as is practicable after becoming aware of any change of circumstances, use, consumption, demand characteristics or connection characteristics of any of its Customers which may require the Service Provider to assign another Reference Tariff to the Customer.
- (f) If a Customer requests a User to re-assign the Customer to a different Reference Tariff, the User must refer the request to the Service Provider within 2 Business Days after receiving the request.
- (g) If the User refers a request to the Service Provider for a change in the Reference Tariff assigned to the Distribution Supply Point, the Service Provider must advise the User as soon as practicable either:
 - (1) that the change in the assigned Reference Tariff can occur, when that change will commence and the Charges for the change; or
 - (2) that the change in the assigned Reference Tariff cannot occur, with reasons.

9.11 Theft of Gas

A party must promptly notify the other party if it reasonably believes that a person is committing or has committed theft of Gas from the Distribution System and the other party may be affected by the theft.

9.12 Information for Customers

Subject to clauses 9.1, 9.2, 9.3, 9.4 and 9.5:

- (a) If the User receives a request from a Customer for documentation or information required to be provided by the Service Provider under the Regulatory Instruments:
 - (1) where the request is for a copy of the Distribution System Code or standard document or other standard information approved by the Service Provider, the User may provide such documents and information to the Customer; otherwise
 - (2) where the request is for documentation or information that is not documentation or information of the type described under clause 9.12(a)(1) (**Non Standard Information**), the User must promptly notify the Service Provider of the request.
- (b) If the Service Provider requests the User to do so, the User will respond directly to a Customer's request for Non Standard Information, and the Service Provider shall use its reasonable endeavours to assist the User to respond to the request to the Customer's reasonable satisfaction.
- (c) If the Service Provider elects to respond directly to a Customer's request for Non Standard Information, the Service Provider shall use its reasonable endeavours to respond to the request to the Customer's reasonable satisfaction, and the User shall use its reasonable endeavours to assist the Service Provider to respond.
- (d) If the Service Provider receives a request from a Customer for documentation or information required to be provided by the User under the Regulatory Instruments, the Service Provider will advise the Customer of the User's contact details or pass on any written request to the User as soon as reasonably practicable.
- (e) Where requested by the Service Provider, the User must deliver to a Customer any notification, information or documentation provided by the Service Provider for that Customer which is required to be provided by the Service Provider under this Agreement or the Regulatory Instruments.

10 Force Majeure

10.1 Suspension of Obligations

If a party is unable wholly or in part to perform on time as required any obligation under this Agreement (other than an obligation to pay money) by reason of the occurrence of a Force Majeure Event, that obligation shall be suspended, without

liability, so far as the party's ability to perform is affected by the Force Majeure Event.

10.2 Mitigation of Force Majeure Event

A party affected by a Force Majeure Event shall use all reasonable endeavours to remove the effect of each Force Majeure Event affecting its performance of this Agreement, but nothing in this clause 10.2 requires it to settle any industrial dispute otherwise than as that party in its absolute discretion sees fit.

10.3 Notice

Subject to clause 10.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a Force Majeure Event, it shall as soon as reasonably practicable thereafter give to the other party notice containing full particulars of the Force Majeure Event including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

11 Enforcement of the Service Provider's Rights Against Customers

11.1 Restriction on the Service Provider's enforcement rights

Subject to clauses 11.2(a) and 11.2(c), the Service Provider is not entitled to enforce its rights directly against the Customer (whether under the Deemed Contract or otherwise) without notifying or consulting with the User.

11.2 Consultation prior to Disconnection

- (a) Prior to the Service Provider Disconnecting a Customer's Distribution Supply Point (other than pursuant to a Disconnection Request), the Service Provider and the User must, subject to the Service Provider's and User's obligations under the Regulatory Instruments, use reasonable endeavours to agree;
 - (1) the procedure to be followed in effecting the Disconnection; and
 - (2) the charges to be incurred by the User.
- (b) If the Service Provider and the User fail to agree a procedure or price under clause 11.2(a) within 3 Business Days of the Service Provider first advising the User of its desire to Disconnect the Customer's Distribution Supply Point, the Service Provider may effect the Disconnection and otherwise enforce its rights against the Customer.
- (c) Notwithstanding clauses 11.2(a) and 11.2(b), the Service Provider may take action to Disconnect a Customer's Distribution Supply Point without notifying or consulting with the User where the Disconnection is due to an Emergency, or where relevant Regulatory Instruments require or allow it.

11.3 The Service Provider to indemnify the User

The Service Provider shall indemnify the User against Claims arising from, or incurred by the User as a consequence of, any action taken by the User under this clause 11 to enforce the Service Provider's rights at the request of the Service Provider, except to the extent that the Claim arises from the negligent or reckless act or omission of the User or from any breach or non-observance by the User of this Agreement or the Regulatory Instruments.

11.4 The User to notify Customer and the Service Provider

- (a) The User must notify the Customer of its obligations relating to matters set out in Schedule 3.
- (b) The User must notify the Customer if the User becomes aware that a Customer is, or may, breach any of its obligations under the Regulatory Instruments relating to matters set out in Schedule 3, and if the Customer does not take remedial action, the User must promptly notify the Service Provider of the breach or potential breach.

11.5 Limitation of the User's obligations

Nothing in this clause is intended to affect or impose on the User any of the Service Provider's rights or obligations under the Regulatory Instruments.

12 Term and Termination

12.1 Term

This Agreement commences on the Commencement Date and continues until terminated under this clause 12, or as otherwise agreed by the parties.

12.2 Termination for default or insolvency of the User

- (a) Where:
 - (1) the User defaults in due and punctual payment of any money at the time and in the manner prescribed under this Agreement; or
 - (2) the User fails to provide credit support in accordance with clause 7.8; or
 - (3) the User defaults in the performance of any of its other promises or obligations under this Agreement which would cause material detriment to the Service Provider; or
 - (4) there is an Insolvency Event in relation to the User,then the User is in default and the Service Provider may give written notice of the default to the User stating:
 - (A) that the Service Provider considers that the User is in default; and
 - (B) the cause of the default.

- (b) At the same time as giving any notice to the User under clause 12.2(a), the Service Provider must give a copy of that notice to the Regulator.
- (c) If the User does not remedy the default specified in the notice given under clause 12.2(a) within the following times:
 - (1) in the case of a default described in clause 12.2(a)(2) or clause 12.2(a)(4), 7 days; and
 - (2) in the case of any other default described in clause 12.2(a), 21 days,then the Service Provider may give notice of its intention to terminate this Agreement under clause 12.3.

12.3 Notice of termination

- (a) Where the Service Provider is entitled to give a notice under this clause 12.3, the Service Provider may give written notice to the User stating:
 - (1) that the Service Provider intends to terminate this Agreement; and
 - (2) the cause or causes for terminating this Agreement.
- (b) At the same time as giving any notice to the User under clause 12.3(a), the Service Provider must give a copy of that notice to the Regulator.
- (c) The User must within 7 days of the service of a notice of termination under clause 12.3(a) remedy or remove the cause or causes stated in the notice of termination.
- (d) If within the 7 days referred to in clause 12.3(c) the User does not remedy or remove the cause or causes, the Service Provider may by further notice in writing to the User terminate this Agreement with effect from the date specified in the notice.

12.4 Termination for jeopardising the Distribution System

- (a) If the User:
 - (1) jeopardises the safety or integrity of the Distribution System; and
 - (2) the User is reasonably able to stop any action which jeopardises the safety or integrity of the Distribution System; thenthe Service Provider may serve a written notice on the User:
 - (3) specifying the action which jeopardises the safety or integrity of the Distribution System; and
 - (4) specifying a reasonable period of time within which the User must take all reasonable actions within its control either to:
 - (A) ensure that the action which jeopardises the safety or integrity of the Distribution System is stopped; or
 - (B) ensure that the action which jeopardises the safety or integrity of the Distribution System is not repeated,whichever is applicable.

- (b) If the User has not complied with the notice sent by the Service Provider under clause 12.4(a) within the time specified in that notice, the Service Provider may send a written notice to the User stating that:
 - (1) The Service Provider intends to terminate this Agreement if the breach is not rectified within 7 days; and
 - (2) specifying the reasons for terminating this Agreement.
- (c) If the breach is not rectified by the User within 7 days of receiving the notice specified in clause 12.4(b), the Service Provider may terminate this Agreement by further notice in writing to the User with effect from the date specified in the notice.

12.5 Termination where no Customers

If at any time there is no Customer in respect of whom the User requires Distribution Services under this Agreement, the User may, by notice to the Service Provider, terminate this Agreement.

12.6 Termination by the Service Provider

- (a) The Service Provider may terminate this Agreement on the giving to the User of 90 Business Days' notice, where, under the Regulatory Instruments, the Service Provider ceases to be obliged to provide Distribution Services to the User.
- (b) Should the Service Provider's Distribution Licence be revoked by the Regulator in accordance with clause 3.2 of its Distribution Licence, the Service Provider must by notice to the User, terminate this Agreement with effect from the date that the Distribution Licence is revoked.

12.7 Consequences of Termination

Upon termination or expiration of this Agreement, or replacement of this Agreement with an agreement having similar effect, this Agreement, other than clauses 7.5 (adjustment of invoices), 7.8 (credit support), 12.9 (preservation of rights), 12.10 (distribution services after termination), 13 (liabilities and indemnities), 14 (dispute resolution), 17 (confidentiality) and 18 (law and jurisdiction), is at an end as to its future operation except for the enforcement of any right or claim which arises on, or has arisen before, termination.

12.8 Remedies for Default

Subject to clause 12.7 (consequences of termination), without limiting any other rights of the parties under this Agreement or otherwise at law, if a party has defaulted on the performance of an obligation to pay any amount to the other party under this Agreement, the non-defaulting party may:

- (a) set off, apply or draw on (as the case may be) any credit support provided under clause 7.8 for the amount then due and payable by the defaulting party to the non-defaulting party and any accrued interest; or
- (b) sue the defaulting party for compensation for that default and exercise all available legal and equitable remedies including without limitation, suing

for specific performance, injunctive relief or such other orders as it deems appropriate.

12.9 Preservation of rights

Nothing in clause 12 will operate to exclude, limit or otherwise affect the parties' rights, remedies or powers under statute, common law or in equity and the parties' rights under clause 12 to terminate this Agreement will be without prejudice to the parties' rights to pursue relief by way of damages, injunction or specific performance in respect of a breach of this Agreement. Without limiting the foregoing, the Service Provider shall be entitled to render an invoice to the User for Distribution Services provided and not invoiced up to and including the date of termination, and any such invoice will be payable in accordance with clause 7 (payment and billing for Distribution Services).

12.10 Distribution Services after termination

Notwithstanding the termination of this Agreement, the Service Provider and the User acknowledge that the Service Provider may continue to provide Distribution Services to the User in respect of any Customer until the first to occur of the events specified in clause 4.3 (cessation of provision of Distribution Services). In respect of any such Distribution Services provided after termination of this Agreement, all provisions of this Agreement which relate to the provision of Distribution Services shall continue to apply.

13 Liabilities and indemnities

13.1 No Warranties

- (a) Subject to the *Trade Practices Act 1974* (Cth) and the express provisions of this Agreement, all warranties, terms and conditions in relation to the provision of the Distribution Services, or other product or service which may be otherwise implied by use, statute or otherwise are, to the extent that they may lawfully be, hereby excluded.
- (b) Nothing in clause 13.1(a) excludes the operation of the Guaranteed Service Levels required to be satisfied by the Service Provider under the Regulatory Instruments.

13.2 Liability for supply

Without limiting any other legal liability of a Service Provider, subject to the exclusions provided in sections 213, 233(1) or 233(3) of the GIA and the Gas Safety Act, the Service Provider shall indemnify the User against any

- (a) Claim by a Customer against the User relating to the quality of, or Interruptions to, the Supply by the Service Provider, where the Service Provider would have been liable to that Customer under the Deemed Contract had that Customer claimed against the Service Provider, but only to the extent that the Service Provider would have been liable to that Customer under the Deemed Contract;

- (b) Claim against the User by a Customer for breach by the User of any conditions, warranties or terms implied by Part V of the *Trade Practices Act* 1974 and equivalent State legislation in respect of the Supply by the Service Provider in relation to that Customer:
 - (1) to the extent that the breach has not occurred as a result of the acts or omissions of the User;
 - (2) where the User has by its conduct and in its Retail Contract with that Customer limited or excluded its liability to that Customer for breach of any of the conditions, warranties or terms implied by Part V of the *Trade Practices Act* 1974 and equivalent state legislation into that Retail Contract to the maximum extent permitted by that Act and by the Regulatory Instruments;
 - (3) where the User has, at the Service Provider's request, delivered to the Customer any information published by the Service Provider concerning the inherent limitations in the quality and reliability of the Supply; and
 - (4) provided the User has not agreed to supply to the Customer Distribution Services in excess of the standard of Distribution Services to be supplied by the Service Provider to the User under this Agreement.
- (c) The User must demonstrate to the Service Provider its compliance with its obligations under clauses 13.2(b)(2), 13.2(b)(3) and 13.2(b)(4) on reasonable request of the Service Provider from time to time.
- (d) The liability of the Service Provider under this clause 13.2(b) shall be reduced to the extent that the User has caused or contributed to the Claim.
- (e) A Claim under this clause 13.2(b) will be a Claim for the purposes of clause 13.8(a).

13.3 Non-operation of limitations of liability

- (a) The Service Provider may not rely on clause 13.1(a) of this Agreement to exclude any liability of the Service Provider to the User for any Claim made against the User by a Customer, to the extent that, at the time the User entered into its contract with the Customer, the User was prohibited by law (including the Regulatory Instruments) from including in that contract a provision which excluded the User from liability for that Claim.
- (b) Clause 13.1(a) shall not apply in relation to any Customer to whom the User sells Gas under a contract executed before the Commencement Date to the extent that the contract does not exclude the User from the warranties, terms and conditions described in clause 13.1(a).

13.4 Insurance

Each party must obtain adequate insurance covering any liability which it may incur under this Agreement. A party must provide the other party with proof of the currency of this insurance and details of the adequacy of the insurance cover, on the other party's reasonable request from time to time.

13.5 Indemnity by the User

The User indemnifies the Service Provider against any:

- (a) liability incurred by the Service Provider for damage caused by the User to the Distribution System; and
- (b) penalty, damages, cost, expense or losses resulting due to Customers withdrawing in any hour a Quantity of Gas at any Distribution Supply Point exceeding the Customer's MHQ at that Distribution Supply Point.

13.6 Exemption of liability

The Service Provider is not liable to any penalty or damages for failing to convey Gas through the Distribution System if the failure arises out of any accident or cause beyond the Service Provider's control.

13.7 Preservation of statutory provisions

Despite any other provision of this Agreement, this Agreement:

- (a) does not vary or exclude the operation of sections 213, 233(1) or 233(3), of the GIA or the Gas Safety Act; and
- (b) does not constitute an agreement under section 233(2) of the GIA.

13.8 Third Party Claims and Demands

- (a) A party (the **Indemnified Party**) must:
 - (1) notify the other party (the **Responsible Party**) of any third party Claim, for which it may be indemnified under this clause 13;
 - (2) permit the Responsible Party (entirely at the Responsible Party's expense) to defend or settle that third party Claim as the Responsible Party sees fit, or where the Responsible Party does not elect to defend or settle that third party Claim, to have a watching brief and be kept fully informed by the Indemnified Party of the progress of that third party Claim; and
 - (3) provide the Responsible Party (at the Responsible Party's expense) with such assistance in respect of the third party Claim as the Responsible Party may reasonably request.
- (b) If the Responsible Party elects to take over conduct of a third party Claim as contemplated in clause 13.8(a) the Responsible Party must:
 - (1) consult with and where reasonably possible, take account of the views of the Indemnified Party in relation to the progress of the third party Claim; and
 - (2) if it becomes aware that the Indemnified Party may have some liability in respect of that third party Claim for which the Indemnified Party will not be indemnified under this clause 13, notify the Indemnified Party of that fact, consult with and keep the Indemnified Party informed in respect of the progress of that third party Claim and comply with the provisions of clause 13.8 as if

references in that clause to the Indemnified Party were to the Responsible Party, and vice versa.

- (c) If the Responsible Party elects not to take over the conduct of a third party Claim as contemplated in clause 13.8(a), the Responsible Party must indemnify the Indemnified Party against all costs (including reasonable legal costs) incurred by the Indemnified Party in defending the third party Claim, to the extent that those costs are not recovered from any other person.

13.9 No Admissions

Except where required by law to do so, the Indemnified Party must not, in relation to any Claim of the type referred to in clause 13:

- (a) make any admission or representation prejudicial to the Responsible Party;
- (b) agree to any compromise or settlement; and
- (c) do anything else that may be prejudicial to the Responsible Party, without the Responsible Party's written consent.

14 Dispute resolution

14.1 Disputes

- (a) To the extent that a dispute resolution scheme approved by the Regulator under clause 10 of the Distribution System Code applies to a dispute under this Agreement, the parties agree to apply the dispute resolution procedures approved under that clause 10 to that dispute.
- (b) To the extent that the Access Code applies to a dispute under this Agreement, the parties agree to apply the dispute resolution procedures under the Access Code to that dispute.
- (c) Subject to clause 7.7 (disputed invoices) and clauses 14.1(a) and 14.1(b), any dispute or difference arising between the parties out of or in connection with this Agreement must be resolved in accordance with this clause 14.

14.2 Notice of Dispute

Should any dispute or difference arise between the parties out of or in connection with this Agreement, either party may give written notice of the dispute or difference to the other party. The notice shall state that it is a notice under this clause 14 and shall identify the dispute concerned and the clauses of this Agreement relevant to the dispute.

14.3 Referral to Chief Executive Officers or nominees

If the parties fail to resolve a dispute or difference within 10 Business Days of a notice of dispute being given under clause 14.2, the dispute or difference must be referred for resolution to the respective chief executive officers (or the chief executive officer's nominee) of the parties whose decision shall be binding. Subject to clause 14.6, the parties waive their rights to commence court

proceedings for resolution of the dispute prior to referral of the issue to the chief executive officers (or their nominees) under this clause. If the matter is not resolved within 5 Business Days of such referral either party may then take further action in accordance with clause 14.4 or clause 14.5.

14.4 Mediation

- (a) The parties must comply with clauses 14.2 and 14.3 as a pre-condition to submitting a dispute to mediation in accordance with this clause 14.4.
- (b) If a dispute is not resolved by the chief executive officers (or nominees, as applicable) of the parties as contemplated in clause 14.3 within 5 Business Days of it being referred to those persons, either party may submit the dispute to mediation in accordance with and subject to the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules by giving notice in writing to the other party, that the dispute remains unresolved and will be submitted to mediation.
- (c) The Service Provider and the User will bear their own costs in respect of the mediation.
- (d) If a dispute has been submitted to mediation in accordance with this clause 14.4, subject to clause 14.6, the parties waive their rights to commence court or arbitration proceedings for resolution of the dispute until completion of the mediation.
- (e) Once a party submits a dispute to mediation, the other party must participate in the mediation.

14.5 Arbitration

- (a) The parties must comply with clauses 14.2 and 14.3 as a pre-condition to submitting a dispute to arbitration in accordance with this clause 14.5.
- (b) Subject to clause 2.6 (regulatory relief), if a dispute is not resolved by the chief executive officers (or their nominees, as applicable) of the parties as contemplated in clause 14.3, or if a dispute is not resolved in mediation pursuant to clause 14.4, either party may submit the dispute to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations (Victorian Chapter) (the **Rules**) by giving notice in writing to the other party, in accordance with the Rules, that the dispute remains unresolved and will be submitted to arbitration.
- (c) The Service Provider and the User will bear their own costs in respect of the arbitration.
- (d) Subject to clause 14.5(e), without limiting the generality of clause 17 (confidentiality):
 - (1) any proceedings conducted under clause 14.5(b) will be private and confidential as between the parties;
 - (2) no party may cause or permit any part of proceedings or correspondence under clause 14.5(b) to be published in the press or other media; and

- (3) all such proceedings and correspondence, the documentation and information relevant to such proceedings and correspondence, and the reasons for any award or other determination made under clause 14.5(b), must be kept confidential by the parties and may not be disclosed other than to the extent permitted under clause 17 (confidentiality).
- (e) Nothing in clause 14.5(d) applies to or in relation to or restricts in any way:
 - (1) disclosure of information to an arbitrator or umpire in accordance with clause 14.5(b); or
 - (2) disclosure of the proceedings or correspondence or the reasons for the award or other determination in the course of legal proceedings relating to the arbitration, award or other determination made under clause 14.5(b), or in the course of any other judicial, arbitral or administrative proceedings between the parties.
- (f) Once a party submits a dispute to arbitration, the other party must participate in the arbitration.

14.6 Summary or urgent relief

- (a) Nothing in clause 14 shall prejudice the right of a party to seek urgent injunctive or declaratory relief in a court in respect of any matter arising under this Agreement.

14.7 Customer Disputes

- (a) If any Customer brings any legal proceedings in any court against any party to this Agreement (the **Defendant Party**) and the Defendant Party wishes to make a third party claim (as defined in clause 14.7(b)) against the other party to this Agreement, then the parties agree that the third party claim can be dealt with in the legal proceedings brought by the Customer rather than being dealt with under this clause 14.
- (b) For the purposes of clause 14.7(a), **third party claim** shall mean:
 - (1) any claim by a Defendant Party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
 - (2) any claim by a Defendant Party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Customer; or
 - (3) any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Customer and the Defendant Party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

14.8 Obligations Continuing

Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 14:

- (a) the parties shall, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement to the extent that such obligations are not the subject of that dispute; and
- (b) the parties are not precluded by this clause 14 from exercising their rights of termination in accordance with clause 12 (term and termination).

15 Representations and Warranties

15.1 The User's representations and warranties

- (a) The User represents and warrants to the Service Provider that it holds and will continue to hold a Retail Licence for the duration of this Agreement.
- (b) The User represents and warrants to the Service Provider that it has the right to have Gas delivered to the Transfer Point.

15.2 The Service Provider's representations and warranties

The Service Provider represents and warrants to the User that it holds and will continue to hold a Distribution Licence for the duration of this Agreement.

15.3 Other representations and warranties

Each party to this Agreement represents and warrants that:

- (a) it is incorporated or established and validly existing;
- (b) it has full power, authority and legal right to execute, deliver and perform its obligations under this Agreement;
- (c) execution of and performance of that party's obligations under this Agreement will not amount to a breach of any contractual or other obligation owed by that party to a third party; and
- (d) as at the date of this Agreement an Insolvency Event is not subsisting in respect of that party.

15.4 No reliance

Except as otherwise provided in clause 6.2(f) (disconnection at the request of the User) and this clause 15, each party to this Agreement acknowledges that in entering into this Agreement it has not relied on any representations or warranties about its subject matter.

16 Notices

16.1 Method of Giving Notices

- (a) Unless otherwise agreed by the parties, and subject to clause 16.1(b), a notice, consent, approval or other communication (each a **Notice**) under this Agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (1) delivered;
- (2) sent by pre-paid mail;
- (3) transmitted by facsimile; or
- (4) transmitted electronically,

to that person's address, as specified below:

- (A) if to the Service Provider

Address:

Attention:

Facsimile:

Telephone:

E-mail:

- (B) if to the User:

Address:

Attention:

Facsimile:

Telephone:

E-mail:

- (b) Notices that may be transmitted via the B2B Hub, shall be transmitted in the form required under the Gas Interface Protocol.

16.2 Time of receipt of notice

A Notice given to a person in accordance with this clause 16 is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if prior to 5:00 pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting;
- (c) if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if the transmission report states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day;

- (d) if transmitted electronically, on the day of transmission if the information technology system of the person giving the notice states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day; or
- (e) if transmitted via the B2B Hub, once an electronic acknowledgment of receipt has been received (via the B2B Hub) by the person who transmitted the notice.

16.3 Time of receipt of Invoices

An invoice payable under clause 7 is deemed to have been received when a summary statement of the invoice is delivered as if it were a Notice. The date of deemed receipt of an invoice will be extended by each day that the supporting documentation relating to the invoice is delivered after delivery of the invoice summary statement.

16.4 Confirmation of electronic delivery

Without prejudice to the effectiveness of service of a notice transmitted electronically if a notice is given electronically, other than via the B2B Hub, under any of clauses 7.7(a) (disputed invoices), 7.8 (credit support), 9.9(a)(1)(A), 9.9(b), 9.9(c) (Ombudsman complaints), 9.10 (changes in Reference Tariffs or Reference Services), 12.2 (termination for default or insolvency of User), 12.3 (notice of termination) and 14 (dispute resolution) the notice must also be sent simultaneously by any one of the means listed in clauses 16.1(a)(1) to 16.1(a)(3) (inclusive).

17 Confidentiality

17.1 General obligation

Subject to clauses 7.8 (credit support), 17.3 (conditions on disclosure) and 17.4 (notice to other party) and any confidentiality requirement under the Regulatory Instruments, this Agreement and all information exchanged between the parties under this Agreement or during the negotiations preceding the Commencement Date is confidential to the party who provided it and may not be disclosed to any person except:

- (a) by a party, to:
 - (1) its employees and contractors, and the employees and contractors of any of its related bodies corporate, within the meaning of the Corporations Act, requiring the information for the purposes of this Agreement (or any transactions contemplated by it); and
 - (2) its legal and other professional advisers, requiring the information for the purposes of this Agreement (or any transactions contemplated by it) or for the purpose of advising that party in relation thereto;
- (b) with the consent of the party who provided the information;

- (c) if the information is at the time lawfully in the possession of the proposed recipient of the information through sources other than the other party;
- (d) (1) to the extent required by law or any Regulatory Instrument or by a lawful requirement of any Authority having jurisdiction over a party (whether pursuant to a licence held by that party or otherwise); or
 - (2) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party;
- (e) if required in connection with legal proceedings or other dispute resolution relating to this Agreement or for the purpose of advising a party in relation thereto;
- (f) if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or a person to whom it has disclosed the information;
- (g) if the information relates to a Customer, in addition to the circumstances described in paragraphs (a) to (f) of this clause 17.1, the party may disclose that information to any person if the party has received the explicit informed consent in writing of the Customer to do so;
- (h) if disclosure is necessary to ensure the stability of the Distribution System or to protect the safety of personnel or equipment;
- (i) pursuant to, and in accordance with, clauses 8 (conditions on disclosure) and 9 (communications regarding Customers and system data); or
- (j) to confirm the existence of a haulage agreement between the parties.

For the purposes of this Agreement, information is not generally and publicly available merely because it is known to the Regulator, VENCORP, another service provider, a producer or another User.

17.2 Representatives to keep information confidential

Subject to clauses 17.3 (conditions on disclosure) and 17.4 (notice to other party), each party shall procure that its employees and contractors, and the employees and contractors of any of its related bodies corporate, its legal and other professional advisers do not disclose (otherwise than to the party) any information concerning the other party or a Customer obtained under this Agreement except in the circumstances specified in clause 17.1, or use the information other than for the purpose for which it was disclosed in accordance with this Agreement.

17.3 Conditions on disclosure

- (a) In the case of a disclosure under clause 17.1(d) or 17.1(e), the party proposing to make the disclosure shall inform the proposed recipient of the confidentiality of the information and the party proposing to disclose shall take all reasonable precautions to ensure that the proposed recipient keeps the information confidential.
- (b) If a party is permitted to disclose any confidential information in accordance with this clause 17, the party proposing to disclose shall use reasonable

endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

17.4 Notice to other Party

Each party, shall:

- (a) promptly inform the other party of any request received by that party from any person referred to in clause 17.1(a)(1) to disclose information under that clause;
- (b) inform the other party as soon as reasonably practicable after information is disclosed by the party under clause 17.1(a)(1); and
- (c) where possible, not disclose any information under clause 17.1(d)(2) or 17.1(e) unless the other party has been informed of the proposed disclosure.

18 Law and jurisdiction

18.1 Governing Law

This Agreement is governed by the law in force in the State of Victoria.

18.2 Submission to Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

19 General

19.1 Waiver

- (a) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the party to be bound by the waiver.

19.2 Amendment

- (a) This Agreement may only be amended or supplemented in writing, executed by the parties in the same manner as the parties executed this Agreement.
- (b) Where the Regulator approves an amendment to the Terms and Conditions in response to a revision submitted by the Service Provider, the parties agree to amend this Agreement in the same way.

19.3 Attorneys

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Agreement.

19.4 Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

19.5 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

19.6 Further Assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

19.7 Entire Agreement

This Agreement is the entire agreement of the parties on the subject matter of this Agreement.

19.8 Assignment

- (a) Subject to clause 19.8(b) neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- (b) The Service Provider may assign this Agreement to a person who is the licensee under a Distribution Licence for all or any part of the Distribution System.

19.9 Remedies Cumulative

The rights and remedies provided in this Agreement do not exclude any rights or remedies provided by law.

19.10 Review of Agreement

The parties acknowledge that the Regulatory Instruments to which this Agreement is subject may be the subject of ongoing changes and that those changes may in turn require amendments to be made to this Agreement. The parties agree to negotiate in good faith any amendments to this Agreement that may be reasonably

required as a consequence of any changes to the Regulatory Instruments or in light of commercial experience.

19.11 No Agency or partnership

Nothing in this Agreement constitutes any agency, partnership or joint venture relationship between the parties.

19.12 Restriction on authority

Neither party shall make or give any representation or warranty in relation to the other party or agree to any obligation on behalf of the other party, unless the representation, warranty or obligation has been expressly approved in advance in writing by the other party.

19.13 Costs

- (a) Each party will bear its own legal and other costs in relation to the negotiation and documentation of their Agreement.
- (b) Each party will bear half of any stamp duty payable in respect of this Agreement.

19.14 Schedules

The Schedules form part of this Agreement and in the event of inconsistency, the Schedules will prevail over the other terms of this Agreement.

Schedule 1 – Approved Form of Unconditional Undertaking

(Clause 7.8)

At the request of

..... ACN (“the User”)

and in consideration of

..... ACN (“the Service Provider”)

accepting this undertaking in respect of the contract for the provision of use of Distribution Services and other related services (“the Distribution Reference Services Terms and Conditions Agreement”)

..... ACN (“the Financial Institution”)

unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Service Provider to a maximum aggregate sum of

\$.....

(.....).

The undertaking is to continue until notification has been received from the Service Provider that the sum is no longer required by the Service Provider or until this undertaking is returned to the Financial Institution or until payment to the Service Provider by the Financial Institution of the whole of the sum or such part as the Service Provider may require.

Should the Financial Institution be notified in writing, purporting to be signed by for and on behalf of the Service Provider that the Service Provider desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Service Provider forthwith without reference to the User and notwithstanding any notice given by the User not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Service Provider the sum of

\$.....

(.....)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Service Provider and thereupon the liability of the Financial Institution hereunder shall immediately cease.

DATED this day of 20.....

Schedule 2 – Services other than Reference Services

Services other than Reference Services shall include:

- *Tariff D Connection*
- *After hours Connection and Reconnection for Tariff V customers*

Schedule 3 – Matters to be notified to Customer by User

(Clause 11.4)

Customer obligations under the Regulatory Instruments relating to:

- (1) Prohibition against allowing Gas Supplied by the Service Provider to the Customer's supply address to be used at another Customer's supply address;
- (2) Prohibition against taking at the Customer's supply address Gas Supplied to another supply address;
- (3) Prohibition against Supplying natural gas to any other person unless permitted by Regulatory Instruments or agreed by the Service Provider;
- (4) Prohibition against interfering or tampering with, or permitting interference or tampering with, the Service Provider's Distribution System or any Metering Installation at the Customer's supply address;
- (5) Prohibition against allowing Gas Supplied to a Residential Customer to be used for non-domestic purposes other than for home office purposes;
- (6) Prohibition against allowing Gas Supplied under a specific purpose tariff to be used for another purpose;
- (7) Prohibition against bypassing or allowing Gas Supplied to the Customer's supply address to bypass the Meter;
- (8) Prohibition against allowing persons who are not licensed gas installers to perform any work on natural gas installations;
- (9) Maintenance of the Gas Installation or Service Provider's equipment at the Customer's supply address;
- (10) Prohibition against the use of Gas Supplied in a manner that may:
 - (A) interfere with the Service Provider's Distribution System or with Supply to any other Gas Installation, or
 - (B) cause damage or interference to any third party;
- (11) Protection of the Service Provider's equipment at the Customer's supply address from damage or interference
- (12) Informing the Service Provider of changes:
 - (A) to the major purpose for usage of Gas at the Customer's supply address,
 - (B) affecting access to the Customer's Metering Installation, and

- (C) or proposed changes to the Customer's Gas Installation which may affect the quality or safety of the Supply of Gas to the Customer's supply address or any other person;
- (13) Informing the Service Provider about any Gas leak or other problem with the Service Provider's Distribution System;
- (14) Access rights for Connection or Disconnection;
- (15) Access rights for inspection or testing of Gas Installations or Metering Installations;
- (16) Access rights for undertaking inspection, repairs, testing or maintenance of the Distribution System;
- (17) Access rights for collection of Metering Data;
- (18) Service Provider's Interruption or Curtailment rights; and
- (19) Any matter that may threaten:
 - (A) the health or safety of any person;
 - (B) damage to the property;
 - (C) the integrity or safety of the Distribution System, or
 - (D) Supply to any other Gas Installation.