



**National Third Party Access Code  
for Natural Gas Pipeline Systems:**

**Access Arrangement by  
TXU Networks (Gas) Pty Ltd  
for its Distribution System**

**1 January 2003**

# **ACCESS ARRANGEMENT BY TXU NETWORKS (GAS) PTY LTD FOR ITS DISTRIBUTION SYSTEM**

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# ACCESS ARRANGEMENT BY TXU NETWORKS (GAS) PTY LTD FOR ITS DISTRIBUTION SYSTEM

## 1 Introduction

### 1.1 Purpose of this document

This revision, to the Access Arrangement first approved by the Regulator on 17 December 1998 ("Access Arrangement"), was submitted by TXU Networks (Gas) Pty Ltd ACN 086 015 036 ("the Service Provider") in accordance with section 2 of the National Third Party Access Code for Natural Gas Pipeline Systems ("Access Code"). The Access Arrangement as revised, describes the terms and conditions on which the Service Provider will grant access to its Distribution System.

### 1.2 Composition of Access Arrangement

This Access Arrangement as revised comprises this document together with the plans of the Distribution System lodged with the Regulator. This Access Arrangement is in three parts-

**Part A** -*this document including Part A Schedule 1 Ancillary Reference Services & Part A Schedule 2 Access Arrangement Glossary;*

**Part B** -*Reference Tariffs & Reference Tariff Policy including Part B Schedule 1 Initial Haulage Reference Tariffs & Part B Schedule 2 Initial Ancillary Reference Tariffs;* and

**Part C** -*Terms & Conditions.*

Access Arrangement Information for the revisions to this Access Arrangement was submitted together with the revisions in accordance with section 2.28 of the Access Code.

### 1.3 Effective Date

The Access Arrangement first came into effect on 1 January 1999. This Access Arrangement as revised was first submitted to the Regulator on 28 March 2002. On 3 October 2002 the Regulator issued its final decision under section 2.38 of the Access Code on those revisions to this Access Arrangement. This Access Arrangement as revised was subsequently submitted to the Regulator in accordance with section 2.40 of the Access Code on 15 November 2002 and was approved in accordance with section 2.41 of the Access Code. The Access Arrangement as revised will come into effect from 1 January 2003 or otherwise in accordance with section 2.48 of the Access Code.

## 2 Definitions and Interpretation

In this Access Arrangement and supporting documents, where a word or phrase is capitalised it has:

- (a) the definition given to that word or phrase in the Access Code (unless the word or phrase is also defined in the Glossary which is contained in Schedule 2 of Part A of this Access Arrangement, in which case the word or phrase has the definition given to that word or phrase in the Glossary); or
- (b) if the word or phrase is not defined in the Access Code, the definition given to that word or phrase in the Glossary;

unless the context otherwise requires.

## 3 Contact Details

The contact officer for further details on this Access Arrangement is:

The General Manager  
TXU Networks (Gas) Pty Ltd  
Level 35, 385 Bourke Street  
MELBOURNE VIC 3000

Telephone: (03) 8628 1004 Facsimile: (03) 8628 1388

## **4 Prior contractual rights**

No provision in this Access Arrangement as revised deprives any person of a contractual right which was in existence prior to 3 November 1997 being the date on which this Access Arrangement was first submitted to the Regulator or deprives any person of a contractual right which was in existence prior to 28 March 2002 being the date on which the proposed revisions to this Access Arrangement were first submitted to the Regulator.

## **5 Elements set out Section 3 of the Access Code**

This section, in compliance with section 2.29 of the Access Code, includes the elements set out in sections 3.1 to 3.20 of the Access Code which are applicable to the Service Provider.

### **5.1 Services Policy**

5.1.1 The Service Provider will make Haulage Reference Services and Ancillary Reference Services, available to Users or Prospective Users of the Distribution System at the Reference Tariffs and in accordance with the Reference Tariff Policy set out in section 5.2 below. The Reference Services are likely to be sought by a significant part of the market.

The Tariff V Haulage Reference Service is the Haulage Reference Service where the withdrawal of Gas is at a Tariff V Distribution Supply Point.

The Tariff M Haulage Reference Service is the Haulage Reference Service where the withdrawal of Gas is at a Tariff M Distribution Supply Point but does not include Tariff M Connection.

The Tariff D Haulage Reference Service is the Haulage Reference Service where the withdrawal of Gas is at a Tariff D Distribution Supply Point but does not include Tariff D Connection.

The Ancillary Reference Services are those services as described in Schedule 1 of Part A.

5.1.2 The Service Provider will provide the Reference Services in accordance with the Regulatory Instruments.

5.1.3 The Service Provider will make Services other than Reference Services available to Users or Prospective Users as agreed or as determined in accordance with section 6 of the Access Code.

Services other than Reference Services include Tariff D Connection and Tariff M Connection.

### **5.2 Reference Tariffs and Reference Tariff Policy**

Reference Tariffs and the Reference Tariff Policy applicable to this Access Arrangement are set out in Part B.

#### **5.2.1 Reference Tariffs**

Section 1 of Part B describes the assignment of Reference Tariffs to Distribution Supply Points. The existing Haulage Reference Tariffs as at 31 December 2002 for Haulage Reference Services are set out in Schedule 1 of Part B, which will be amended in accordance with the Tariff Control Formula described below. The initial Ancillary Reference Tariffs applicable from 1 January 2003 for Ancillary Reference Services are set out in Schedule 2 of Part B.

#### **5.2.2 Haulage Reference Tariff Control Formula**

Section 3 of Part B describes the formula to be applied in varying, withdrawing or introducing new Haulage Reference Tariffs.

### 5.2.3 Processing changes to Reference Tariffs

Section 4 of Part B describes the processes for varying, withdrawing or introducing new Reference Tariffs.

### 5.2.4 Calculation of Charges for Haulage Reference Tariffs

Section 5 of Part B describes the calculation of Charges from the application of Haulage Reference Tariffs.

### 5.2.5 Reference Tariff Policy

Section 6 of Part B sets out the Reference Tariff Policy describing the principles used to determine a Reference Tariff. The policy includes:

- 6.1 CPI-X Price path
- 6.2 New Facilities Investment
- 6.3 Speculative Investment Fund

### 5.2.6 Fixed Principles

Section 7 of Part B describes a range of Fixed Principles that are to apply to the Access Arrangement. Section 7.1 sets out General Fixed Principles while section 7.2 describes the Efficiency Incentive and Carry-over Mechanism.

### 5.2.7 Change in Tax Pass-Through

Section 8 of Part B describes the procedures to apply as a result of a new Relevant Tax or a change in a Relevant Tax Section.

## 5.3 Terms and Conditions

5.3.1 The terms and conditions on which the Service Provider will supply each Reference Service are set out in Part C.

5.3.2 The terms and conditions on which the Service Provider will supply each Service other than a Reference Service are set out in Part C as a relevant matter in accordance with section 2.29 of the Access Code.

## 5.4 Capacity Management Policy

5.4.1 The Distribution System is a Market Carriage Pipeline.

## 5.5 Queuing Policy

### 5.5.1 Applicability

This Queuing Policy is applicable to requests for new Connections or modifications to existing Connections and is subject to the Extensions and Expansions Policy.

### 5.5.2 Procedure

(a) The Service Provider will administer requests by Prospective Users for Connection or a request by a User or Prospective User for a modification to an existing Connection in the following manner:

- (1) The Service Provider will administer requests in the order they are received (on a “first come, first served” basis), including advising the Prospective User as to the charge (if any) for undertaking or modifying the Connection; and
- (2) The Service Provider may amend the charge first specified pursuant to clause 5.5.2(a)(1) prior to the Connection being made, if additional requests for undertaking or modifying a Connection are received and those additional requests allow the recovery of the charge over a larger or different group of Prospective Users or Users.

## 5.6 Extensions/Expansions Policy

### 5.6.1 Coverage

- (a) Subject to clauses 5.6.1(b), an Extension or Expansion to the Distribution System will be covered by this Access Arrangement where that Extension or Expansion is owned by the Service Provider.
- (b) An Extension will not be covered by this Access Arrangement:
  - 1. where the Extension is considered by the Service Provider to be a significant Extension and the Service Provider gives written notice to the Regulator before the Extension comes into service that the Extension will not form part of this Access Arrangement; or
  - 2. where the Extension is not a significant Extension, and the Regulator agrees, unless the Extension was included in the calculation of the Reference Tariffs.
- (c) For the purposes of clause 5.6.1(b), a significant Extension is an Extension which will service a minimum of 5,000 customers.

### 5.6.2 Effect of Extension/Expansion on Reference Tariffs

- (a) This clause 5.6.2 describes how Users will be charged for a Reference Service where the provision of the Reference Service requires New Facilities Investment constituted by an Extension or Expansion covered by this Access Arrangement (such Users are Incremental Users). Where New Facilities Investment is required to provide a Service other than a Reference Service, the Service Provider will negotiate the charge in good faith with the relevant Users (subject to the relevant provisions of the Access Code).
- (b) Where New Facilities Investment passes the Economic Feasibility Test, Incremental Users will be charged at the prevailing Reference Tariffs and as permitted by section 8.15 of the Access Code, the Service Provider will seek to include the New Facilities Investment in the Capital Base at the next review of the Access Arrangement. The Service Provider may, at its discretion, seek the Regulator's agreement prior to the next review of the Access Arrangement that the New Facilities Investment passes the requirements of section 8.16 of the Access Code.
- (c) Where New Facilities Investment does not pass the Economic Feasibility Test:
  - (1) the Service Provider will seek to include the relevant part of the New Facilities Investment in the Capital Base at the next review of the Access Arrangement. The Service Provider may, at its discretion, seek the Regulator's agreement prior to the next review of the Access Arrangement that the relevant part of the New Facilities Investment passes the requirements of section 8.16 of the Access Code (as permitted by section 8.21 of the Access Code);
  - (2) the remaining New Facilities Investment may be (subject to the Access Code):
    - (A) recovered by charging Incremental Users according to the prevailing Reference Tariffs plus a Surcharge approved by the Regulator under section 8.25 of the Access Code;
    - (B) included in a Speculative Investment Fund under the Reference Tariff Policy in Part B, (in which case Incremental Users would be charged according to the prevailing Reference Tariffs); or
    - (C) recovered by a combination of these approaches (in which case Incremental Users would be charged according to the prevailing Reference Tariffs plus a Surcharge approved by the Regulator under section 8.25 of the Access Code); and

- (3) the Service Provider will notify the relevant Users of its choice between these approaches prior to the relevant New Facility entering in to service.
- (d) The Service Provider may, at its discretion, negotiate a Capital Contribution with a specific User or Users in respect of a New Facility, in which case, the charge for the User or Users shall be as agreed between the parties (for the purposes of determining Reference Tariffs, this New Facilities Investment shall be treated as if it were funded by the Service Provider and the User or Users shall be assumed to be paying a Surcharge (if any) that would be approved by the Regulator under section 8.25 of the Access Code).
- (e) Notwithstanding clauses 5.6.2(c) to 5.6.2(d) above, where the Service Provider considers that some or all of the *New Facilities Investment* that does not pass the *Economic Feasibility Test* may pass the *System Wide Benefits Test*, the Service Provider may propose revisions to the Access Arrangement which have the effect of raising *Reference Tariffs* immediately (and thus permitting the part of the *New Facilities Investment* that would pass the *System Wide Benefits Test* to be included in the *Capital Base* and recovered through *Reference Tariffs* immediately). These revisions will be proposed and considered according to the process in section 2 of the Access Code and, if accepted, would amount to a change to this Access Arrangement.

### 5.6.3 Unreticulated Townships

The Service Provider's policy for Extensions to unreticulated townships where the Extension was not included in the calculation of the Reference Tariffs or the subject of a competitive tender is as follows:

- 1) any proposal to reticulate a township, or request to the Service Provider to consider reticulation of a township, will undergo an initial feasibility assessment.
- 2) If the feasibility assessment indicates that the Extension may be economic, the Service Provider will conduct further investigation that may include proposals for the regulatory treatment of the Extension.
- 3) The Service Provider may approach the Regulator with details of the proposed Extension with a view to agreeing on the regulatory treatment of the Extension.
- 4) Where the agreed regulatory treatment is that the Extension is, if it proceeds, to be covered by this Access Arrangement:
  - the Service Provider will be permitted to recover the Net Financing Cost incurred during the Access Arrangement Period in which the Extension is commenced in Reference Tariffs to take effect in subsequent Access Arrangement Periods;
  - the Capital Base for the Access Arrangement Period commencing immediately after the commencement of the Extension will be increased by the amount of the New Facilities Investment or Recoverable Portion;
  - the New Facilities Investment will not reduce the carry-over of cost-related efficiencies from the Access Arrangement Period in which the Extension is commenced to any subsequent Access Arrangement Period;

provided the Extension:

- passes the Economic Feasibility Test; and
- would otherwise be uneconomic for the Service Provider if commenced prior to being included in the calculation of Reference Tariffs in future Access Periods.

- 5) Once agreement has been reached concerning the regulatory arrangement, the Service Provider will undertake a detailed feasibility assessment. Should the outcome of this assessment establish or confirm that the Extension is economic (including the consideration of any Capital Contributions or Surcharges) under the agreed regulatory arrangement, then the Extension will progress. Otherwise, further discussions will be held with the Regulator. If, in light of the detailed economic assessment and available regulatory arrangements, the Extension is not economic, the Extension will not proceed.
- 6) Where the Extension is deemed uneconomic, the Service Provider may review the Extension should material changes occur.
- 7) The Service Provider's funding of Extensions to unreticulated townships is, in accordance with 3.16(c) of the Access Code, conditional upon (among other things) the Service Provider having sufficient funds available on commercial terms acceptable to the Service Provider.

## **5.7 Review and expiry of Access Arrangement**

5.7.1 The Revisions Submission Date will be 30 March 2007.

5.7.2 The Revisions Commencement Date will be 1 January 2008.

## **Schedule 1 of Part A of Access Arrangement by TXU Networks (Gas) Pty Ltd**

### **ANCILLARY REFERENCE SERVICES**

In relation to Distribution Supply Points at which Gas is withdrawn by or in respect of a Residential Customer:

a) Meter and Gas Installation Test –

- (i) on-site testing; or
- (ii) at NATA accredited laboratory.

b) Disconnection by the carrying out of work being–

- (i) removal of the meter at a Metering Installation, or
- (ii) the use of locks or plugs at a Metering Installation, or
- (iii) excavating and shutting the service tee in the street,

in order to prevent the withdrawal of Gas at the Distribution Supply Point in response to:

- The direction in writing of a User
- A request from a Customer
- The Customer obtaining or having obtained Supply of Gas at a Distribution Supply Point otherwise than in accordance with the Distribution System Code or any regulatory requirement.

c) Turn on and Reconnection-

- (i) between the hours of 9.00am and 5pm on Business Days, or
- (ii) at any other time.



**Schedule 2 of Part A of Access Arrangement by TXU Networks (Gas) Pty Ltd**

**ACCESS ARRANGEMENT GLOSSARY**

**1 January 2003**

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## Definitions and Interpretation

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### S 2.1 Definitions

**Access Act** means the Gas Pipelines Access (Victoria) Act 1998;

**Access Arrangement** means this arrangement for access for third parties to the Distribution System lodged by the Service Provider with, and approved by, the Regulator under the Access Act and Access Code;

**Actual Meter Reading** has the same meaning as in the Retail Gas Market Rules;

**Additional Charge** means any charge imposed on the Service Provider by an Authority which is referable to the User or a Customer, and where such charge is referable to a class of Retailers or Customers rather than an individual Retailer or Customer, that charge will be allocated between the Retailers or Customers (as the case may be) on a fair and reasonable basis by the Service Provider, provided that the Service Provider is not prohibited from passing through that charge to Retailers or Customers under the Regulatory Instruments;

**Access Code** means the National Third Party Access Code for Natural Gas Pipeline Systems set out in Schedule 2 to the Gas Pipelines Access (South Australia) Act 1997;

**Agreement** means an agreement executed or to be executed by the Service Provider and a User on the Terms and Conditions or an agreement in respect of the terms and conditions for the provision of Services, as negotiated between the Service Provider and a User ;

**Ancillary Reference Service** means a Reference Service as set out in Schedule 1 of Part A of this Access Arrangement;

**Ancillary Reference Tariff** means the tariff that applies to an Ancillary Reference Service;

**Annual MHQ** means the greatest Quantity of Gas (in GJ) withdrawn at a Distribution Supply Point in any hour in a Calendar Year;

**Authority** means any:

- (a) government or regulatory department, statutory corporation (including the Regulator and VENCORP), body, instrumentality, minister, agency or other authority; or
- (b) body which is the successor to the administrative responsibilities of that department, statutory corporation, body, instrumentality, minister, agency or authority.

**B2B Hub** means the electronic messaging system operated by VENCORP for the Gas industry in Victoria or any electronic messaging system which replaces that system;

**Bank Bill Rate** means the bank bill standard rate defined to be equal to:

- (a) the “bid rate” (rounded up to four decimal places) quoted on the page entitled “BBSY” of the Reuters Monitor System at or about 10:00 am on any Business Day for bank accepted bills of exchange which have a tenor of 30 days; or

- (b) if the Bank Bill Rate cannot be determined in accordance with paragraph (a) of this definition, the rate percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the current bill market, and in default of agreement within 14 days, the rate nominated by the Service Provider and approved by the Regulator as an appropriate rate;

**Bank Guarantee** means an irrevocable bank guarantee from a trading bank conducting business in Australia in favour of the Service Provider substantially in the form set out in Schedule 1 of the Terms and Conditions, for the Required Bank Guarantee Amount;

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

**Calendar Year** means a twelve month period commencing on 1 January;

**Certificate of Compliance** means a notice of installation, or completion of Gas Installation work, from a Gas Installer;

**Change in Taxes Event** means a variation, withdrawal or introduction of a Relevant Tax, or a change in the way or rate at which a Relevant Tax is calculated, which has a material impact on the costs to the Service Provider of providing the Reference Services.

**Charges** means the charges payable by the User to the Service Provider under clause 7 of the Terms and Conditions and includes:

- (a) the amount determined from the application of the Reference Tariffs in respect of the Reference Services provided to the User in respect of its Customers or such other amount as agreed in writing;
- (b) where the User is a gas retailer within the meaning of clause 12(9) and 13(10) of the Order in Council made under section 68 of GIA on 15 November 2001 (Gazette No. G. 46 at page 2865), the prices, fees and charges notified by the Service Provider under clauses 12 and 13 of that Order;
- (c) where Services other than Reference Services are provided by the Service Provider as set out in Schedule 2 of the Terms and Conditions, the Non-Reference Service Charge;
- (d) Connection Charges; and
- (e) Additional Charges;

**Claim** means any loss, liability, damage, claim, action, dispute, proceeding, loss, liability, demand, cost or expense whether arising in contract, tort (including negligence), equity or otherwise in respect of an event occurring after the Commencement Date;

**Class A Inquiry** means an inquiry identified as an “A” inquiry in the Gas Leak and Emergency Calls Protocol and includes an inquiry relating to a Gas leak or Emergency;

**Class B Inquiry** means an inquiry identified as a “B” inquiry in the Gas Leak and Emergency Calls Protocol and includes an inquiry relating to a Gas leak or Emergency;

**Class C Inquiry** means an inquiry identified as a “C” inquiry in the Gas Leaks and Emergency Calls Protocol and includes an unplanned Interruption;

**Commencement Date** means in respect of an Agreement, the date of execution of the Agreement;

**Confidential Information** means all:

- (a) know-how, trade secrets, ideas, concepts, technical and operational information owned or used by the parties to an Agreement;
- (b) information concerning the affairs or property of or any business, property or transaction in which the parties to an Agreement may be or may have been concerned or interested;
- (c) details of any Customers of the User; and
- (d) any other information which is to be treated in a confidential manner under a Regulatory Instrument with which a party to an Agreement is required to comply;

**Connection** means the provision of a New Facility in relation to, and the joining of a Gas Installation to a Distribution Supply Point to allow, the flow of Gas to the Gas Installation through the Distribution Supply Point (but does not include Turn On);

**Connection Charge** means the charge for Connection (if any) determined pursuant to the Access Arrangement or the Distribution System Code (excluding a Tariff D Connection Charge and a Tariff M Connection Charge);

**Connection Request** means a request in a form reasonably required by the Service Provider given by the User to the Service Provider requesting Connection or Turn On;

**Controller** has the same meaning as defined in the Corporations Act;

**Corporations Act** means the Corporations Act 2001;

**CPI** for a particular Calendar Year is:

- (a) the consumer price index: all groups index for the eight state capitals as published by the Australian Bureau of Statistics for the September quarter immediately preceding the start of the relevant Calendar Year

**divided by**

- (b) the consumer price index: all groups for the eight state capitals as published by the Australian Bureau of Statistics for the September quarter immediately preceding the September quarter referred to in paragraph (a)

**minus one;**

**Curtail** means to temporarily reduce the injection or withdrawal of Gas to or from the Distribution System;

**Customer** means a customer of the User at a Distribution Supply Point;

**Customer MHQ** means the maximum hourly Quantity of Gas, expressed in gigajoules per hour (GJ/hour), for delivery to a Tariff D Distribution Supply Point or a Tariff M Distribution Supply Point initially nominated by the User to the Service Provider and agreed to by the Service Provider in writing and then as agreed from time to time between the parties to an Agreement;

**Default Rate** means on any date the rate percent per annum which is the aggregate of 2% per annum and the Bank Bill Rate;

**Deemed Contract** means a contract between the Service Provider and a Customer under section 48 of the GIA;

**Disconnection** means the carrying out of work to prevent the withdrawal of Gas at a Distribution Supply Point;

**Disconnection Request** means a request in a form reasonably required by the Service Provider given by the User to the Service Provider requesting the Disconnection and which must include the reason for requesting the Disconnection and certification that the User is entitled to Disconnect the Customer;

**Distribution Area** has the same meaning as defined in Schedule 2 of the Distribution Licence;

**Distribution Demand Tariff Component** means a Haulage Reference Tariff Component of Haulage Reference Tariff D or of a Haulage Reference Tariff M, as set out in clause 5(3) of the Reference Tariff Policy (as varied from time to time) expressed in \$/GJ for Annual MHQ;

**Distribution Fixed Tariff Component** means a Haulage Reference Tariff Component of Haulage Reference Tariff V, as set out in clause 5(1) of the Reference Tariff Policy (as varied from time to time) and is expressed in \$/day;

**Distribution Licence** means the licence of that name to provide services by means of a distribution pipeline granted to the Service Provider by the Regulator under the GIA;

**Distribution Pipeline** has the same meaning as in the GIA;

**Distribution Services** means:

- (a) Reference Services in relation to Customers;
- (b) where the User is a gas retailer within the meaning of clauses 12(9) and 13(10) of the Order-in-Council made under section 68 of the Gas Industry Act 2001 on 15 November 2001 (Gazette No. G 46 at page 2865), the activities and tasks set out in Schedule 1 of that Order;
- (c) such Services other than Reference Services that the Service Provider has agreed to provide to the User as set out in Schedule 2 of the Terms and Conditions (including a Tariff D Connection and a Tariff M Connection); and
- (d) Connection (other than a Tariff D Connection and a Tariff M Connection);

**Distribution Supply Point** means a point on the Distribution System at which Gas is capable of being withdrawn from the Distribution System for delivery to a Customer, which is normally located at the outlet of a Meter and includes a “supply point” and an “ancillary supply point” as defined in the Gas Industry (Residual Provisions) Act 1994 (Victoria) in relation to a Distribution System;

**Distribution System** means that part of the Gas Distribution System which is more particularly described in the plan of the Distribution System lodged with the Regulator and any Extension or Expansion of the Distribution System that is covered by the Access Arrangement;

**Distribution System Code** means the Victorian Gas Distribution System Code issued by the Regulator, compliance with which is a condition of the Distribution Licence;

**Distribution Volume Tariff Component** means a Reference Tariff Component of Haulage Reference Tariff V, as set out in clause 5(2) of the Reference Tariff Policy (as varied from time to time), expressed in \$/GJ for GJs of Gas withdrawn in the Peak Period or in the Off-Peak Period ;

**Economic Feasibility Test** means the test that determines whether the Anticipated Incremental Revenue generated by the New Facility exceeds the New Facilities Investment;

**Emergency** has the same meaning as in the Distribution System Code;

**ESC Act** means the Essential Services Commission Act 2001 (Victoria);

**Estimated Meter Reading** has the same meaning as in the Retail Gas Market Rules;

**Expansion** has the same meaning as in the Distribution System Code;

**Extension** means extending a Pipeline to enlarge the area to which Gas may be, or is, supplied, including (for the avoidance of doubt) extensions which connect together pre-existing pipeline systems;

**First Access Arrangement Period** means the period commencing on 1 January 1998 and ending on 31 December 2002;

**Force Majeure Event** has the same meaning as force majeure in the Distribution System Code;

**FRC (Full Retail Contestability)** means the date on which there ceases to be in effect an Order in Council made under section 35 of the GIA;

**FRO (Financially Responsible Organisation)** has the same meaning as in the Retail Gas Market Rules;

**Gas** has the same meaning as in the Distribution System Code;

**Gas Day** has the same meaning as in the MSO Rules;

**Gas Distribution Company** has the same meaning as in the GIA;

**Gas Distribution System** has the same meaning as in the GIA;

**Gas Installation** has the same meaning as in the Distribution System Code;

**Gas Installer** has the same meaning as in the Distribution System Code;

**Gas Interface Protocol** has the same meaning as in the Retail Gas Market Rules;

**Gas Leaks and Emergencies Number** means the Service Provider's contact telephone number as stated in clause 9.1(d) of the Agreement;

**Gas Leaks and Emergencies Calls Protocol** means the Gas Leak and Emergency Calls, "A" to "C" Priority, version 1.2 as approved by the Victorian Gas Retail Rules Committee;

**Gas Retail Code** means the code of that name being a determination of the Regulator under section 43 of the GIA;

**GIA** means the Gas Industry Act 2001 (Victoria), as amended from time to time;

**GJ** means Gigajoule. 1 GJ is equal to one thousand million Joules (1,000,000,000J);

**Glossary** means this glossary;

**GST** means goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST law;

**GST law** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Guaranteed Service Levels** or **GSLs** means the standard of service that must be provided by the Service Provider in respect of certain Distribution Services as set out in a Regulatory Instrument;

**Guarantor** has the meaning given in clause 7.8(a)(1)(B) of the Terms and Conditions;

**Haulage Reference Services** means:

- (a) allowing injection of Gas at Transfer Points;
- (b) conveyance of Gas from Transfer Points to Distribution Supply Points; and
- (c) allowing withdrawal of Gas at Distribution Supply Points;

except to the extent that:

- (d) before the start of the Second Access Arrangement Period the Service Provider and the User have agreed in writing that specific pricing applies to that Service;
- (e) after the start of the Second Access Arrangement Period, the Service Provider and the User agree in writing or in such other form as approved by the Regulator that the Service is not to be a Haulage Reference Service; or
- (f) the Services are provided to a Transfer Point between a Distribution Pipeline by means of which the Service Provider provides Services and a Distribution Pipeline by means of which another Gas Distribution Company (which is not exempt from the requirement to hold a licence because of an Order under section 24 of the GIA) provides Services;

**Haulage Reference Tariff** means the tariff that applies to Haulage Reference Services;

**Haulage Reference Tariff Component** means an individual price element comprising part of a Haulage Reference Tariff;

**Haulage Reference Tariff D** means the Haulage Reference Tariff that applies to the Tariff D Haulage Reference Service (including a new Haulage Reference Tariff to apply to that Service introduced pursuant to the Reference Tariff Policy);

**Haulage Reference Tariff M** means the Haulage Reference Tariff that applies to the Tariff M Haulage Reference Service (including a new Haulage Reference Tariff to apply to that Service introduced pursuant to the Reference Tariff Policy);

**Haulage Reference Tariff V** means the Haulage Reference Tariff that applies to the Tariff V Haulage Reference Service (including a new Haulage Reference Tariff to apply to that Service introduced pursuant to the Reference Tariff Policy);

**Heating Value** has the same meaning as in the Gas Safety (Gas Quality) Regulations 1999 (Victoria);

**Inquiry** means an inquiry or consultation commenced by the Ombudsman under its constitution;

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

- (a) an order is made that it be wound up or that a Controller be appointed to it or any of its assets;
- (b) a resolution that it be wound up is passed;
- (c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
- (d) an administrator is appointed to it (other than by the Regulator pursuant to the party's licence under the GIA) or a resolution that an administrator be appointed to it is passed;
- (e) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors;
- (f) any action is taken by the Australian Securities and Investment Commission to cancel its registration or to dissolve it;
- (g) it is insolvent within the meaning of Section 95A of the Corporations Act , as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law; or
- (h) it stops or suspends:
  - (1) the payment of all or a class of its debts; or
  - (2) the conduct of all or a substantial part of its business; or
- (i) if the User is constituted in another jurisdiction, any event having a substantially similar effect to any of the events specified in the preceding paragraphs happens to it under the law of that other jurisdiction;

**Intellectual Property** means all rights in all trade marks, patents, copyrights, designs and other similar legally enforceable rights anywhere in the world owned, used, or intended to be used, by the parties which are developed jointly by the parties in the provision of the Distribution Services whether or not registered, registrable or patentable;

**Interruption** means the planned or unplanned temporary stoppage of Supply to one or more Distribution Supply Points;

**J** means Joule; a unit of energy as defined in AS1000-1979 "The International System of Units (SI) and its Application";

**Licence Fee** means the licence fee and other fees and charges in respect of the Distribution Licence paid or payable by the Service Provider under its Distribution Licence as directed by the Regulator.

**Main** has the same meaning as in the Distribution System Code;

**Meter** has the same meaning as in the Distribution System Code;

**Metering Installation** means the Meter and associated equipment and installations which may include correctors, regulators, filters, data loggers and telemetry relating to a Distribution Supply Point;

**Metering Data** means data pertaining to the measure of the quantity of Gas flow obtained from a Metering Installation;

**Meter Reading** has the same meaning as in the Retail Gas Market Rules including as if the reference in that definition to a “reading period” included the period of an invoice;

**MHQ** means the maximum Quantity of Gas (in GJ) withdrawn at a Distribution Supply Point in any hour;

**MIRN** means in relation to a Distribution Supply Point at any time, the metering installation registration number for that Distribution Supply Point including the checksum for that MIRN;

**MSO Rules** has the same meaning as defined in the GIA;

**Negative Pass Through Amount** means, in relation to the occurrence of a Change in Taxes Event, an amount that the Service Provider is required to pay to its Users or a factor by which amounts the User is required to pay the Service Provider are reduced;

**Net Financing Cost** means the surplus of the estimated New Facilities Investment in relation to, and Non Capital Costs of, the Extension within the Access Arrangement Period in which the Extension is commenced over the present value of the estimated incremental revenue that would be derived directly from the Extension or Expansion within that period;

**Non-Reference Service Charge** means the amount payable by the User for the provision of Services other than Reference Services, being the amount as set out in Schedule 2 of the Terms and Conditions or as agreed between the parties to an Agreement or determined pursuant to the Access Code;

**Off-Peak Period** means the period of a Calendar Year except the Peak Period;

**Ombudsman** means the Energy and Water Ombudsman (Victoria) or any other ombudsman approved by Regulator for the purposes of the User’s Retail Licence;

**Pass Through Amount** means a Positive Pass Through Amount or a Negative Pass Through Amount;

**Peak Period** means the period of 1 June to 30 September of a Calendar Year;

**Positive Pass Through Amount** means, in relation to the occurrence of a Change in Taxes Event, an amount that a User is required to pay to the Service Provider or a factor by which amounts the User is required to pay the Service Provider are increased;

**Quantity** means, in relation to Gas, the energy content of that Gas calculated by multiplying its volume in cubic metres at a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kPa by its Heating Value;

**Reconciliation Amount** means that amount payable in respect of Unaccounted for Gas calculated by VENCORP in accordance with the Distribution System Code;

**Reconnect** means the Turn On for or in respect of a Customer following the Disconnection of the Distribution Supply Point at which Gas was prior to Disconnection, withdrawn by or in respect of that Customer;

**Reference Service** means the Haulage Reference Service and Ancillary Reference Service as defined in clause 5.1 of Part A of this Access Arrangement;

**Reference Tariff** means the Haulage Reference Tariff and Ancillary Reference Tariff and as varied pursuant to the Reference Tariff Policy;

**Reference Tariff Class** refers to Distribution Supply Points which are assigned to the same Haulage Reference Tariffs;

**Reference Tariff Policy** means the Reference Tariff Policy set in out Part B of this Access Arrangement;

**Regulator** means the Essential Services Commission, a statutory corporation established under the ESC Act;

**Regulatory Instrument** means the Access Act, Access Law, Access Code, GIA, Gas Safety Act 1997 (Victoria) and other legislation, any subordinate legislation, licence, code, rules, sub-code, guideline, safety case, order or regulation regulating the gas industry in Victoria, or elsewhere if applicable, whether made under the GIA or other applicable legislation having jurisdiction over the relevant party, including the MSO Rules and the Distribution System Code;

**Regulatory Year** means a period of 12 months ending on 31 December each year;

**Related Body Corporate** means an entity which is related to another entity within the meaning of section 9 of the Corporations Act;

**Relevant Tax** means any-

- (a) royalty, duty, excise, tax, impost, levy, fee or charge (including, but without limitation, any GST) imposed by any Authority in respect of the repair, maintenance, administration or management of the Distribution System (or any part of it) or in respect of the provision of Reference Services, but excluding:
  - (1) income tax (or State equivalent income tax) and capital gains tax;
  - (2) stamp duty, financial institutions duty, bank accounts debit tax or similar taxes or duties;
  - (3) Licence Fees or any other membership, contribution or other charges payable to other regulatory bodies in the Gas industry;
  - (4) penalties and interest for late payment relating to any tax, royalty, duty, excise, impost, levy, fee or charge;
  - (5) any charge associated with the introduction of FRC; and
  - (6) any tax or charge which replaces the taxes or charges referred to in (1) to (5);
- (b) costs associated with changes in service standards but only where the Service Provider has been directed, ordered or required as a result of legislation or regulatory arrangements to make such a change in service standards; and
- (c) costs associated with the retailer of last resort scheme implemented under section 34 of the GIA.

**Required Bank Guarantee Amount** means the amount of the Bank Guarantee calculated by the Service Provider under clauses 7.8(b) or 7.8(c) of the Terms and Conditions;

**Residential Customer** means a Customer who uses Gas primarily for domestic purposes;

**Retailer** has the same meaning as gas retailer in the GIA;

**Retail Gas Market Rules** means the rules approved by the Regulator under section 65 of the GIA;

**Retail Contract** means a contract as defined under the Gas Retail Code;

**Retail Licence** means a licence to sell Gas granted to a Retailer by the Regulator under Part 3 of the GIA;

**Retail Services** means the following services that are provided by a User to the Service Provider at the Service Provider's request:

- (a) processing of GSL payments under clause 7.6 of the Terms and Conditions;
- (b) notification of Reference Tariffs under clause 9.10(c) of the Terms and Conditions;
- (c) provision of information and documentation to Customers under clause 9.12(b) of the Terms and Conditions;
- (d) delivering to a Customer any notification, information or documentation as requested by the Service Provider under clause 9.12(e) of the Terms and Conditions; and
- (e) delivering to a Customer information as requested by the Service Provider under clause 13.2(b)(3) of the Terms and Conditions;

but does not include any such services to the extent that the User is obliged to perform those services under the Regulatory Instruments;

**Second Access Arrangement Period** means a period commencing on 1 January 2003 and ending on 31 December 2007;

**Services Policy** means the policy contained in clause 5.1 of this Access Arrangement;

**Specifications** means the quality specifications prescribed by the Gas Safety (Gas Quality) Regulations 1999 (Victoria);

**Substituted Meter Reading** has the same meaning as in the Retail Gas Market Rules;

**Supply** means the delivery of Gas;

**System Wide Benefits Test** means the test applied to determine whether a New Facility has system wide benefits that justify the approval of a higher Reference Tariff for all Users;

**Tariff Control Formula** means the formulae described in clause 3.1 of the Reference Tariff Policy that applies to Haulage Reference Tariffs;

**Tariff D Customer** means a Customer in respect of whom the User is charged Haulage Reference Tariff D;

**Tariff D Distribution Supply Point** means a Distribution Supply Point to which is assigned Haulage Reference Tariff D as determined by the application of clause 1 of the Reference Tariff Policy;

**Tariff D Connection** means the Connection and maintenance of the Connection at a Tariff D Distribution Supply Point;

**Tariff D Connection Charge** means a Non-Reference Service Charge for a Tariff D Connection;

**Tariff D Haulage Reference Service** means a Haulage Reference Service described as such in clause 5.1.1 of Part A of this Access Arrangement;

**Tariff M Customer** means a Customer in respect of whom the User is charged Haulage Reference Tariff M;

**Tariff M Distribution Supply Point** means a Distribution Supply Point to which is assigned Haulage Reference Tariff M as determined by the application of clause 1 of the Reference Tariff Policy;

**Tariff M Connection** means the Connection and maintenance of the Connection at a Tariff M Distribution Supply Point;

**Tariff M Connection Charge** means a Non-Reference Service Charge for a Tariff M Connection;

**Tariff M Haulage Reference Service** means a Haulage Reference Service described as such in clause 5.1.1 of Part A of this Access Arrangement;

**Tariff V Customer** means a Customer in respect of whom the User is charged Haulage Reference Tariff V;

**Tariff V Distribution Supply Point** means a Distribution Supply Point to which is assigned Haulage Reference Tariff V as determined by the application of clause 1 of the Reference Tariff Policy;

**Tariff V Haulage Reference Service** means a Haulage Reference Service described as such in clause 5.1.1 of Part A of this Access Arrangement;

**Terms and Conditions** means the terms and conditions referred to in clause 5.3 of Part A and as set out in Part C of this Access Arrangement;

**Third Access Arrangement Period** means a period of at least 5 Calendar Years commencing on 1 January 2008;

**Transfer Point** means a point at which Gas is transferred from:

- (a) a Transmission Pipeline to a Distribution Pipeline, or
- (b) a Distribution Pipeline to a Distribution Pipeline;

**Transmission System** has the same meaning as in the Distribution System Code;

**Transmission Pipeline** has the same meaning as in the GIA;

**Turn On** means the act of turning on Supply including the removal of any locks or plugs used to isolate Supply or reinstallation of a Meter if it has been removed, performance of a safety check and the lighting of appliances where necessary;

**Unaccounted for Gas** has the same meaning as in the Distribution System Code;

**VENCorp** means the Victorian Energy Networks Corporation established under Part 2A of the GIA and includes any successor body and any body who assumes the rights of VENCorp pursuant to any privatisation and any successor of that body;

**VENCorp Meter Register** has the same meaning as in the MSO Rules; and

**X** has the same meaning as in clause 3.1 of the Reference Tariff Policy.

## **S 2.2 Interpretation**

- (a) In this Access Arrangement, 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 Access Arrangement 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 notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Access Arrangement;
  - (6) 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 agents 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;
  - (7) 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;

- (8) to time is to Melbourne time; and
  - (9) 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
  - (10) 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 period occurs from, after or before a day or the day of an act or event, it excludes that day.
  - (e) A reference to a thing (including, but not limited to, a right) includes any part of that thing.
  - (f) A reference to a right includes a remedy, power, authority, discretion or benefit.
  - (g) All Reference Tariffs and Reference Tariff Components calculated under this Access Arrangement will be rounded to the accuracy, in terms of the number of decimal places, required by the relevant Service Provider's charging and billing systems.
  - (h) A Reference Tariff which has been calculated and rounded under the principles in S 2.2(g) will not be rounded to a different level of accuracy when utilised in calculations made under this Access Arrangement.
  - (i) All values used in calculations made under this Access Arrangement, except those values to which S 2.2(g) and s 2.2(h) apply, will not be rounded.
  - (j) When a calculation is required under this Access Arrangement:
    - (1) a year "t" is the year in respect of which the calculation is being made;
    - (2) a year "t-1" is the year immediately preceding year "t"; and
    - (3) a year "t-2" is the year immediately preceding year "t-1".

## Existing Haulage Reference Tariffs - 31 December 2002

### 1 HAULAGE REFERENCE TARIFF V

#### 1.1 TXU Central

##### (a) Domestic

Distribution Fixed Tariff Component (Domestic)- \$0.0723/day (GST excluded)

1	2	3
Consumption range (GJ/day)	Distribution volume tariff component – peak period (\$/GJ) (excluding GST)	Distribution volume tariff component - off-peak period (\$/GJ) (excluding GST)
0 - 0.1 GJ	5.3104	4.7938
0.1 - 0.2 GJ	3.6981	3.1813
0.2 - 1.4 GJ	2.2758	1.9388
> 1.4 GJ	0.8526	0.7268

##### (b) Commercial

Distribution Fixed Tariff Component (Commercial) - \$0.0723 (GST excluded)

1	2	3
Consumption range (GJ/day)	Distribution volume tariff component – peak period (\$/GJ) (excluding GST)	Distribution volume tariff component - off-peak period (\$/GJ) (excluding GST)
0 - 0.1 GJ	5.3104	4.7938
0.1 - 0.2 GJ	3.6981	3.1813
0.2 - 1.4 GJ	2.2758	1.9388
> 1.4 GJ	0.8526	0.7268

## Existing Haulage Reference Tariffs - 31 December 2002

### 1 HAULAGE REFERENCE TARIFF V (continued)

#### 1.2 TXU West

##### (a) Domestic

Distribution Fixed Tariff Component (Domestic)- \$0.0723/day (GST excluded)

1	2	3
Consumption range (GJ/day)	Distribution volume tariff component – peak period (\$/GJ) (excluding GST)	Distribution volume tariff component - off-peak period (\$/GJ) (excluding GST)
0 - 0.1 GJ	4.2147	3.6981
0.1 - 0.2 GJ	3.6981	3.1813
0.2 - 1.4 GJ	2.2758	1.9388
> 1.4 GJ	0.8526	0.7268

##### (b) Commercial

Distribution Fixed Tariff Component (Commercial) - \$0.0723 (GST excluded)

1	2	3
Consumption range (GJ/day)	Distribution volume tariff component – peak period (\$/GJ) (excluding GST)	Distribution volume tariff component - off-peak period (\$/GJ) (excluding GST)
0 - 0.1 GJ	4.2147	3.6981
0.1 - 0.2 GJ	3.6981	3.1813
0.2 - 1.4 GJ	2.2758	1.9388
> 1.4 GJ	0.8526	0.7268

## Existing Haulage Reference Tariffs - 31 December 2002

### 2 HAULAGE REFERENCE TARIFF D

1	2
Annual MHQ (GJ)	Distribution demand tariff component(\$/GJ) (GST excluded)
0-10	828.37
>10-50	565.27
>50	299.01

### 3 HAULAGE REFERENCE TARIFF M

1	2
Annual MHQ (GJ)	Distribution demand tariff component(\$/GJ) (GST excluded)
0-10	N/A until 1/01/2004
>10-50	N/A until 1/01/2004
>50	N/A until 1/01/2004

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## Initial Ancillary Reference Tariffs - 1 January 2003

Ancillary Reference Tariff	Price (GST excluded)
Meter and Gas Installation Test (where meter within limits)	\$56.00 [Provided that if the Meter or Gas Installation is defective and fails to meet the accuracy standards prescribed in the DSC the payment will be refunded]
Disconnection by the carrying out of work being removal of the meter at a Metering Installation	\$42.00
Disconnection by the carrying out of work being the use of locks or plugs at a Metering Installation	\$42.00
Disconnection by the carrying out of work being excavating and shutting the service tee in the street	\$112.00
Reconnection of Meter	\$51.00
Reconnection of Meter in the street	\$112.00



**PART B**

**OF THE ACCESS ARRANGEMENT**

**BY TXU NETWORKS (GAS) PTY LTD**

**FOR THE DISTRIBUTION SYSTEM**

**REFERENCE TARIFFS**

**AND**

**REFERENCE TARIFF POLICY**

**1 January 2003**

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**Schedule 1 – Existing Haulage Reference Tariffs at 31 December 2002**

**Schedule 2 - Initial Ancillary Reference Tariffs effective 1 January 2003**

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# 1 Haulage Reference Tariffs

## 1.1 Haulage Reference Tariffs

### (a) Existing Haulage Reference Tariffs

For Calendar Year 2003, the Haulage Reference Tariffs to apply from 1 January 2003 are the tariffs set out in Schedule 1 adjusted to comply with the Tariff Control Formula and rebalancing control formula in clause 3 and verified by the Regulator as if clause 4 applied (but for the timing requirements of clause 1(b)(2) and of clause 4.1(a)).

### (b) Introduction of new Haulage Reference Tariffs

(1) The Service Provider may develop one or more new Haulage Reference Tariffs for application to Users in certain circumstances, providing that any new Haulage Reference Tariff is consistent with the Service Provider's Reference Tariff Policy, as set out in clause 6.

(2) The Service Provider is required to notify the Regulator in writing of its intent to introduce new Haulage Reference Tariffs or new Haulage Reference Tariff Components at least 60 Business Days prior to the date on which it wishes the new Haulage Reference Tariffs to commence.

### (c) No Meter

A Distribution Supply Point which does not have a Meter is assigned to Haulage Reference Tariff V, unless otherwise agreed between the Service Provider and the relevant User to whom Reference Services are provided at that Distribution Supply Point.

### (d) Distribution Area

The Haulage Reference Tariffs apply to the Distribution System within the Service Provider's Distribution Area.

## 1.2 Application of Haulage Reference Tariffs

### (a) Assigned Haulage Reference Tariffs

Where the Service Provider is charging a particular Haulage Reference Tariff in respect of Supply at a particular Distribution Supply Point, then the User at that Distribution Supply Point is to be regarded as being "assigned" to that Haulage Reference Tariff.

### (b) Haulage Reference Tariffs for existing Distribution Supply Points

Unless a new Haulage Reference Tariff has been reassigned to a Distribution Supply Point, the Haulage Reference Tariff to apply to a Distribution Supply Point from 1 January 2003 is deemed to be the Haulage Reference Tariff assigned to that Distribution Supply Point as at 31 December 2002.

### (c) Haulage Reference Service provided at a Distribution Supply Point

The Haulage Reference Service provided at a particular Distribution Supply Point is the Haulage Reference Service in respect of which there is a specified Haulage Reference Tariff which is assigned at that Distribution Supply Point.

### **1.3 Assignment of new Haulage Reference Tariffs and new Haulage Reference Tariff Components**

#### **(a) Change in volume of Gas consumed**

If, after the initial assignment of a Haulage Reference Tariff to a Distribution Supply Point, the Service Provider becomes aware that:

- (1) the Quantity of Gas withdrawn at that Distribution Supply Point has changed; or
- (2) the User's Customer at that Distribution Supply Point has changed or will change,

so that the Haulage Reference Tariff should no longer be assigned to the Distribution Supply Point to which it is currently assigned, the Service Provider may reassign an alternative Haulage Reference Tariff to that Distribution Supply Point.

#### **(b) Change in demand or Connection characteristics**

If the Service Provider believes that a User's demand characteristics or Connection characteristics (or both) have changed such that it is no longer appropriate for that User's Distribution Supply Point to be assigned to the Haulage Reference Tariff to which the User's Distribution Supply Point is currently assigned, then the Service Provider may reassign an alternative Haulage Reference Tariff to that Distribution Supply Point.

#### **(c) Factors to be considered by the Service Provider**

In determining the assignment of a Haulage Reference Tariff to a Distribution Supply Point the Service Provider will take into account:

- (1) the User's demand and Connection characteristics; and
- (2) Haulage Reference Tariffs assigned to Distribution Supply Points with the same or materially similar demand and Connection characteristics.

#### **(d) Notification of proposed reassignment of Haulage Reference Tariff**

If, after 1 January 2003, the Service Provider becomes aware that a Haulage Reference Tariff assigned to a Distribution Supply Point should be a different Haulage Reference Tariff, the Service Provider will advise the relevant User accordingly prior to the reassignment occurring, unless otherwise agreed.

#### **(e) Terms and Conditions for new and changed Distribution Supply Points**

If a new Haulage Reference Tariff is assigned to a Distribution Supply Point or there is a change of User at a Distribution Supply Point, the Service Provider will supply to the relevant User, as soon as practicable after a request from that User, the terms and conditions which will apply to the relevant User at that Distribution Supply Point, and the Haulage Reference Tariff that is assigned to that Distribution Supply Point.

**(f) Notification by User regarding a different Haulage Reference Tariff**

Where a User receives notice under clause 1.3(d) that a Haulage Reference Tariff assigned to a Distribution Supply Point should be a different Haulage Reference Tariff, the different Haulage Reference Tariff will be assigned to that Distribution Supply Point unless the User submits a written and reasonable request to the Service Provider to remain on the original Haulage Reference Tariff and the Service Provider approves the request.

**(g) Time period for reassignment**

When introducing a new Haulage Reference Tariff and/or Haulage Reference Tariff Component, the Service Provider will assign the new Haulage Reference Tariff and/or Haulage Reference Tariff Component to the relevant Distribution Supply Point within 30 Business Days of the earlier of:

- (1) the receipt of a written notice that the Regulator has verified the Service Provider's proposed introduction of a new Haulage Reference Tariff and/or Haulage Reference Tariff Component; and
- (2) 20 Business Days from the date on which the Regulator received the Service Provider's notification under clause 4.1(c).

**(h) Additional information required for new Haulage Reference Tariffs and new Haulage Reference Tariff Components**

Where the Service Provider is proposing to introduce a new Haulage Reference Tariff or a new Haulage Reference Tariff Component, the Service Provider will submit the following information to the Regulator, at the same time that it submits its Haulage Reference Tariff proposals, and in addition to the information required under clause 4.3:

- (1) a parent Haulage Reference Tariff(s), which is the Haulage Reference Tariff(s) currently assigned to those Distribution Supply Points to which the new Haulage Reference Tariff is proposed to apply;
- (2) reasonable estimates of the Quantities that would have been distributed in relevant units if the new Haulage Reference Tariff Components had existed in the Calendar Year immediately prior to the current Calendar Year for each new Haulage Reference Tariff Component; and
- (3) the Quantities that would have been distributed in relevant units if the new Haulage Reference Tariff Components had existed in the Calendar Year immediately prior to the current Calendar Year for each Haulage Reference Tariff Component of the parent Haulage Reference Tariff(s).

**(i) Switching rates**

Where the Service Provider submits information to the Regulator that the switching rate of Users moving from a given parent Haulage Reference Tariff to a new Haulage Reference Tariff will continue to be above zero from Calendar Year to Calendar Year, the Service Provider will also submit the following information:

- (1) the Quantities distributed in relevant units at the relevant Distribution Supply Point where the new Haulage Reference Tariff is already assigned to that Distribution Supply Point;
- (2) the Quantities distributed in relevant units at those Distribution Supply Points at which the same new Haulage Reference Tariff is expected to apply during the course of the next Calendar Year; and
- (3) the Quantities distributed in relevant units at those Distribution Supply Points at which the parent Haulage Reference Tariff continues to apply.

**(j) Details of estimates**

The Service Provider will provide details of and the basis for all estimates provided under clauses 1.3(h), and (i) to the Regulator, including (but not limited to) the information in clause 1.3(e).

**(k) Resubmission of estimates**

The Regulator can request that the Service Provider resubmit Quantity estimates provided under clauses 1.3(h) and (i) where the Regulator considers the estimates to be incomplete, inconsistent or unsubstantiated. The Regulator must provide reasons for requesting such a resubmission.

**(l) Timing of information**

The elapsed time between the Regulator requesting that the Service Provider provide additional information under clause 1.3(l), and the Service Provider providing that information to the Regulator does not count towards the 20 Business Days under clause 1.3(g).

**1.4 Withdrawal of Haulage Reference Tariffs**

**(a) Withdrawal of Haulage Reference Tariff**

When proposing the withdrawal of an existing Haulage Reference Tariff and/or Haulage Reference Tariff Component, the Service Provider will reassign alternative Haulage Reference Tariffs to all relevant Distribution Supply Points within 30 Business Days of the earlier of:

- (1) the receipt of a written notice that the Regulator has verified the Service Provider's proposed withdrawal of the existing Haulage Reference Tariff and/or Haulage Reference Tariff Component; and
- (2) 20 Business Days from the date on which the Regulator received the Service Provider's notification under clause 4.1(c).

**(b) Notification of withdrawal of Haulage Reference Tariff**

Prior to the withdrawal of the existing Haulage Reference Tariff and/or Haulage Reference Tariff Component, the Service Provider will as soon as practicable notify all affected Users in writing.

**(c) Additional information to be provided to Regulator**

When the Service Provider proposes to withdraw a Haulage Reference Tariff, in addition to the information required under clause 4.3, the Service Provider will:

- (1) notify the Regulator in writing of the Haulage Reference Tariffs that will replace the withdrawn Haulage Reference Tariffs;
- (2) where Haulage Reference Tariffs will be reassigned to more than one Distribution Supply Point in Calendar Year  $t$ , provide a breakdown of the actual Quantities, in relevant units, that were distributed under each existing Haulage Reference Tariff Component to these Users under the existing parent Haulage Reference Tariffs in Calendar Year  $t-2$ ; and
- (3) where Haulage Reference Tariffs have been reassigned to more than one Distribution Supply Point in Calendar Year  $t-1$ , provide a breakdown of the actual Quantities, in relevant units, that were distributed to these Users under each Haulage Reference Tariff Component which existed immediately prior to the reassignment under the parent Haulage Reference Tariffs that previously existed in Calendar Year  $t-1$ .

**1.5 Provision of information on tariffs by the distribution business**

The distribution business will prepare and publish a public Tariff Report, by 1 March of each Calendar Year. The Tariff Report should contain sufficient information to enable distribution customers to understand the basis for the tariff policies adopted by the distribution business.

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**2 Ancillary Reference Tariffs**

**2.1 Existing Ancillary Reference Tariffs**

For Calendar Year 2003, the Ancillary Reference Tariffs for Ancillary Reference Services that are to apply from 1 January 2003, are set out in Schedule 2.

**2.2 Adjustments to Ancillary Reference Tariffs**

The Service Provider may adjust the Ancillary Reference Tariffs from time to time in accordance with the following formula-

$$ART_t = ART_{t-1} \cdot (1 + CPI_t)$$

where:

$ART_t$  is the Ancillary Reference Tariff that applies in Calendar Year  $t$ ;

$ART_{t-1}$  is the Ancillary Reference Tariff that applies in Calendar Year  $t-1$ ; and

$CPI_t$  is defined in the Glossary.

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### 3 Haulage Reference Tariff Control Formula

The Tariff Control Formula comprises the principles, procedures and formulae which apply during the Second Access Arrangement Period for:

- (1) varying;
- (2) withdrawing; and
- (3) introducing new,

Haulage Reference Tariffs. For the avoidance of doubt, the Tariff Control Formula does not apply to Ancillary Reference Tariffs.

Whenever the Service Provider proposes to vary, withdraw or introduce any new Haulage Reference Tariff, it will ensure that the proposed Charge will be compliant with the relevant Tariff Control Formula set out in clause 3.1 and with the relevant rebalancing control formula in clauses 3.5 and 3.6 to the reasonable satisfaction of the Regulator, and it will comply with the procedures set out in clause 4.

#### 3.1 The Tariff Control Formula

The Tariff Control Formula adopted is consistent with the tariff basket form of price control.

**The Tariff Control Formula for the Calendar Years 2003, 2006 & 2007 is:**

$$(1 + CPI_t)(1 - X_t)(1 + L_t) \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} \cdot q_{t-2}^{ij}}{\sum_{i=1}^n \sum_{j=1}^m p_{t-1}^{ij} \cdot q_{t-2}^{ij}}$$

where the Distributor has  $n$  Haulage Reference Tariff categories, each category having up to  $m$  Haulage Reference Tariff Components and where:

$p_t^{ij}$  is the proposed Haulage Reference Tariff for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t$ ;

$p_{t-1}^{ij}$  is the Haulage Reference Tariff being Charged for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t-1$ ;

$q_{t-2}^{ij}$  is the Quantity of Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  that was sold in Calendar Year  $t-2$ ;

$CPI_t$  is defined in the Glossary;

$X_t = +0.02$  for the Calendar Year 2003 and  $= -0.008$  for each of the Calendar Years 2006 and 2007; and

$L_t$  is the Licence Fee Factor as defined below.

**The Tariff Control Formula for the Calendar Year 2004 is:**

$$(1 + CPI_t)(1 - X_t)(1 + L_t)(1 + A) \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} \cdot q_{t-2}^{ij}}{\sum_{i=1}^n \sum_{j=1}^m p_{t-1}^{ij} \cdot q_{t-2}^{ij}}$$

where the Distributor has  $n$  Haulage Reference Tariff categories, each category having up to  $m$  Haulage Reference Tariff Components and where:

$p_t^{ij}$  is the proposed Haulage Reference Tariff for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t$ ;

$p_{t-1}^{ij}$  is the Haulage Reference Tariff being Charged for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t-1$ ;

$q_{t-2}^{ij}$  is the Quantity of Haulage Reference Tariff Component  $j$  of Reference Tariff  $i$  that was sold in Calendar Year  $t-2$ ;

$CPI_t$  is the  $CPI$  for Calendar Year  $t$ , as defined in the Glossary;

$X_t = -0.008$ ;

$L_t$  is the Licence Fee Factor for Calendar Year  $t$ , as defined below; and

$A$  is the adjustment factor  $A$  to account for the unrecovered Correction Factor in the First Access Arrangement Period as defined below.

**The Tariff Control Formula for the Calendar Year 2005 is:**

$$\frac{(1 + CPI_t)(1 - X_t)(1 + L_t)}{(1 + A)} \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} \cdot q_{t-2}^{ij}}{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} \cdot q_{t-1}^{ij}}$$

where the Distributor has  $n$  Haulage Reference Tariff categories, each category having up to  $m$  Haulage Reference Tariff Components and where:

$p_t^{ij}$  is the proposed Haulage Reference Tariff for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t$ ;

$p_{t-1}^{ij}$  is the Haulage Reference Tariff being Charged for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t-1$ ;

$q_{t-2}^{ij}$  is the Quantity of Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  that was sold in Calendar Year  $t-2$ ;

$CPI_t$  is the  $CPI$  for Calendar Year  $t$ , as defined in the Glossary;

$X_t = -0.008$ ;

$L_t$  is the Licence Fee Factor for Calendar Year  $t$ , as defined below; and

$A$  is the adjustment factor  $A$  to account for the unrecovered Correction Factor in the First Access Arrangement Period, as defined below.

**The Licence Fee Factor is:**

$$L_t = \frac{1 + \frac{lf_{t-1} \cdot (1 + WACC)}{SR_t}}{1 + \frac{lf_{t-2} \cdot (1 + WACC)}{SR_{t-1}}} - 1$$

where:

$lf_{t-1}$  is the Licence Fee for the financial year ending June  $t-1$ ;

$lf_{t-2}$  is the Licence Fee for the financial year ending June  $t-2$ ;

$SR_t$  is the smoothed revenue for Calendar Year  $t$ , as defined below-

$$SR_t = SREV_t \cdot Inf_t$$

where:

$SREV_t$  is the total annual Haulage Reference Tariff revenue, as calculated by the Regulator's Price Control Model provided to the Service Provider on 14 November 2002, and as set out in July 2001 dollars in the table below-

	2003	2004	2005	2006	2007
TXU	\$111,091,562	\$115,001,919	\$118,886,756	\$122,891,322	\$126,817,919

$Inf_t$  is set out for each Calendar Year below:

$$2003 = (1 + CPI_{2002}) \cdot (1 + CPI_{2003})$$

$$2004 = (1 + CPI_{2002}) \cdot (1 + CPI_{2003}) \cdot (1 + CPI_{2004})$$

$$2005 = (1 + CPI_{2002}) \cdot (1 + CPI_{2003}) \cdot (1 + CPI_{2004}) \cdot (1 + CPI_{2005})$$

$$2006 = (1 + CPI_{2002}) \cdot (1 + CPI_{2003}) \cdot (1 + CPI_{2004}) \cdot (1 + CPI_{2005}) \cdot (1 + CPI_{2006})$$

$$2007 = (1 + CPI_{2002}) \cdot (1 + CPI_{2003}) \cdot (1 + CPI_{2004}) \cdot (1 + CPI_{2005}) \cdot (1 + CPI_{2006}) \cdot (1 + CPI_{2007})$$

$SR_{t-1}$  is the smoothed revenue for Calendar Year  $t-1$ , calculated in the same manner as  $SR_t$  is calculated above;

$CPI$  is the  $CPI$  for relevant Calendar Year, as defined in the Glossary;

$WACC$  is the pre-tax WACC applying to the Service Provider, which = 0.069; and

For the Calendar Year 2003, the term-

$$1 + \frac{lf_{t-2} \cdot (1 + WACC)}{SR_{t-1}} = 1$$

Where the Service Provider has not been notified of the relevant Licence Fee in sufficient time to be included in calculations for its submission of tariffs for approval then the last known Licence Fee will be substituted for the relevant Licence Fee. Any difference between any substituted and actual Licence Fee will be multiplied by  $(1 + WACC)$ ; where  $WACC = 0.069$ ) for each Calendar Year and then added to or subtracted from the relevant Licence Fee Factor for the first subsequent year that the relevant Licence Fee is known.

**The Adjustment Factor is:**

$$A = \frac{F_{2004}}{SR_{2004}}$$

where:

$F_{2004}$  is a correction factor, as calculated below; and

$SR_{2004}$  is the smoothed revenue for Calendar Year 2004, calculated in the same manner as  $SR_t$  is calculated above.

**The Correction Factor is:**

$$F_{2004} = (Fa_{2004} + Fb_{2004}) \bullet (1 + WACC) \bullet (1 + CPI_{2004})$$

where:

$Fa_{2004}$  is a correction factor for Calendar Year 2002, as calculated below;

$Fb_{2004}$  is a correction factor for Calendar Year 2001, as calculated below;

$WACC$  is the pre-tax WACC applying to the Service Provider, which = 0.069; and

$CPI_{2004}$  is the CPI for Calendar Year 2004, as defined in the Glossary.

**The Correction Factor  $Fa_{2004}$  is:**

$$Fa_{2004} = [(ADV_{2002} \bullet MADT_{2002}) - ADR_{2002}] \bullet (1 + CPI_{2003})(1 + WACC) - [2,814,138 \bullet (1 + CPI_{2002})(1 + CPI_{2003})]$$

where:

$ADV_{2002}$  is the total Quantity of Gas distributed in Calendar Year 2002;

$MADT_{2002}$  is the maximum average Haulage Reference Tariff in Calendar Year 2002, calculated in accordance with clause B.3.3 of the Tariff Order;

$ADR_{2002}$  is the total amount of Haulage Reference Tariff revenue earned in Calendar Year 2002;

$CPI_{2003}$  is the CPI for Calendar Year 2003, as defined in the Glossary;

$WACC$  is the pre-tax WACC applying to the Service Provider, which = 0.069;

$FADT_{2002}$  is the forecast average Haulage Reference Tariff in Calendar Year 2002, calculated in accordance with clause B.3.2 of the Tariff Order; and

$FDV_{2002}$  is the forecast Quantity of Gas distributed in Calendar Year 2002, calculated in accordance with clause B.3.2 of the Tariff Order.

**The Correction Factor  $Fb_{2004}$  is:**

$$Fb_{2004} = [(ADV_{2001} - EDV_{2001}) \bullet MADT_{2001} - (ADR_{2001} - EDR_{2001})] \bullet (1 + I_{2002})$$

where:

$ADV_{2001}$  is the total Quantity of Gas distributed in Calendar Year 2001;

$EDV_{2001}$  is the estimated Quantity of Gas distributed in Calendar Year 2001, calculated in accordance with clause B.3.5 of the Tariff Order;

$MADT_{2001}$  is the maximum average Haulage Reference Tariff in Calendar Year 2001, calculated in accordance with clause B.3.3 of the Tariff Order;

$ADR_{2001}$  is the total amount of Haulage Reference Tariff revenue earned in Calendar Year 2001;

$EDR_{2001}$  is the estimated amount of Haulage Reference Tariff revenue earned in Calendar Year 2001, calculated in accordance with clause B.3.5 of the Tariff Order; and

$I_{2002}$  is the interest rate for Calendar Year 2002, as calculated in accordance with clause B.3.5 of the Tariff Order.

**3.2 New Haulage Reference Tariffs**

- (a) Where the Service Provider is proposing to introduce new Haulage Reference Tariffs and/or new Haulage Reference Tariff Components the  $q_{t-2}^{ij}$  term in clause 3.1 will be interpreted in relation to:
  - (1) the estimates of the Quantities that would have been distributed, in relevant units, if the Haulage Reference Tariff Components had existed in Calendar Year t-2 as provided by the Service Provider, in accordance with clause 1.3(h); and
  - (2) the Haulage Reference Tariff Components of the parent Haulage Reference Tariff in Calendar Year t-2 as provided by the Service Provider in accordance with clause 1.3(h).
- (b) Where the Service Provider has introduced new Haulage Reference Tariffs and/or new Haulage Reference Tariff Components in Calendar Year t-1, the  $p_{t-1}^{ij}$  term in clause 3.1 will be interpreted in relation to the estimates of the Quantities that would have been distributed, in relevant units, if the Haulage Reference Tariff Components had existed in Calendar Year t-2, as provided by the Service Provider in accordance with clause 1.3(h).

**3.3 Withdrawal of Haulage Reference Tariffs**

- (a) Where the Service Provider is proposing to withdraw a Haulage Reference Tariff and to reassign only one other Haulage Reference Tariff to the Distribution Supply Point to which the Haulage Reference Tariff to be withdrawn applied, the  $p_t^{ij}$  term in clause 3.1 for the Haulage Reference Tariff that is proposed to be withdrawn will be interpreted in relation to the Haulage Reference Tariff Components of the Haulage Reference Tariff which will be reassigned to that Distribution Supply Point in Calendar Year t, in accordance with information submitted under clause 1.4.

- (b) Where the Service Provider is proposing to withdraw a Haulage Reference Tariff and to reassign more than one other Haulage Reference Tariff to the Distribution Supply Point to which the Haulage Reference Tariff to be withdrawn applied:
- (1) the  $p_t^{ij}$  term in clause 3.1 for the Haulage Reference Tariff that is proposed to be withdrawn will be interpreted separately in relation to the Haulage Reference Tariff Components of each of the Haulage Reference Tariffs which will be reassigned to those Distribution Supply Points in Calendar Year t, in accordance with information submitted under clause 1.4; and
  - (2) the  $q_{t-2}^{ij}$  term in clause 3.1 for the Haulage Reference Tariff that is proposed to be withdrawn in Calendar Year t will be the actual Quantities, in relevant units, of each Haulage Reference Tariff Component that were distributed under the parent Haulage Reference Tariff at those Distribution Supply Points to which the same Haulage Reference Tariff has been assigned in Calendar Year t, in accordance with information submitted under clause 1.4; and
  - (3) the  $q_{t-2}^{ij}$  term in clause 3.1 for the Haulage Reference Tariff that has been withdrawn in Calendar Year t-1, will be the actual Quantities, in relevant units, of each Haulage Reference Tariff Component that were distributed under the parent Haulage Reference Tariff at those Distribution Supply Points to which the same Haulage Reference Tariff has been assigned in Calendar Year t-1, in accordance with information submitted under clause 1.4.

### 3.4 Haulage Reference Tariff information

Where the Service Provider submits information in accordance with clause 1.3(i) that switching rates of Users moving from a given parent Haulage Reference Tariff to a proposed new Haulage Reference Tariff will continue to be above zero from Calendar Year to Calendar Year, application of the Tariff Control Formula in clause 3.1 will distinguish between:

- (a) Distribution Supply Points to which the new Haulage Reference Tariff has already been assigned, in which case  $q_{t-2}^{ij}$  will be based on the actual Quantities distributed, in relevant units, at those Distribution Supply Points to which the new Haulage Reference Tariff has already been assigned and  $p_t^{ij}$  is the new Haulage Reference Tariff; and
- (b) Distribution Supply Points to which the new Haulage Reference Tariff is expected to be assigned during Calendar Year t, in which case  $q_{t-2}^{ij}$  will be based on the estimates of the Quantities which would have been distributed at those Distribution Supply Points, as submitted by the Service Provider in accordance with clause 1.3(i), and  $p_t^{ij}$  is the new Haulage Reference Tariff.

### 3.5 Rebalancing controls on Haulage Reference Tariffs

- (a) The Service Provider will maintain Haulage Reference Tariffs between:
- (1) an upper limit of the cost to bypass the network; and
  - (2) a lower limit of the marginal cost of supply.
- (b) In undertaking any rebalancing, the Service Provider will ensure that the proposed Haulage Reference Tariffs comply with the relevant Rebalancing Control Formula as set out in this clause 3.5 as follows-

#### Rebalancing Control Formula for Calendar Year 2003:

$$p_{2003}^{ij} \leq p_{2002}^{ij} \cdot (1 + CPI_{2003} - 0.01), i = 1, \dots, n; j = 1, \dots, m$$

where:

$p_{2003}^{ij}$  is the proposed Haulage Reference Tariff for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year 2003;

$p_{2002}^{ij}$  is the Haulage Reference Tariff being Charged for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year 2002; and

$CPI_{2003}$  is the CPI for Calendar Year 2003, as defined in the Glossary;

#### Rebalancing Control Formula for Calendar Years 2004 to 2007:

$$(1 + CPI_t)(1 + Y_t)(1 + L_t) \geq \frac{\sum_{j=1}^m p_t^{ij} \cdot q_{t-2}^{ij}}{\sum_{j=1}^m p_{t-1}^{ij} \cdot q_{t-2}^{ij}}, i = 1, \dots, n$$

where:

$p_t^{ij}$  is the proposed Haulage Reference Tariff for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t$ ;

$p_{t-1}^{ij}$  is the Haulage Reference Tariff being Charged for Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  in Calendar Year  $t-1$ ;

$q_{t-2}^{ij}$  is the Quantity of Haulage Reference Tariff Component  $j$  of Haulage Reference Tariff  $i$  that was sold in Calendar Year  $t-2$ ;

$CPI_t$  is the CPI for Calendar Year  $t$ , as defined in the Glossary;

$Y_t$  is 0.02; and

$L_t$  is the Licence Fee Factor as defined in clause 3.1.

If  $L_t < 0$ , then  $(1 + L_t) = 1$ .

**If in Calendar Year 2004:**

**A >0 then the Rebalancing Control Formula is:**

$$(1 + CPI_t)(1 + Y_t)(1 + L_t)(1 + A) \geq \frac{\sum_{j=1}^m p_{2004}^{ij} \cdot q_{2002}^{ij}}{\sum_{j=1}^m p_{2003}^{ij} \cdot q_{2002}^{ij}}, i = 1, \dots, n$$

where:

*A* is the adjustment factor *A* to account for the unrecovered Correction Factor in the First Access Arrangement Period, as defined in clause 3.1,

**Otherwise the Rebalancing Control Formula is unchanged.**

**If in Calendar Year 2005:**

**A <0 then the Rebalancing Control Formula is:**

$$\frac{(1 + CPI_t)(1 + Y_t)(1 + L_t)}{(1 + A)} \geq \frac{\sum_{j=1}^m p_{2005}^{ij} \cdot q_{2003}^{ij}}{\sum_{j=1}^m p_{2004}^{ij} \cdot q_{2003}^{ij}}, i = 1, \dots, n$$

**Otherwise the Rebalancing Control Formula is unchanged.**

### **3.6 Rebalancing Controls for new and withdrawn Haulage Reference Tariffs**

For the purposes of the application of the rebalancing control formulae as set out in Clause 3.5:

- (a) where the Service Provider proposes to introduce a new Haulage Reference Tariff and/or new Haulage Reference Tariff Components:
  - (1) the term  $q_{t-2}^j$  in the rebalancing control will be interpreted in relation to the estimates of the Quantities that would have been sold, in relevant units, if the Haulage Reference Tariff Components existed in Calendar Year t-2; and
  - (2) the  $p_t^j$  term in the rebalancing control will be interpreted in relation to the Haulage Reference Tariff Components of the parent Haulage Reference Tariff in Calendar Year t-2.
- (b) where the Service Provider has introduced new Haulage Reference Tariffs and/or new Haulage Reference Tariff Components in Calendar Year t-1, the  $q_{t-2}^j$  term of the rebalancing control will be in relation to the estimates of the Quantities that would have been sold, in relevant units, if the Haulage Reference Tariff Components had existed in Calendar Year t-2.

- (c) where the Service Provider proposes to withdraw a Haulage Reference Tariff and reassign those Distribution Supply Points to another Haulage Reference Tariff:
  - (1) the  $p_t^j$  term in the rebalancing control for the Haulage Reference Tariff that is proposed to be withdrawn will be interpreted in relation to the Haulage Reference Tariff Components of the Haulage Reference Tariff that those existing Distribution Supply Points will be reassigned to in Calendar Year t;
  - (2) the rebalancing control on Haulage Reference Tariffs will be applied separately in relation to each of the Haulage Reference Tariffs Distribution Supply Points are reassigned to, and:
    - (A) the  $p_t^j$  term in the rebalancing control for the Haulage Reference Tariff that is proposed is to be withdrawn will be interpreted in relation to the Haulage Reference Tariff Components of each of the Haulage Reference Tariffs that those existing Distribution Supply Points will be reassigned to in Calendar Year t; and
    - (B) the  $q_{t-2}^j$  term in the rebalancing control for the Haulage Reference Tariff that is proposed to be withdrawn will be the breakdown of the actual Quantities, in relevant units, that were sold under each Haulage Reference Tariff Component of the parent Haulage Reference Tariffs to each Distribution Supply Point reassigned to the same Haulage Reference Tariff.

## **4 Approval of annual and within-year variations to Haulage Reference Tariffs and new Haulage Reference Tariffs**

### **4.1 Submission to the Regulator**

- (a) The Service Provider will, at least 30 Business Days prior to the commencement of the next Calendar Year submit proposed Haulage Reference Tariffs to apply from the start of the next Calendar Year for verification of compliance by the Regulator, in accordance with clauses 4.2(a), (b), (c) and (d).
- (b) Where the Service Provider proposes to change a Haulage Reference Tariff within a Calendar Year it will submit the proposed Haulage Reference Tariff change for verification of compliance by the Regulator, in accordance with clauses 4.2(a), (b) and (c).
- (c) Where the Service Provider proposes to introduce a new Haulage Reference Tariff or new Haulage Reference Tariff Component or withdraw an existing Haulage Reference Tariff or existing Haulage Reference Tariff Component within a Calendar Year it will submit the proposal for verification of compliance by the Regulator, in accordance with clauses 4.2(a), (b), (c) and (d) and clause 1.1(b)(2).
- (d) The Service Provider will ensure its proposed Haulage Reference Tariffs or proposed changes to Haulage Reference Tariffs submitted under clauses 4.1(a), (b) or (c) comply with the Tariff Control Formula and rebalancing control formulae in clause 3.

## 4.2 Assessment by the Regulator

- (a) The Regulator will provide the Service Provider with written notice of whether or not it has verified the Haulage Reference Tariffs proposed by the Service Provider and submitted under clauses 4.1(a), (b) or (c) as compliant with the Tariff Control Formula and the rebalancing control formulae. If the Regulator declines to verify the proposed Haulage Reference Tariffs as compliant, the Regulator must provide a written statement of reasons for that decision.
- (b) The proposed Haulage Reference Tariffs will be deemed to have been verified as compliant in writing by the Regulator by the end of 20 Business Days from the date on which the Regulator received the Service Provider's notification under clauses 4.1(a), (b) or (c) unless the Regulator has notified the Service Provider in writing that it has declined to verify the proposed Haulage Reference Tariffs as compliant.
- (c) If the Regulator issues a written notice to the Service Provider that it has declined to verify proposed Haulage Reference Tariffs and/or Haulage Reference Tariff Components (including but not limited to any new Haulage Reference Tariff and/or any new Haulage Reference Tariff Component) as compliant for a new Calendar Year  $t$ , then-
  - (1) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $> 1$  then the Haulage Reference Tariffs applying in Calendar Year  $t-1$  are scaled up by the relevant left-hand side of the price control formula set out in clause 3.1; or
  - (2) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $< 1$  then the Haulage Reference Tariffs applying in Calendar Year  $t-1$  are scaled down by the relevant left-hand side of the price control formula set out in clause 3.1.
- (d) If the Regulator has notified the Service Provider in writing that it has declined to verify as compliant the withdrawal of any existing Haulage Reference Tariffs and/or the withdrawal of any existing Haulage Reference Tariff Components proposed for Calendar Year  $t$ , then-
  - (1) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $> 1$  then the Haulage Reference Tariffs applying in Calendar Year  $t-1$  are scaled up by the relevant left-hand side of the price control formula set out in clause 3.1; or
  - (2) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $< 1$  then the Haulage Reference Tariffs applying in Calendar Year  $t-1$  are scaled down by the relevant left-hand side of the price control formula set out in clause 3.1.
- (e) The Service Provider may provide additional information and resubmit or revise its proposed Haulage Reference Tariffs in accordance with clauses 4.1(a), (b) or (c) if the Regulator declines to verify as compliant proposed Haulage Reference Tariffs under clause 4.2(a) provided that if, in a Calendar Year, changes to Haulage Reference Tariffs have been verified as compliant by the Regulator, the Service Provider will notify in writing all Users affected by the changes as soon as practicable.

- (f) If the Service Provider does not submit proposed Haulage Reference Tariff in accordance with clause 4.1(a) for a new Calendar Year t, then-
  - (1) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $> 1$  then the Haulage Reference Tariffs applying in Calendar Year t-1 will continue to apply; or
  - (2) if the relevant left-hand side of the price control formula set out in clause 3.1 is  $< 1$  then the Haulage Reference Tariffs applying in Calendar Year t-1 are scaled down by the relevant left-hand side of the price control formula set out in clause 3.1.

### 4.3 Information Required from the Service Provider

At the same time as submitting proposed Haulage Reference Tariffs to the Regulator, the Service Provider will also provide to the Regulator information demonstrating that the proposed Haulage Reference Tariffs are, to the extent relevant, consistent with the Tariff Control Formula in clause 3.

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## 5 Calculation of Charges for Haulage Reference Tariffs

Haulage Reference Tariffs are Charged in accordance with the calculations described below:

### (1) Distribution Fixed Tariff Components

The Distribution Fixed Tariff Components and consumption ranges shown in Schedule 1, as applicable, are daily amounts. The Distribution Fixed Tariff Component or consumption range applied to calculate a Charge for a billing period shall be the Haulage Reference Tariff Component or consumption range shown in Schedule 1, as applicable, multiplied by the number of days in the billing period.

### (2) Distribution Volume Tariff Components

(A) Distribution Volume Tariff Components are Charged according to the actual GJs of Gas withdrawn in the billing period, or an estimate of the GJs of Gas withdrawn in the billing period which is acceptable to the Service Provider.

(B) Where some of the days in the billing period are in the Peak Period:

$$GPP = TAG \times \frac{PPBP}{TBP}$$

where:

GPP is the GJs of Gas withdrawn in the Peak Period;

TAG is the total actual GJs of Gas withdrawn in the billing period;

PPBP is the number of days in the billing period which are in the Peak Period; and

TBP is the total number of days in the billing period.

(3) Distribution Demand Tariff Components

(A) Distribution Demand Tariff Components are Charged according to the following formula:

$$MC = \frac{EAC - CBTD}{RBP}$$

where:

MC is the Charge for a particular month in Regulatory Year “t”.

EAC is the estimated annual Charge calculated by applying the relevant Haulage Reference Tariff Components to EAD;

CBTD is the sum of the Charges for all prior billing periods of Regulatory Year “t”;

RBP is the remaining billing periods in Regulatory Year “t”, as set out below:

<b>Month</b>	<b>RBP</b>
January	12
February	11
March	10
April	9
May	8
June	7
July	6
August	5
September	4
October	3
November	2
December	1

EAD is:

- (i) for billing periods between January and September, the higher of:
  - (I) the forecast Annual MHQ for Regulatory Year “t”; and
  - (II) the Annual MHQ, as measured to date during Regulatory Year “t”,

where the forecast Annual MHQ for Regulatory Year “t” is either:

- (iii) the actual Annual MHQ for Regulatory Year “t-1”; or
  - (iv) a Quantity agreed between the Service Provider and the User.
- (ii) for billing periods between October and December, the actual Annual MHQ for Regulatory Year “t”.

- (B) Where a User's Customer withdraws Gas at a Distribution Supply Point and ceases to withdraw Gas at that Distribution Supply Point in a month:
  - (i) the Service Provider may Charge the User in respect of that Distribution Supply Point, for the whole of the month in which the Customer ceased withdrawal of Gas;
  - (ii) the Service Provider will not charge the User in respect of that Distribution Supply Point, for any month after the month in which the Customer ceased withdrawal of Gas; and
  - (iii) where another Customer starts to withdraw Gas at that Distribution Supply Point, the Quantity of forecast highest MHQ for the year for that Distribution Supply Point must be agreed between the Service Provider and the relevant User in respect of that Distribution Supply Point.
- (C) Where a User's Customer withdraws Gas at a Distribution Supply Point and ceases to be a Customer of that User during a month and becomes:
  - (i) a Customer of another User; or
  - (ii) a User,  
the Service Provider will charge:
    - (iii) the User from whom the Customer purchases its Gas at that Distribution Supply Point in that month; or
    - (iv) the Customer as a User in that month,  
respectively, for that month.
- (4) Unmetered Haulage Reference Tariff Components

Where Haulage Reference Tariff V has been assigned to a Distribution Supply Point under clause 1.1(c) because it is an unmetered Distribution Supply Point, there is deemed to be no withdrawal of Gas at that Distribution Supply Point for charging purposes. For the avoidance of doubt, in such circumstances Haulage Reference Tariff V is deemed to apply and any applicable fixed Haulage Reference Tariff Component may be Charged as a fixed Charge.

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## **6 Reference Tariff Policy**

Under the Access Code, an Access Arrangement must include a policy describing the principles that are to be used to determine a Reference Tariff (a **Reference Tariff Policy**). This clause 6 sets out the Service Provider's Reference Tariff Policy which has been developed in accordance with section 8 of the Access Code.

### **6.1 CPI-X Price Path**

The CPI-X price path approach is consistent with section 8.3 of the Access Code. The Service Provider adopts this approach.

### **6.2 New Facilities Investment**

The Service Provider may at its discretion undertake New Facilities Investment that does not satisfy the requirements of section 8.16 of the Access Code. The Extensions/Expansions Policy in clause 5.6 of Part A of this Access Arrangement explains how New Facilities Investment in relation to a New Facility which is to be treated as part of the Covered Pipeline will affect Reference Tariffs.

Clause 6.3 below sets out the principles of a Speculative Investment Fund which the Service Provider may operate in relation to New Facilities Investment that does not satisfy the requirements of section 8.16 of the Access Code.

### **6.3 Speculative Investment Fund**

In accordance with section 8.19 of the Access Code, the amount of the Speculative Investment Fund for the Service Provider at any time is equal to:

- (a) the difference between the New Facilities Investment and the amount which satisfies section 8.16 of the Access Code, less any amount the Service Provider notifies the Regulator (at the time the expenditure is incurred) that it has elected to recover through a Surcharge under section 8.25 of the Access Code; plus
- (b) an annual increase in that amount calculated on a compounded basis at a risk adjusted Rate of Return approved by the Regulator; less
- (c) any part of the Speculative Investment Fund previously added to the Capital Base due to the type and volume of services provided using the increase in Capacity attributable to the New Facility change such that any part of the Speculative Investment Fund would then satisfy the requirements of section 8.16 of the Access Code.

### **6.4 Efficiency incentive and carry-over mechanism**

Section 8.44 of the Access Code provides for a Service Provider's Reference Tariff Policy to include an incentive mechanism that permits the Service Provider to retain all, or any share of any, returns to the Service Provider from the sale of the Reference Services:

- during the Access Arrangement Period, that exceed the level of returns expected for that Access Arrangement Period; or
- during a period approved by the Regulator that exceeds the level of returns expected for that period.

**(a) General principles**

(1) The incentive arrangements that are to apply to cost-related efficiencies achieved by the Service Provider, and the adjustment to preserve the incentive to meet efficient growth in demand are a combination of:

- a tariff basket form of price control; and
- the carryover that would result in the Service Provider retaining the reward associated with an efficiency-improving initiative for five years after the year in which the gain was achieved, ie. a reward (being the net amount of the efficiency gains (or losses) relating to capital and operating expenditure) in one year of an Access Arrangement Period would be added to the Total Revenue and carried forward into the Third Access Arrangement Period if necessary, until it has been retained by the Service Provider for a period of a full five years.

(2) There would be no claw-back of gains that have already been made (or losses that have been incurred) during the Second Access Arrangement Period.

(3) Efficiency gains (or losses) related to capital expenditure in any year would reflect the difference between the actual expenditure and the original forecast (or benchmark) expenditure level, as follows:

$$\text{Efficiency Gain} = WACC * (\text{Capex}_i^{\text{Forecast}} - \text{Capex}_i^{\text{Actual}})$$

where:

*WACC* is the pre-tax WACC applying to the Service Provider, which = 0.069.

(4) For operating expenditure the annual efficiency gain (or loss) flowing from an initiative in Calendar Year t would be calculated as:

$$\text{Efficiency Gain} = \text{Underspending}_i - \text{Underspending}_{i-1}$$

where:

$$\text{Underspending}_i = \text{Opex}_i^{\text{Forecast}} - \text{Opex}_i^{\text{Actual}}$$

(5) For operating expenditure, the additional reward (penalty) associated with initiatives undertaken in a particular year would reflect the reduction (increase) in the level of recurrent operating expenditure in excess of the assumed productivity gain (as reflected in expenditure forecasts) over that year.

(6) For capital expenditure, the additional reward (penalty) associated with initiatives undertaken in a particular year would reflect the reduction (increase) in financing costs resulting from the difference between the actual and benchmark assumption for capital expenditure in that year. The financing savings would be calculated as the regulatory WACC (the pre-tax WACC applying to the Service Provider, which = 0.069 for the Second Access Arrangement Period) multiplied by the capital expenditure saving.

**(b) The mechanism for carrying over efficiency gains**

- (1) For operating expenditure, it will be assumed that the Service Provider does not achieve more than the forecast productivity gain between the penultimate and last years of the Second Access Arrangement Period. As a result, if the Service Provider makes an efficiency gain in the last year of the Second Access Arrangement Period, there would be no carryover in respect of that year. However, the operating expenditure benchmark for the Third Access Arrangement Period will then be higher than otherwise for the Third Access Arrangement Period by the amount of the efficiency gain. This would provide the Service Provider with precisely the same reward had the expenditure level in the last year been known.
- (2) For capital expenditure, it would be assumed that the actual expenditure in the last year of the Second Access Arrangement Period was equal to the forecast for that year. As a result, if the Service Provider makes an efficiency gain in the last year of the Second Access Arrangement Period, there would be no carryover in respect of that year. However, the regulatory asset base (and thus the return on assets) would be higher than otherwise over the next period. This would imply that the 'return on assets' included in the revenue benchmarks would be higher, and provide the Service Provider with precisely the same reward as the carryover had the expenditure level in the last year been known. At the following review, the regulatory asset base would be adjusted to take account of the difference between the forecast and actual capital expenditure for the last year of the Second Access Arrangement Period.
- (3) There would be no adjustment to the original expenditure benchmarks against which the assessment of the efficiency gains in excess of the forecast would be measured, with the following exceptions:
  - (A) the carryover of cost-related efficiency gains will be calculated in a manner that takes account of any change in the scope of the activities which form the basis of the determination of the original benchmarks. The Service Provider will provide information in relation to any change in scope as part of the Access Arrangement Information submitted on 30 March 2007. The Regulator will assess the information provided by the Service Provider. This information will, without limitation, quantify and substantiate the impact of the scope changes on the original benchmarks;
  - (B) the carryover in respect of cost-related efficiency gains will be calculated in a manner that takes account of the difference between forecast and actual growth by adjusting the original benchmarks on the basis of the difference between the actual number of connections in any Calendar Year and the assumed number of connections for that year multiplied by the capital expenditure per connection and operating expenditure per connection; and

- (C) the carryover in respect of cost-related efficiency gains will be calculated in a manner that takes account of any difference between the capital replacement works assumed in Haulage Reference Tariffs for the Second Access Arrangement Period and the capital replacement works actually undertaken in the Second Access Arrangement Period. This clause shall not be construed to mean that the Service Provider is-
- (i) required to undertake the capital replacement works; or
  - (ii) constrained in its discretion to determine the timing, size or nature of those capital replacement works.

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## 7 Fixed Principles

### 7.1 General

- (a) Section 8.47 of the Access Code provides that a Reference Tariff Policy will include certain Fixed Principles, being an element of the Reference Tariff Policy which cannot be changed when the Service Provider submits revisions to an Access Arrangement, without the agreement of the Service Provider.
- (b) No Fixed Principle can be changed by the Regulator without the approval of the Service Provider.
- (c) Each Fixed Principle will apply for different periods as described in this clause 7.
- (d) The period during which each Fixed Principle may not be changed is the Fixed Period (**Fixed Period**).

### 7.2 Adoption of Fixed Principles

- (a) Subject to clause 7.2(b), in approving revisions to this Access Arrangement for the Third Access Arrangement Period, the Regulator is to adopt the Fixed Principles as set out below.
  - (1) The utilisation of incentive based regulation adopting a CPI-X approach and not rate of return regulation.  
This Fixed Principle will apply until the end of the Third Access Arrangement Period.
  - (2) the adoption of an X factor in the CPI-X formula so that only one X factor applies without revision for the second and following Calendar Years of the Third Access Arrangement Period to which the decision applies. The requirement to adopt a single X factor will not preclude a Po adjustment in future access arrangement periods.  
This Fixed Principle will apply until the end of the Third Access Arrangement Period.

- (3) the Capital Base at the start of the Second Access Arrangement Period, adjusted to take account of:
- (A) changes to CPI over the Second Access Arrangement Period;
  - (B) depreciation;
  - (C) New Facilities Investment meeting the requirements of section 8 of the Access Code;
  - (D) disposals in the ordinary course of business since the commencement of the Second Access Arrangement Period and the difference between forecast and actual disposals for the 2002 Calendar Year, other than a disposal of:
    - (i) all of the assets and liabilities of the Service Provider;
    - (ii) assets pursuant to which the assets of the Service Provider are sold and leased back to the Service Provider; and
  - (E) the principle that the Capital Base will not be reduced as a result of assets forming part of the Capital Base becoming redundant; and
  - (F) the difference between the amount of capital expenditure actually incurred in Calendar Year 2002 and the benchmark capital expenditure for that year assumed in the price control model.

This Fixed Principle will apply until the end of the Third Access Arrangement Period.

- (4) The inclusion of the following costs (to be reflected in the Reference Tariffs) in the Third Access Arrangement Period:
- (A) the present value of any outstanding capital costs at the end of Calendar Year 2007 approved under the Cost Recovery Order in Council dated 15 November 2001 (OIC) in the Capital Base to be used to calculate Reference Tariffs for the Third Access Arrangement Period, and for the avoidance of doubt, any outstanding capital costs means any FRC capital costs approved under the OIC that have not been recovered by the prices, fees and charges determined by the Regulator under section 12 of the OIC; and
  - (B) any adjustment factor determined by the Regulator pursuant to, or in a manner consistent with, clause 14 of the OIC, and not recovered as prices, fees or charges determined by the Regulator under section 12 of the OIC at the end of Calendar Year 2007.
  - (C) Capital and non-capital costs to be incurred in the Third Access Arrangement Period for or in connection with, or in relation to, the implementation and operation of the Retail Gas Market Rules will be considered under the Access Code and reflected in Reference Tariffs for that period.

This Fixed Principle will apply until the end of the Third Access Arrangement Period.

- (5) To the extent that the Rate of Return is relevant to the determination of Reference Tariffs, the Rate of Return on the Capital Base shall be calculated on a real, post-tax basis.

If applicable, this Fixed Principle applies for 30 years.

To the extent that the Rate of Return is relevant to the determination of Reference Tariffs, the Rate of Return on the Capital Base shall be calculated using the Capital Asset Pricing Model.

This Fixed Principle will apply until the end of the Third Access Arrangement Period.

- (6) To the extent that the application of clause 6.4 results in a positive efficiency carryover at the end of the Second Access Arrangement Period, the reward earned in the Second Access Arrangement Period is to be added to the Total Revenue and carried forward into the Third Access Arrangement Period, until it has been retained by the Service Provider for a period of a full five years, in accordance with clause 6.4.

This Fixed Principle will apply until the end of the Third Access Arrangement Period.

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## **8 Change in Tax Pass-Through**

Whenever a Change in Taxes Event has occurred, the Service Provider may apply to the Regulator for approval to increase or decrease the Reference Tariffs, in accordance with the procedures contained in this clause 8.

### **8.1 Change in Taxes Event**

If a Change in Taxes Event occurs, the Service Provider may give a statement to the Regulator within 3 months of the Change in Taxes Event occurring specifying:

- (a) details of the Change in Taxes Event concerned;
- (b) the date the Change in Taxes Event took or takes effect;
- (c) the estimated financial effect of the Change in Taxes Event on the Service Provider;
- (d) the Pass Through Amount the Service Provider proposes in relation to the Change in Taxes Event; and
- (e) the basis on which the Pass Through Amount is to apply.

### **8.2 Obligations of the Regulator**

- (a) If the Regulator receives a statement under clause 8.1, the Regulator must decide whether the Change in Taxes Event specified in the statement occurred or is continuing, and if the Regulator decides that the Change in Taxes Event occurred or is continuing, the Regulator must decide:
  - (1) the Pass Through Amount; and
  - (2) the basis on which the Pass Through Amount is to apply,and notify the Service Provider in writing of the Regulator's decision.

- (b) If the Regulator does not give a notice to the Service Provider under clause 8.2(a) within 30 Business Days of receiving a statement from the Service Provider under clause 8.1, on the 31st Business Day after receiving the statement from the Service Provider under clause 8.1 the Regulator is taken to have notified the Service Provider of its decision under clause 8.2(a) that the Pass Through Amount and the basis on which the Pass Through Amount is to apply are as specified in the statement given by the Service Provider under clause 8.1.

### **8.3 Powers of the Regulator where a Change in Taxes Event occurs**

- (a) If a Change in Taxes Event occurs and the Service Provider likely to be affected by the Change in Taxes Event does not give the Regulator a statement under clause 8.1 concerning the Change in Taxes Event, the Regulator may decide on a Pass Through Amount and the basis on which the Pass Through Amount is to apply.
- (b) Where under clause 8.3(a) the Regulator decides on a Negative Pass Through Amount, the Regulator:
  - (1) may decide to require the Service Provider to pass through the Negative Pass Through Amount decided by the Regulator on the basis decided by the Regulator; and
  - (2) where the Regulator decides to require the Service Provider to pass through the Negative Pass Through Amount, the Regulator must notify the Service Provider in writing of the Negative Pass Through Amount, the basis on which the Negative Pass Through Amount is to apply and the reasons for the Regulator's decision.

### **8.4 Factors which the Regulator must consider**

In deciding the Pass Through Amount and the basis on which the Pass Through Amount is to apply under clauses 8.2 and 8.3, the Regulator must ensure that the financial effect on the Service Provider associated with the Change in Taxes Event concerned is economically neutral taking into account:

- (a) the relative amounts of Reference Services supplied to each User;
- (b) the time cost of money for the period over which the Pass Through Amount is to apply;
- (c) the manner in which and period over which the Pass Through Amount is to apply;
- (d) the financial effect to the Service Provider associated with the provision of Reference Services directly attributable to the Change in Taxes Event concerned, and the time at which the financial effect arises;
- (e) the amount of any change in another tax which, in the Regulator's opinion, was introduced as complementary to the Change in Taxes Event concerned;
- (f) the effect of any other previous Change in Taxes Event since the later of the date on which:
  - (1) this Access Arrangement takes effect; and
  - (2) the last decision made under clauses 8.2 and 8.3(b);

- (g) any Pass Through Amount applied under this clause 8 relating to a previous Change in Taxes Event which resulted in the Service Provider recovering an amount either more or less than the financial effect on the Service Provider of that previous Change in Taxes Event; and
- (h) any other factors the Regulator considers relevant.

## **8.5 When the Service Provider applies a Pass Through Amount**

- (a) The Service Provider:
  - (1) may, after
    - (A) receipt of a notice from the Regulator or a deemed receipt of a notice under clause 8.2 as to a Positive Pass Through Amount; and
    - (B) notifying its Users of:
      - (i) the Positive Pass Through Amount which the Regulator has approved or is deemed to have approved; and
      - (ii) the basis on and date from which the Service Provider will apply the Positive Pass Through Amount,

apply the Positive Pass Through Amount specified in the notice to Users on the basis indicated in the notice; and
  - (2) must, after receipt of a notice or deemed receipt of a notice from the Regulator, under clause 8.2, or after receipt of a notice under clause 8.3 as to a Negative Pass Through Amount apply the Negative Pass Through Amount on the basis decided by the Regulator.
- (b) The Pass Through Amount must be:
  - (1) shown separately on each User's invoice; or
  - (2) otherwise identified in a manner approved by the Regulator.
- (c) The Service Provider can only seek to reclaim from Users' Positive Pass Through Amounts in respect of Services provided from the time that the Service Provider:
  - (1) notified its Users under clause 8.5(a)(1)(B); and
  - (2) started showing or identifying the Positive Pass Through Amount as required under clause 8.5(b).

## **8.6 Pass Through Amount not included in price control calculations**

A Pass Through Amount applied by the Service Provider under this clause 8 is not:

- (a) taken into account when deciding the Service Provider's revenues, Reference Tariffs or Reference Tariff Components used in deciding whether the Service Provider's Reference Tariffs or Reference Tariff Components comply with the Fixed Principles and Tariff Control Formula and rebalancing control formulae in Part B of this Access Arrangement; and
- (b) subject to the procedures in clause 4.



**TXU Networks**

**PART C**  
**OF THE ACCESS ARRANGEMENT**  
**BY TXU NETWORKS (GAS) PTY LTD**  
**FOR THE DISTRIBUTION SYSTEM**

**TERMS**  
**AND**  
**CONDITIONS**

**1 January 2003**

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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.

### **1.3 Standards**

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

- (a) Australian Standard AS - 1000 - 1979 “The International System of Units (SI) and its Application”;
- (b) the Commonwealth *Weights and Measures (National Standards) Act* 1960 - 1965 and regulations thereunder; and
- (c) the Australian Gas Association Booklet entitled “Metric Units and Conversion Factors to Use in the Australian Gas Industry”.

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## **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 to 2.4 (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.

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## **3 Customer Relationship**

- (a) Notwithstanding the existence of the 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 Service Provider and the User after the Commencement Date.

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## **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, until and including the earlier of the dates described in clause 4.3(a) or 4.3(b) in relation to that Customer or,

if clause 4.3(c) applies to the Customer, the date that the Customer is no longer entitled to be Reconnected by a User under the Gas Retail Code.

#### **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 person whilst that person is a Customer.

#### **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 VENC Corp transfers financial responsibility for the Customer's MIRN from the User to another Gas Retailer or to the Customer directly;
- (b) the time agreed between the User and the Service Provider on which the Customer ceases to, or ceases to be entitled to, receive Supply in respect of that Distribution Supply Point, which may or may not include Disconnection; or
- (c) the time at which the Service Provider Disconnects the Customer in response to the Customer's request or otherwise in accordance with this Agreement or the Regulatory Instruments.

#### **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 given its permission to 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**

- (a) At all times, the User 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.

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## **5 Connection**

- (a) In this clause 5 “Connection” includes “Turn On” but not Reconnection.
- (b) 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.
- (c) 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(c), such information will include the information described in clause 9.4(a) (Customer details) and clause 9.5 (new Distribution Supply Point information).

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## **6 Disconnection, Interruption and Curtailment 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 payable to VENCORP 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;
- (2) the User has issued a Disconnection Request in breach of the Regulatory Instruments; or
- (3) where the User has issued a Disconnection Request for non payment of bills, the Customer does not have any outstanding amounts owing to the User in respect of the Customer's Connection to the Distribution Supply Point, provided that the Service Provider is not obliged to make enquiries of the Customer as to any outstanding amounts.

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 as allowed under the Distribution System Code or 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.

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# **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 Customer is a customer of the User and 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 (subject to the necessary amendments).
- (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.
- (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) The recipient must pay any fine, penalty or other cost in respect of a failure to pay any amount described in clause 7.3(b) or 7.3(d) except to the extent that the fine, penalty or other cost is caused by the supplier's failure to lodge money received from the recipient before the due date for lodgement.
- (f) 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 in respect of 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 renders an invoice for Distribution Services that were provided more than 11 months prior to the date of the invoice, the User will not be obliged to pay that invoice 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 in an invoice rendered under this Agreement must be altered by the party rendering the invoice in a subsequent invoice to rectify the error. Causes of error may include, but are not limited to:
  - (1) meter tampering or bypass; or
  - (2) defective meters or defective Meter Readings; or
  - (3) errors by VENCORP in its provision of data to the Service Provider; or
  - (4) errors 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 Residential 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 Residential Customer;
  - (2) the User must pay that amount to the Residential Customer or credit that amount to the Residential Customer as soon as practicable, in accordance with the User's Residential 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 Residential 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 Residential Customer; or
  - (ii) if requested by the Service Provider, on behalf of the Service Provider, pay the required payment to the Residential Customer or credit that amount to the Residential 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 Residential Customer under the Regulatory Instruments.
- (d) The Service Provider must notify the User where it makes a Guaranteed Service Level payment directly to a Residential 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 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:
  - (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) VENC Corp calls upon any credit support provided by the User or its Guarantor to VENC Corp under the MSO Rules; or
  - (5) the User ceases to be registered with VENC Corp under the MSO Rules; or
  - (6) where the User purchases energy under an agreement from a person registered with VENC Corp 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)(2), (3), (4), (5) or (6), 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 under clause 7.8(b) because of the operation of clauses 7.8(a)(1), (4), (5) or (6).

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## **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, 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.

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## **9 Communications regarding Customers and System Data**

### **9.1 Answering Calls**

- (a) Subject to clauses 9.1(c), and 9.1(i), 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 through 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: 136 707.
  - (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 clauses 9.1(h) and (i), where 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; and
    - (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 make available to the User 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
  - (10) where there are changes to a Gas Installation that the User is made aware of, a Certificate of Compliance reference number and the name of the party who issued the Certificate of Compliance.
- (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.
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## **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.

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## **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.

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## **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 4.
- (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 4, 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.

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# **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 of the safety and integrity of 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; then

the 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 Commission 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, 7.8, 12.9, 12.10, 14, 17 and 18, 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, 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 and any accrued interest for the amount then due and payable by the defaulting party to the non-defaulting party; 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, each party shall be entitled to render an invoice to the other party 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. 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.

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# **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
    - (i) 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)(3)(i). 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.

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## **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 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 Australia Rules for the Mediation of Commercial Disputes 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, 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:
  - (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.
- (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.

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## **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) 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.

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## 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), 7.8, 9.9(a)(1)(A), 9.9(b), 9.9(c), 9.10, 12.2, 12.3 and 14 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).

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## **17 Confidentiality**

### **17.1 General obligation**

Subject to clauses 7.8 , 17.3 and 17.4 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 and 9 ; or
- (j) to confirm the existence of a use of system 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, the System Operator, another network service provider, a generator or another Retailer.

### **17.2 Representatives to keep information confidential**

Subject to clauses 17.3 and 17.4, 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.
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## **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.

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## **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

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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.

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**Schedule 1 of Part C of Access Arrangement by TXU Networks (Gas) Pty Ltd**  
**Schedule 1 – Approved Form of Unconditional Undertaking**

(Clause 7.8)

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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 system 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 at ..... this ..... day of .....20.....**

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**Schedule 2 of Part C of Access Arrangement by TXU Networks (Gas) Pty Ltd**

**Schedule 2 – Transfer Points**

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## Schedule 3 of Part C of Access Arrangement by TXU Networks (Gas) Pty Ltd

### Schedule 3 – Services other than Reference Services

- Routine basic Meter Reading for scheduled Meter Readings.
- Final Meter Readings for change of occupancy and/or change of User and where the Meter Reading is outside the scheduled read cycle.
- Metering Data services including:
  - provision and installation of equipment for the collection of Metering Data; and
  - the collection of Metering Data other than as provided as part of tariffed Distribution Services.
  - Validating, processing and storing Metering Data and energy calculations other than as provided as part of tariffed Distribution Services.
  - Provision of wholesale market interface services other than as provided as part of tariffed Distribution Services.
  - Provision of a register of information relating to the Meter and associated equipment and installations for the collection of Metering Data.
- New Tariff D Transfer Point.
- New Tariff D Connection.
- Altering a Meter position.
- Providing remote Meter Reading.
- Repair of damages to Distributor assets and equipment.
- Alterations in size or capacity of a standard Transfer Point.
- Temporary Supply.
- Multiple Transfer Points to a single premises.
- Services requested by and provided to a third party and not made available as a normal part of the Distribution Services to all Customers (e.g. moving mains or Transfer Point equipment).
- Other services such as Customer transfers, MIRN allocation and discovery and provision of MIRN standing data.

**Schedule 4 – 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.