

# **Victorian Access Arrangement Annexure F**

## **General Terms and Conditions**

**Terms & Conditions applicable to the provision of Reference Services  
Victorian Distribution Network**

2013 - 2017

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# TERMS AND CONDITIONS

These are the terms and conditions on which the Service Provider (Vic Gas Distribution Pty Ltd (ABN 73 085 899 001)) ("Envestra") will provide Reference Services pursuant to the Access Arrangement applicable to the Network (the **Access Arrangement**).

## PART I: INTRODUCTION

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### **1. THE AGREEMENT**

#### **1.1 Contents of Agreement**

The Agreement between Envestra and the Network User comprises these terms and conditions and the Specific Terms and Conditions.

#### **1.2 Inconsistency**

If these terms and conditions and the Specific Terms and Conditions are inconsistent in any respect, the Specific Terms and Conditions will prevail to the extent of the inconsistency.

#### **1.3 Interpretation**

Unless expressly defined in these terms and conditions, definitions given to terms in the Access Arrangement apply to those terms in the Agreement.



## PART II: HAULAGE REFERENCE SERVICES

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### **2. HAULAGE REFERENCE SERVICES**

#### **2.1 Haulage Reference Services**

During the Term, in consideration of the Haulage Service Charges payable by the Network User under the Agreement, Envestra will:

- (a) receive Gas at each User Receipt Point; and
- (b) deliver Gas through each User DP that is located on a Sub-Network into which the Network User is entitled to deliver Gas (through a User Receipt Point),

in accordance with, and subject to, the terms of the Agreement.

#### **2.2 Obligation to Deliver**

Subject to the terms of the Agreement, Envestra will deliver Gas through each User DP as and when Gas is taken through that DP (whether by the Network User, a Shared Customer or by someone else).

#### **2.3 Delivery to Network User**

As between Envestra and the Network User, all Gas taken or delivered through any User DP will be taken to have been delivered to or for the account of the Network User.

#### **2.4 Delivery Quantities**

Subject to the terms of the Agreement, Envestra will deliver through each DP whatever Quantity of Gas is taken through that DP (whether that Gas is taken by the Network User, a Shared Customer or someone else and whether the taking of that Gas is or is not specifically authorised by the Network User or any Shared Customer).

#### **2.5 Odourisation**

During the Term, Envestra will ensure that all Gas in the Network is odourised in accordance with applicable laws or, if no laws are applicable, in accordance with industry practices generally adopted within Australia.

#### **2.6 Service Standards**

Envestra will ensure that the Network is operated and managed during the Term in accordance with the Access Arrangement and in accordance with all applicable laws from time to time.

#### **2.7 Compliance with Law**

The Network User will ensure that it holds, and exercises its best endeavours to ensure that it continues to hold, whatever licences or other authorisations it requires to sell or consume Gas delivered through the Network and will comply with all applicable laws from time to time.

### **3. HAULAGE SERVICE CHARGES**

#### **3.1 Payment of Charges**

The Network User will pay Envestra the Haulage Service Charges in accordance with the Agreement.

#### **3.2 Calculation of Haulage Service Charges**

The Haulage Service Charges will be calculated from time to time for each User DP in accordance with the Agreement and the Tariff Schedule applicable at the relevant time.

#### **3.3 Fixed Component of Haulage Service Charges**

The Network User will remain responsible to pay Haulage Service Charges in respect of each User DP for so long as the Network User remains the FRO for that User DP (within the meaning of the Retail Market Procedures)(and, in particular, for so long as the Network User is the FRO for a User DP, the Network User will remain liable to pay any part of the Haulage Service Charges that is payable under the Tariff Schedule, irrespective of the Quantity of Gas delivered through that User DP, whether or not there is any Shared Customer in respect of that User DP).

#### **3.4 Notice of GSL Payments**

If the Network User is a Gas Retailer, Envestra must notify the Network User where it makes a GSL Payment directly to a Customer under the regulatory instruments. The notice may be given to the Network User with, or as part of, a statement of charges under the Agreement.

### **4. CAPACITY MANAGEMENT**

#### **4.1 Maximum Daily Quantity**

Subject to sub-clause 4.3, the Maximum Daily Quantity for a DP is the maximum Quantity of Gas that Envestra is obliged to deliver through that DP to or for the account of the Network User during any Network Day.

#### **4.2 Maximum Hourly Quantity**

Subject to sub-clause 4.3, the Maximum Hourly Quantity for a DP is the maximum Quantity of Gas which Envestra is obliged to deliver through that DP to or for the account of the Network User during any period of 60 minutes.

#### **4.3 Network Limitations**

At no time will Envestra have any obligation to deliver more Gas through any User DP than is possible given the technical, physical and practical limitations of the Network, and the pressure and flow-rate of Gas within the Network, at that time.

#### **4.4 Quantities Received**

If it is necessary to determine the Quantity of Gas delivered through any User Receipt Point by or for the account of the Network User, then Envestra will do so:

- (a) in accordance with the law;

- (b) (to the extent permitted by law) in accordance with any rules or agreement that bind Envestra and the Network User; and
- (c) (to the extent not otherwise determined by paragraphs (a) and (b)) on a reasonable basis.

#### 4.5 Overselling Capacity

Envestra must not connect a new DP to the Network or expand the capacity of an existing DP if Envestra reasonably believes that, under normal conditions and as a consequence of connecting that new DP or expanding the capacity of that existing DP, there will be insufficient capacity in the Network to meet the anticipated demand for Gas at any User DP.

For the purposes of this sub-clause, '**normal conditions**' means the conditions which normally occur in the Network when taking into account daily, weekly and seasonal influences.

#### 5. [NOT USED]

#### 6. [NOT USED]

#### 7. [NOT USED]

#### 8. [NOT USED]

#### 9. METERING INSTALLATION

##### 9.1 Delivery Point Metering Installation

Envestra will ensure each User DP has a Metering Installation to measure the Volume of Gas delivered to that DP. Where required by Envestra, the Network User must ensure that a suitable and safe source of electricity is available at the User DP to enable Envestra to install and operate the Metering Installation at that User DP.

##### 9.2 Standard of Metering Installation at Delivery Points

Envestra will ensure that any Metering Installation it installs at any DP meets the requirements prescribed by law to the extent that those requirements are applicable to that Metering Installation at that DP. The type of Metering Installation installed at a DP will generally be the same as that installed at DPs that have similar characteristics.

##### 9.3 Maintenance and Removal

Envestra will ensure that each Metering Installation is maintained in reasonable condition throughout the Term. Where:

- (a) the Metering Installation at a DP includes equipment for telemetry or interval metering; and
- (b) that equipment is no longer required by law to be used at that DP and the Network User requests that the equipment be removed,

then the Network User will bear the costs of removal of that equipment.

#### **9.4 Receipt Point Metering Installation**

Where Envestra does not own or control a Metering Installation directly upstream of a User Receipt Point, the Network User must ensure that the User Receipt Point has a Metering Installation to continuously and instantaneously measure the Quantity of Gas delivered through that User Receipt Point.

#### **9.5 Standard of Metering Installation at Receipt Points**

The Metering Installation provided by the Network User at a User Receipt Point must be of a type and standard agreed between Envestra and the Network User or, in default of agreement, of a type and standard reasonably acceptable to Envestra.

#### **9.6 Readings of Receipt Point Metering Installation**

The Network User must ensure that Envestra has remote access at all times during the Term to the measurements and readings taken by the Metering Installation provided by the Network User at or in relation to any User Receipt Point.

#### **9.7 Maintenance and Protection of Receipt Point Metering Installation**

The Network User must ensure that any Metering Installation provided by the Network User for any User Receipt Point is maintained in reasonable condition throughout the Term.

#### **9.8 Party Responsible**

For the purposes of the Agreement, the party responsible for a Metering Installation is the Network User in the case of a Metering Installation provided by the Network User, and Envestra in the case of a Metering Installation provided by Envestra.

### **10. METER ACCURACY**

#### **10.1 Scheduled Meter Testing**

The party responsible for a Metering Installation must ensure that the accuracy of that Metering Installation is tested at the times and in the manner required by law.

#### **10.2 Unscheduled Meter Testing**

The party responsible for any Metering Installation will also test the accuracy of that Metering Installation whenever it is requested to do so by the other party in accordance with the Agreement.

#### **10.3 Form of Request**

Whenever the party that is not responsible for a Metering Installation wishes to request the other party to test that Metering Installation, the party making the request must give the other party whatever forms, documents and information the other party reasonably requires.

#### 10.4 Notice of Tests

Whenever the party responsible for a Metering Installation is required to conduct a test under the Agreement, that party will notify the other party of the time or times at which that party intends to conduct that test. The other party may witness the test.

#### 10.5 Notice of Results

Whenever the party responsible for a Metering Installation conducts a test in relation to that Metering Installation at the request of the other party pursuant to the Agreement, that party will give the other party notice of the results of that test as soon as practicable after that test has been conducted.

#### 10.6 Inaccurate Meters

Subject to the Agreement, if any test of a Metering Installation pursuant to the Agreement shows that the measurements taken by that Metering Installation are outside a margin of accuracy that is permitted by law (or, if no margin is prescribed by law, outside a margin of accuracy of plus or minus 2 per cent) (in the case of any Metering Installation at a User DP) or plus or minus 1% (in the case of any Metering Installation at a User Receipt Point) of the Volume of Gas delivered through that Metering Installation (**the allowable margin of accuracy**):

- (a) the party responsible for that Metering Installation must adjust or repair that Metering Installation as soon as is practicable so that the measurements it takes are within the allowable margin of accuracy or replace that Metering Installation (or the relevant parts of that Metering Installation) so that that the Metering Installation takes measurements within the allowable margin of accuracy; and
- (b) in the case of a DP, Envestra must correct previous readings taken from that Metering Installation to reflect the actual Gas delivered (or a reasonable estimate of the Gas delivered) since the date of the last reading taken from that Metering Installation or, if later, the last date on which that Metering Installation was tested and the measurements found to be within the allowable margin of accuracy.

#### 10.7 Basis for Corrections

If Envestra is required by the Agreement to correct previous readings taken from any Metering Installation, Envestra will make those corrections:

- (a) in the manner required by law;
- (b) (to the extent permitted by law) in the manner required by any relevant rules or agreements that bind Envestra and the Network User; and
- (c) (to the extent not otherwise required by paragraph (a) or (b)) on a reasonable basis.

The corrections will bind the Network User in the absence of manifest error.

#### 10.8 Maximum Correction

The party responsible for a Metering Installation will not have to correct the readings taken from that Metering Installation more than one year prior to the date of the relevant test unless it is required to do so by law.

## 10.9 Test Fees

If the party that is not responsible for a Metering Installation (**the Requesting Party**) requests a test of that Metering Installation pursuant to the Agreement, the party that is responsible for that Metering Installation (**the Responsible Party**) will not have to conduct that test if the Requesting Party has not paid (or, where permitted by the Responsible Party, agreed to pay) the Responsible Party a test fee of an amount equal to the cost of the test or the maximum amount which the Responsible Party is permitted by law to charge for that test, whichever amount is lesser.

## 10.10 Refund of Fees

If the Requesting Party has paid the Responsible Party a test fee for testing any Metering Installation and the test shows that the measurements taken by that Metering Installation are outside the allowable margin of accuracy, the Responsible Party will refund that test fee to the Requesting Party (or, if the Responsible Party is Envestra, either refund that test fee to the Network User or credit the Network User with that test fee in the next statement of charges issued pursuant to the Agreement).

## 10.11 Adjust Accounts

If Envestra is required by the Agreement to correct readings taken from any Metering Installation at any User DP, it will recalculate the charges payable under this Agreement for the relevant DP and debit the Network User with any underpayment, or credit the Network User with any overpayment, in the next statement of charges issued pursuant to the Agreement.

# 11. SCHEDULED METER READING

## 11.1 Volume Delivery Points

Subject to the Agreement, Envestra will ensure that the meter at any User DP that is a Volume DP (to which Gas is delivered to or for the account of the Network User) is read during the Term at intervals of 60 days or approximately 60 days.

## 11.2 Demand Delivery Points

Subject to the Agreement, Envestra will ensure that the meter at any User DP that is a Demand DP (to which Gas is delivered to or for the account of the Network User) is read during the Term at intervals of 30 days or approximately 30 days.

## 11.3 First Reading – Volume Delivery Points

Envestra will undertake the first reading of the meter at any User DP that is a Volume DP at whatever time is convenient to Envestra so long as that reading is taken no more than 60 days, or approximately 60 days, after Envestra first delivers Gas through that DP to or for the account of the Network User pursuant to the Agreement.

## 11.4 First Reading – Demand Delivery Points

Envestra will undertake the first reading of the meter at any User DP that is a Demand DP at whatever time is convenient to Envestra so long as that reading is taken no more than 30 days, or approximately 30 days, after Envestra first delivers Gas through that DP to or for the account of the Network User pursuant to the Agreement.

### **11.5 Final Reading – Volume Delivery Points**

After the Term ends, Envestra will undertake a final reading of the meter at any User DP that is a Volume DP at whatever time is required by law and, to the extent permitted by law, at whatever time is convenient to Envestra so long as that reading is taken no more than 60 days, or approximately 60 days, after the previous reading.

### **11.6 Final Reading – Demand Delivery Points**

After the Term ends, Envestra will undertake a final reading of the meter at any User DP that is a Demand DP at whatever time is required by law and, to the extent permitted by law, at whatever time is convenient to Envestra so long as that reading is taken no more than 30 days, or approximately 30 days, after the previous reading.

### **11.7 No Measurements**

If the Volume of Gas delivered at any DP during any period is not measured by the meter at that DP for any reason whatsoever, then the Volume of Gas delivered at that DP during that period will be estimated by Envestra:

- (a) in the manner required by law;
- (b) (to the extent permitted by law) in the manner required by any relevant rules or agreements that bind Envestra and the Network User; and
- (c) (to the extent not otherwise required by paragraph (a) or (b)), on a basis that is reasonable in the circumstances.

## **12. GAS SPECIFICATIONS**

### **12.1 Specifications**

The Network User will ensure that Gas delivered into the Network by or for the account of the Network User meets any specifications imposed by law and, to the extent consistent with the law, the specifications reasonably specified from time to time by Envestra by notice given to the Network User. Envestra may specify different specifications for distinct parts of the Network.

### **12.2 Temperature**

For the purposes of sub-clause 12.1, Envestra notifies the Network User that (until otherwise required pursuant to sub-clause 12.1) Gas delivered into the Network must have a temperature of at least 2 degrees Celsius.

### **12.3 Failure to Comply**

If Gas delivered or to be delivered into the Network (or any part of it) does not meet the specifications then applicable to the Network (or the relevant part of it), Envestra may curtail or interrupt deliveries through any Receipt Point or DP, flare or release Gas from the Network or take whatever other reasonable steps Envestra considers necessary or desirable to ensure that Gas within the Network meets the specifications and does not present a threat to any person or property.

## **12.4 Notice**

- (a) The Network User must notify Envestra as soon as is practicable if there is a possibility that Gas, which does not meet the specifications set pursuant to sub-clauses 12.1 and 12.2, may be delivered into the Network by or for the account of the Network User or if it becomes aware that such Gas is being or has been delivered into the Network by or for the account of the Network User.
- (b) If Envestra becomes aware that Gas which does not meet the specifications set pursuant to sub-clauses 12.1 and 12.2 is being or may be delivered into the Network and the Network User has not given notice to Envestra under paragraph (a) and the delivery of that Gas may have an adverse impact on the Network User or any Shared Customer, then Envestra will notify the Network User as soon as is practicable.

## **12.5 Other Users**

Subject to sub-clause 12.6, Envestra will have no liability to the Network User for any loss, cost, damage or expense the Network User might suffer or incur because someone (other than Envestra) delivers Gas into the Network that does not comply with the specifications required by the Agreement.

## **12.6 Prevention**

If Envestra becomes aware that Gas is being delivered into the Network that does not comply with the specifications required by the Agreement then Envestra will take whatever reasonable steps it is able to take in the circumstances to prevent that Gas being delivered into the Network.

## **12.7 Unlawful Gas**

For the purposes of the Agreement, Gas will not meet the specifications imposed by law if it would be unlawful to sell or supply that Gas, for any reason whatsoever.

# **13. RECEIPT PRESSURES**

## **13.1 Receipt Pressure**

The Network User will ensure that Gas delivered at any User Receipt Point by or for the account of the Network User is delivered at a pressure agreed in writing between Envestra and the Network User for that Receipt Point, or as specified from time to time by Envestra by notice given to the Network User.

## **13.2 Common Pressures**

Envestra may not specify different pressures for Receipt Points pursuant to sub-clause 13.1 other than:

- (a) on grounds that relate to the technical, physical or practical limitations of that Receipt Point or any other Receipt Point or the Network (or any part of it); or
- (b) on grounds that relate to the safe and efficient operation of the Network (or any part of it); or
- (c) on grounds that relate to the operational integrity of the Network (including, but without limitation, the need for Envestra to maintain pressures at any DP in order to comply with its obligations under any law or contract or in order to maintain deliveries of Gas at any DP).



### **13.3 Pressure Management**

If the pressure of Gas delivered at any Receipt Point (whether a User Receipt Point or not) is not within the limits specified for that Receipt Point by Envestra, Envestra may curtail or interrupt deliveries through any Receipt Point or any DP, or flare or release Gas in the Network or take whatever other steps Envestra considers necessary or desirable to increase or reduce the pressure of Gas at any Receipt Point or any DP or at any other point within the Network or to avoid any threat to any person or property.

### **13.4 Other Users**

Subject to sub-clause 13.5, Envestra will have no liability to the Network User for any loss, cost, expense or damage the Network User might suffer or incur because Gas is delivered at any Receipt Point (by someone other than Envestra) at a pressure which is outside the limits required by the Agreement.

### **13.5 Prevention**

If Envestra becomes aware that Gas is being delivered into the Network at a pressure which is outside the limits required by the Agreement then Envestra will take whatever reasonable steps it is able to take in the circumstances to prevent Gas being delivered into the Network at pressures outside those limits.

## **14. DELIVERY PRESSURES**

### **14.1 Delivery Pressure**

Subject to the Agreement, Envestra will ensure that Gas delivered at each User DP during the Term is at a pressure that is within the range of pressures prescribed by law and, to the extent permitted by law, at a pressure (or within a range of pressures) agreed between Envestra and the Network User in relation to that DP.

### **14.2 Exclusion of Liability**

Envestra will not breach its obligations under sub-clause 14.1 where its failure to comply with that sub-clause is due to:

- (a) the technical, practical and physical limitations of the Network;
- (b) the fact that insufficient Gas is delivered into the Network; or
- (c) the fact that Gas is delivered into the Network (whether by or for the account of the Network User or by or for the account of any other person) at pressures outside the limits required by the Agreement.

whether or not Envestra knew, or ought to have known, of those facts or matters at any time before, on or after the Start Date and the failure is not due to the negligent act or omission on the part of Envestra (or any officer, servant, agent, contractor or other person for whom Envestra is liable).

### **14.3 No Implied Obligation**

Nothing in sub-clauses 14.1 or 14.2 imposes any obligation on Envestra to take any steps to modify the technical, practical or physical limitations of the Network or to cause or procure the delivery of Gas into the Network or to ensure that Gas is delivered into the Network at pressures within the limits specified from time to time by Envestra.

#### **14.4 Other Legal Obligations**

Nothing in sub-clauses 14.2 or 14.3 relieves Envestra of any obligations it might have under any applicable law.

### **15. POSSESSION OF GAS AND RESPONSIBILITY**

#### **15.1 Control and Possession**

As between Envestra and the Network User:

- (a) the Network User will be in control and possession of Gas prior to its delivery into the Network by or for the account of the Network User;
- (b) the Network User will be in control and possession of Gas after its delivery out of the Network at any User DP; and
- (c) Envestra will be in control and possession of Gas following its delivery into the Network and prior to its delivery out of the Network.

#### **15.2 No Responsibility before Receipt**

Envestra will have no responsibility or liability whatsoever with respect to any Gas before it is delivered into the Network. This sub-clause will survive the termination of the Agreement.

#### **15.3 Limited Responsibility after Delivery**

To the extent permitted by law, Envestra will have no responsibility or liability whatsoever with respect to any Gas, after it is delivered out of the Network, on account of anything which may be done, happen or arise with respect to that Gas prior to receipt at any Receipt Point or after delivery at any DP, provided that Envestra has complied with its obligations pursuant to clause 14. This sub-clause will survive the termination of the Agreement.

### **16. WARRANTIES AND TITLE TO GAS**

#### **16.1 Warranty of Title to Gas**

The Network User warrants that the Network User has good title to all Gas supplied to Envestra at each Receipt Point by or for the account of the Network User, free and clear of all mortgages, charges and other encumbrances and all other third party rights and claims in and to any Gas (other than any floating charge that has not become a fixed charge and that permits the Network User to sell or supply that Gas). The Network User also warrants that the Network User has the right to supply Gas at each Receipt Point for transportation by Envestra under the Agreement.

#### **16.2 Repetition of Warranties**

The warranties made by the Network User under sub-clause 16.1 will be deemed to be repeated and made on each day on which Gas is delivered to or for the account of the Network User at any Receipt Point or any DP, by reference to the circumstances applicable on that day.

### **16.3 Indemnity**

The Network User will indemnify Envestra against any loss, cost, expense or damage arising from or out of any breach by the Network User of any warranty made or deemed to be made by the Network User under the Agreement.

### **16.4 Title**

Title to the Gas received by Envestra at any Receipt Point will not pass to Envestra but, subject to the Agreement, will remain with the owner of that Gas.

### **16.5 Commingling of Gas**

The Gas delivered to Envestra at any Receipt Point by or for the account of the Network User may be commingled with other Gas in the Network (including Gas owned by Envestra or by any other person). Envestra will be entitled to deliver Gas in a commingled state to each User DP.

### **16.6 No Obligation to Account**

Envestra will have no responsibility to deliver any Gas to or for the account of the Network User (or to otherwise account to the Network User for any Gas delivered into the Network by or for the account of the Network User) other than by delivering Gas in accordance with Envestra's obligations under the Agreement.

### **16.7 Survival**

This clause will survive the termination of the Agreement.

## **17. SUPPLY CURTAILMENT**

### **17.1 Right to Interrupt or Curtail**

Subject to sub-clauses 17.2 and 17.3 and to the extent permitted by law, Envestra may interrupt or curtail deliveries of Gas through the Network at any time, including for a Planned Interruption or an Unplanned Interruption.<sup>1</sup>

### **17.2 Notice of Interruption or Curtailment**

Envestra will give the Network User and/or the relevant Shared Customers such notice as is required by law whenever Envestra proposes to interrupt or curtail deliveries of Gas at any User DP.

### **17.3 Order of Priority**

If Envestra proposes to interrupt or curtail deliveries of Gas pursuant to sub-clause 17.1 then, to the extent that it is practicable to do so (having regard to the reasons for the interruption or curtailment, the intended objective of the interruption or curtailment and any other relevant circumstances), Envestra will endeavour to interrupt or curtail deliveries in the following descending order of priority:

- (a) Interruptible DPs, being any DPs where Envestra has an arrangement that permits Envestra to interrupt or curtail the delivery of Gas at that DP, in the relevant circumstances, in priority to other DPs;

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<sup>1</sup> Rules 88-91 National Energy Retail Rules.

- (b) Demand DPs with alternative fuel sources;
- (c) Demand DPs with the ability to shut down their plant or operations with minimal disruption;
- (d) Demand DPs which are capable of releasing the greatest capacity to that part or parts of the Network in respect of which load shedding is required;
- (e) other Demand DPs;
- (f) Non-Residential DPs;
- (g) Residential DPs;
- (h) emergency or essential services (such as hospitals).

Where two or more DPs fall within a particular category specified in this sub-clause, Envestra may interrupt or curtail deliveries to those DPs in such order as Envestra determines having regard to the relevant circumstances. Envestra will not select which of those DPs to curtail or interrupt based on the identity of the Network User.

#### **17.4 Categorisation of Delivery Points**

For the purposes of sub-clause 17.3, Envestra will determine, in good faith, into which category any particular DP falls, based on its actual knowledge of the DP. Envestra's determination will bind the Network User. If reasonably requested by the Network User, Envestra will provide the Network User with an explanation for Envestra's determination under this sub-clause.

#### **17.5 Network User Information**

The Network User must give Envestra whatever information Envestra reasonably requests from time to time to enable Envestra to interrupt or curtail deliveries of Gas pursuant to the Agreement. That information may include (but is not limited to) emergency contact details for the Network User (or, if the Network User is a Gas Retailer, the Network User or any Shared Customer).

#### **17.6 Updates**

The Network User must give Envestra whatever additional information is necessary from time to time to ensure that all information given to Envestra pursuant to sub-clause 17.5 remains true, correct and up to date throughout the Term.

#### **17.7 Assistance**

The Network User must give Envestra whatever assistance Envestra reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.

If the Network User is a Gas Retailer, the Network User must cause or procure each Shared Customer to give Envestra whatever assistance Envestra reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.

## **18. DISCONNECTION AND RECONNECTION**

### **18.1 Grounds for Disconnection**

Envestra may disconnect any User DP (and, if the Network User is a Gas Retailer, any Shared Customer's premises) from the Network where disconnection is permitted by law.<sup>2</sup>

### **18.2 Reconnection**

If any User DP (or, if the Network User is a Gas Retailer, any User DP or any Shared Customer's premises) is disconnected from the Network, Envestra will re-connect that User DP (or those premises) to the Network as and when required by law.<sup>3</sup>

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<sup>2</sup> Rule 119(1) National Energy Retail Rules.

<sup>3</sup> Rule 122(2) National Energy Retail Rules.

## PART III: OTHER SERVICES

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### **19. ANCILLARY REFERENCE SERVICES**

#### **19.1 Standards**

Envestra will undertake Disconnection and Reconnection of DPs, and carry out Meter and Gas Installation Tests, Meter Removal, Meter Reinstallation and Special Meter Readings, in accordance with the Retail Market Procedures and all other applicable laws.

#### **19.2 Payment of Charges**

Envestra is entitled to charge the Network User for Ancillary Reference Services requested by the Network User. The Ancillary Reference Charge will be calculated from time to time in accordance with the Agreement and the Tariff Schedule applicable at the relevant time.

## PART V: GENERAL TERMS AND CONDITIONS

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### 20. DISTRIBUTION SERVICE CHARGES

#### 20.1 Obligation to Pay Charges

Subject to sub-clause 20.3, in consideration for the Distribution Services, the Network User must pay to Envestra the Distribution Service Charges payable in respect of each User DP (or, if the Network User is a Gas Retailer, each User DP and each Shared Customer).

#### 20.2 Liability for Charges

Subject to sub-clause 20.3, the Distribution Services Charges for which the Network User is liable in respect of a User DP or Shared Customer include the Distribution Service Charges which accrue, in respect of any User DP, whilst the Network User is registered under the Retail Market Procedures as the FRO in relation to that User DP. Subject to sub-clause 22.1, if the Network User is a Gas Retailer, the Network User is liable for those Distribution Services Charges whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User.

#### 20.3 Direct Billing Arrangements

If the Network User is a Gas Retailer, the Network User has no liability to pay any Distribution Service Charges that have been, or are to be, billed to any Shared Customer under a direct billing arrangement between Envestra and that Shared Customer. A direct billing arrangement is an agreement between Envestra and a Shared Customer under which it is agreed that the Shared Customer will be responsible for paying the Distribution Services Charges directly to Envestra.

#### 20.4 Calculation of Charges

The Distribution Services Charges must be calculated from time to time in accordance with the Agreement and the Tariff Schedule applicable at the relevant time.

### 21. STATEMENT OF CHARGES

#### 21.1 Statement of Charges

Envestra will provide a statement of Distribution Services Charges (**a statement of charges**) to the Network User at the time or times required by law and, if not required by law, by no later than the 10<sup>th</sup> Business Day after the end of each Billing Period.

#### 21.2 Content of Statement of Charges

Each statement of charges must include the information required by law together with any other information required by the Agreement. A statement of charges may also include any other information which Envestra decides or agrees to include.

### **21.3 Format of Statement of Charges**

Each statement of charges will be in such format as is required by law and, to the extent permitted by law, in such format as is reasonably determined by Envestra.

### **21.4 Tax Invoice**

To the extent permitted by law, a statement of charges will comply with the requirements that are necessary in order for that statement of charges to constitute, or to be treated as or taken to be, a tax invoice for the purposes of the GST Act. Otherwise, when Envestra gives the Network User a statement of charges, Envestra will provide the Network User with a tax invoice for the amount specified in that statement of charges.

### **21.5 Due Date for Payment**

Subject to clause 23, the Network User must pay the full amount specified in each statement of charges, without set-off, by the due date for payment. The due date for payment is 10 Business Days after the date that the statement of charges is first sent to the Network User. Payment must be made into Envestra's nominated bank account.

### **21.6 Survival**

This clause will survive the termination of the Agreement.

## **22. ADJUSTMENT OF CHARGES**

### **22.1 Recovery not Permitted**

If the Network User is a Gas Retailer and the Network User is not permitted to recover Distribution Service Charges from a Shared Customer under the NERL or the NERR (once they are adopted in Victoria), then neither is Envestra permitted to recover those Distribution Services Charges from the Network User.

### **22.2 Adjustments**

Subject to sub-clause 22.1, the Distribution Service Charges contained in a statement of charges may be adjusted to account for:

- (a) differences between estimated meter readings used for the purposes of a statement and metering data obtained after the issue of a statement; and
- (b) any error in, or correction or substitution of:
  - (i) metering data; or
  - (ii) any other amount or factor that affects the calculation of the Distribution Service Charges.

An adjustment may be made by Envestra by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the Network User together with an explanation of the adjustment.



### 22.3 Time Limit

No claim for an adjustment will be made by the Network User after the expiration of the period mentioned in sub-clause 29.5 or, in any event, more than eleven months after the date of the relevant statement of charges, (except, if the Network User is a Gas Retailer, the Network User may make any claim which the Network User is required by law to pursue on behalf of a Shared Customer).

## 23. DISPUTED STATEMENT OF CHARGES

If the Network User disputes an amount (the **disputed amount**) set out in a statement of charges, then the Network User and Envestra will comply with Rule 510 of the National Gas Rules in relation to that dispute. If rule 510 of the National Gas Rules is not in force or does not apply to that dispute then the following provisions will apply:

- (a) The Network User must give written notice to Envestra of the disputed amount, and the reasons for disputing payment.
- (b) Payment by the Network User of all or part of an amount set out in a statement of charges does not affect the right of the Network User to dispute the amount;
- (c) If the Network User has given notice under paragraph (a) and payment of the charges to which the statement relates has not yet been made, the Network User must pay Envestra by the due date for payment (unless Envestra agrees otherwise) the greater of:
  - (i) the undisputed component of the statement of charges; or
  - (ii) 80% of the total amount due under the disputed statement of charges;
- (d) The Network User must, if the dispute is not resolved by agreement of the parties within 10 Business Days after the date the Network User gave notice under paragraph (a), immediately submit the dispute for resolution or determination in accordance with Part 15C of the National Gas Rules (or, if Part 15C of the National Gas Rules does not apply, in accordance with clause 37);
- (e) If the Network User fails to submit the dispute for resolution or determination in accordance with paragraph (d), Envestra may submit the dispute for resolution or determination in accordance with Part 15C of the National Gas Rules (or, if Part 15C of the National Gas Rules does not apply, in accordance with clause 37);
- (f) Subject to any determination of the dispute resolution panel under Part 15C of the National Gas Rules or the Independent Expert under clause 37 (as the case may be), if, following the resolution or determination of the dispute, the amount due to Envestra is:
  - (i) more than the amount already paid by the Network User, the Network User must pay the difference to Envestra within 3 Business Days of the resolution or determination of the dispute, together with interest on the amount of the difference at the Default Interest Rate for each day from the original due date for payment to the actual date of payment; or
  - (ii) less than the amount already paid by the Network User, Envestra must pay the difference to the Network User within 3 Business Days of the resolution or determination of the dispute, together with interest on the amount of the difference at the Default Interest Rate for each day from the date the Network User made the overpayment to Envestra to the actual date of repayment of the amount of the excess by Envestra.

## **24. DELIVERED QUANTITIES**

### **24.1 Basis for Determination**

Whenever Envestra prepares a statement of charges for a given Billing Period, the Quantity of Gas shown in that statement of charges to have been delivered (or estimated to have been delivered) will be determined by Envestra:

- (a) in the manner required by law;
- (b) (to the extent permitted by law) in the manner required by any relevant rules or agreement that bind Envestra and the Network User; and
- (c) (to the extent not otherwise required by paragraph (a) or (b)), on a reasonable basis.

24.2 [not used]

24.3 [not used]

24.4 [not used]

24.5 [not used]

### **24.6 Determinations Conclusive**

Whenever Envestra determines the Quantities of Gas delivered (or estimated to have been delivered) to any DP during any period in accordance with clause 24.1, that determination will be conclusive and binding on the Network User, unless proven incorrect.

## **25. METHOD OF PAYMENT**

### **25.1 Method of Payment**

Payment by the Network User will be made in the manner specified by law, or where no manner is specified, in immediately available funds on or before the due date by electronic funds transfer to a bank account designated by Envestra by notice in writing to the Network User, or by other agreed method of payment.

### **25.2 Business Days**

If any payment by the Network User falls due on a day that is not a Business Day, then the payment will be made on the Business Day immediately prior to the due date for payment.

## **26. FAILURE TO PAY**

### **26.1 Overdue Interest**

If a party fails to pay any amount due to the other party under the Agreement by the date on which that amount is due (other than where permitted by law), then that party will pay the other party interest on the unpaid amount to the extent that it remains unpaid from time to time. Interest will be calculated in the manner specified by law or, where no manner is specified, on a daily basis and will accrue at the Default Interest Rate. Accrued interest is payable on

demand. Interest not paid in the month in which it accrues will be capitalised and will itself bear interest in accordance with this sub-clause. This sub-clause will survive the termination of the Agreement.

## **26.2 Right to Set Off Unpaid Amounts**

Subject to sub-clause 21.5 and clause 23, if any Party (**Party A**) does not pay any amount due to the other Party (**Party B**) under the Agreement, then Party B may withhold and set off payment of any amounts due or owing by Party B to Party A against any and all amounts due or owing by Party A to Party B. This sub-clause will survive the termination of the Agreement.

## **27. CREDIT SUPPORT**

### **27.1 Network User to provide credit support**

The Network User must, on request by Envestra, provide credit support to Envestra in accordance with the law or, if not required by law, in accordance with this clause<sup>4</sup>.

### **27.2 Credit Support**

The credit support provided by the Network User must be:

- (a) for an amount reasonably requested by Envestra;
- (b) provided within 10 Business Days of Envestra's request; and
- (c) an acceptable form of support in favour of Envestra.

### **27.3 Acceptable Form of Credit Support**

If the Network User is requested to provide credit support, the Network User must provide credit support in an acceptable form. An acceptable form of credit support is:

- (a) a form of credit support that the Network User agrees to provide, and Envestra agrees to accept; or
- (b) an undertaking:
  - (i) substantially in the form set out in Appendix 2; and
  - (ii) issued by a financial institution acceptable to Envestra.

### **27.4 Provision of Credit Support where Dispute arises**

The Network User must provide credit support requested by Envestra even though:

- (a) the Network User disputes Envestra's entitlement to the credit support (in whole or in part); and
- (b) the dispute remains unresolved.

### **27.5 Cost Reimbursement**

Where it is determined that Envestra was not entitled to the credit support provided by the Network User in whole or in part, then (to the extent that Envestra is not otherwise required to do so by law), Envestra must:

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<sup>4</sup> Rule 513 onwards of the National Gas (Retail Support) Amendment Rules 2010 sets out how the amount of credit support a Network User is to provide should be calculated for covered distribution pipelines.

- (a) reimburse the Network User for any costs incurred to procure the credit support (including the costs of funding any cash collateral provided to the issuer of the credit support), in excess of the costs that the Network User would have incurred if the correct amount had been requested; and
- (b) pay the Network User interest at the default rate on the amount of those excess costs.

#### **27.6 Increasing or decreasing credit support**

The amount of credit support provided by the Network User will be increased or decreased in accordance with the law, or as determined by Envestra (acting reasonably).<sup>5</sup>

#### **27.7 Application of Credit Support**

Envestra may only apply or draw on the credit support if:

- (a) Envestra has given not less than 3 business days' notice to the Network User that it intends to apply or draw on the credit support in respect of an amount due and payable by the Network User to Envestra, and that amount remains outstanding; and
- (b) there is no unresolved dispute under clause 23 about the Network User's liability to pay that amount.

#### **27.8 Return of Credit Support**

Envestra must pay, cancel or return to the Network User as appropriate, any balance of credit support outstanding as and when required by law.

#### **27.9 Other obligations of Network User**

The Network User must not take any steps to restrain (by injunction or otherwise):

- (a) an issuer of credit support from paying out, or otherwise satisfying, a claim properly made by Envestra under the terms of the credit support; or
- (b) Envestra from making a claim on the credit support in accordance with the law or the Agreement; or
- (c) Envestra from using the money obtained by calling on the credit support.

The Network User acknowledges that Envestra may disclose to its financiers, the AER or AEMO that it has required or called on credit support provided by the Network User. <sup>6</sup>

### **28. TERMINATION**

#### **28.1 Term**

The Agreement will commence on the Start Date and will continue until it is terminated in accordance with sub-clause 28.2, sub-clause 28.3 or by agreement between Envestra and the Network User.

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<sup>5</sup> See rules 526 and 527 of the National Gas (Retail Support) Amendment Rules 2010.

<sup>6</sup> Rule 530 National Gas (Retail Support) Amendment Rules 2010.

## 28.2 Termination by Envestra

Envestra may terminate the Agreement by seven days' notice given to the Network User at any time, in the event that:

- (a) subject to clauses 23 and 37, the Network User fails to pay any amount due to Envestra on time in the manner required by the Agreement or any Related Haulage Agreement (other than where permitted by law) and the Network User fails to pay the amount due within 14 days after it receives a written notice specifying the amount that is due;
- (b) subject to clauses 23 and 37, the Network User breaches any other obligation under or in relation to the Agreement or any Related Haulage Agreement and, where that breach can be remedied, fails to remedy that breach to the satisfaction of Envestra within 14 days after it receives notice of that breach;
- (c) the Network User becomes an externally-administered body corporate or insolvent under administration (as defined in the Corporations Act 2001) or an Insolvency Event occurs in relation to the Network User;
- (d) an official (including, but not limited to, an administrator, manager or receiver) is appointed in respect of the business of the Network User or the whole, or any significant part of, the assets of the Network User;<sup>7</sup>
- (e) the Network User ceases to be registered under the National Gas Rules as a registered participant in any relevant registrable capacity (or the Network User's registration is suspended);
- (f) the Network User ceases to meet the requirements of the Network User Policy;
- (g) there is any material adverse change, in the reasonable opinion of Envestra, in the ability of the Network User to comply with the terms of, or its obligations under, the Agreement or any Related Haulage Agreement;
- (h) the Network ceases to be a Covered Pipeline under or for the purposes of the National Gas Law (including, but without limitation, if the National Gas Law is repealed); or
- (i) Envestra ceases to hold the Distribution Licence.<sup>8</sup>

## 28.3 Termination by the Network User

The Network User may terminate the Agreement by seven days' notice given to Envestra at any time in the event that:

- (a) Envestra breaches any obligation under or in relation to the Agreement and, where that breach can be remedied, fails to remedy that breach to the satisfaction of the Network User within 14 days after it receives notice of that breach from the Network User;
- (b) Envestra becomes an externally-administered body corporate or insolvent under administration (as defined in the Corporations Act 2001) or an Insolvency Event occurs in relation to Envestra; or
- (c) the Network ceases to be a Covered Pipeline under or for the purposes of the National Gas Law (including, but without limitation, if the National Gas Law is repealed).

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<sup>7</sup> Section 41 of the Gas Industry Act allows the Essential Services Commission to appoint an administrator to a licensed business where the security of gas supply is threatened by a contravention of licence conditions.

<sup>8</sup> For example see clause 3 of Envestra's existing Gas Distribution Licence. This clause enables Envestra's licence to be revoked where Envestra does not comply with an enforcement order or an undertaking, or where Envestra agrees to the revocation of the Licence.

#### **28.4 Effect of Termination**

The termination of the Agreement will terminate the rights and obligations of the Network User and Envestra under the Agreement (to the extent that those rights and obligations have not then accrued), other than rights and obligations which are expressed to survive termination.

#### **28.5 No Refunds**

Envestra will have no obligation to refund or repay any amount paid by the Network User to Envestra on account of Distribution Service Charges to become payable under the Agreement.

#### **28.6 Imbalance on Termination**

If there is an Imbalance on termination of the Agreement, title to any Gas in the Network which is owned by the Network User (but which has not been delivered out of the Network to or for the account of the Network User) will pass to the person to whom, or for whose account, that Gas is delivered, for no consideration other than the terms of this Agreement. The Network User will have no claim against Envestra for or in relation to that Gas.

For the purposes of this sub-clause, there will be an Imbalance (on termination of the Agreement) in the event that the Quantity of Gas delivered into the Network by or for the account of the Network User is not exactly equal to the Quantity of Gas delivered out of the Network to or for the account of the Network User.

#### **28.7 Holding Over**

If Gas continues to be delivered after the end of the Term (except if the Term ends as a result of the termination of the Agreement by Envestra pursuant to sub-clause 28.2 or the Network User pursuant to sub-clause 28.3 of the General Terms and Conditions) through any DP in respect of which the Network User is the FRO (as that term is defined in the Retail Market Procedures) except to the extent that the delivery of Gas is due to the negligent act or omission on the part of Envestra (or any officer, servant, agent, contractor or other person for whom Envestra is liable), Envestra and the Network User will be taken to have entered into a new agreement for the delivery of Gas through that DP on the same terms as the Agreement, except that the expiry date of that agreement will be:

- (a) the date on which Envestra and the Network User enter into a new agreement in respect of the DP which terminates or supersedes that agreement;
- (b) the date on which that DP is disconnected so that it is not possible to deliver Gas through that DP; or
- (c) the date on which the Network User ceases to be the FRO in relation to that DP,

whichever is earlier.

This sub-clause will survive the termination or expiration of the Agreement.

### **29. SERVICE PROVIDER'S LIABILITY**

#### **29.1 Indemnity against Property Damage and Personal Injury**

Subject to the other terms of the Agreement, Envestra will indemnify the Network User against:

- (a) any damage that is caused to property of the Network User (or, if the Network User is a Gas Retailer, a Shared Customer); or

- (b) injury caused to an officer, servant, agent or contractor of the Network User (or, if the Network User is a Gas Retailer, a Shared Customer),

as a result of any negligent act or omission on the part of Envestra or its officers, servants or agents in connection with the provision to the Network User of Distribution Services pursuant to the Agreement or the operation, maintenance, repair, administration or management of the Network or any part of it.

## **29.2 Contribution**

Envestra's obligation to indemnify the Network User under this clause will be reduced in proportion to the extent that the damage or injury has been caused by an act or omission on the part of any of the following:

- (a) the Network User (or any of its officers, servants, agents or contractors)(including, but without limitation, any breach by the Network User of its obligations under the Agreement); or
- (b) if the Network User is a Gas Retailer, a Shared Customer (or any of its officers, servants, agents or contractors).

## **29.3 Notice of Claims**

The Network User will promptly notify Envestra of any Claim which the Network User has, or believes it has, against Envestra as a result of any act or omission on the part of Envestra (or any officer, servant, agent or other person for whom Envestra is liable) in or in connection with:

- (a) the provision of Distribution Services; or
- (b) the operation, maintenance, repair, administration or management of the Network or any part of it.

The Network User's obligations under this sub-clause will survive the termination of the Agreement.

## **29.4 Mitigation**

Each party must use reasonable endeavours to mitigate every Claim it might have against the other party.

## **29.5 Limitation Period**

To the extent permitted by law, Envestra will have no liability to the Network User, for or in respect of any Claim, unless full particulars of that Claim are given by the Network User to Envestra within three months after that Claim becomes known to the Network User (or its officers, servants, agents or contractors) or should have become known to the Network User (or its officers, servants, agents or contractors)(whichever is earlier). This sub-clause will survive the termination of the Agreement.

## **29.6 Exclusion of Economic Loss and Consequential Loss**

To the extent permitted by law, neither party will have any liability to the other party, for or in respect of any Claim for any loss of business or business interruption, loss of profit, loss of revenue or loss of opportunity, or for any other purely economic or monetary loss, or for any indirect, special or consequential loss, cost, expense or damage, which the other party may suffer or incur.

## **29.7 Maximum Liability for Other Loss**

To the extent permitted by law, the maximum amount that either party will be legally liable to pay to the other party (and to any other person or persons) as damages for compensation in respect of the death or any person or any injury to any person or any damage to any property will be limited to \$100 million in aggregate in relation to any one event or occurrence (aggregating all damages and compensation due to the other party and each person in respect of that event or occurrence). Neither party will have any right to recover damages or compensation from the other party in relation to any Claim to the extent that the other party's liability will then exceed the limit set out in this sub-clause.

## **29.8 Australian Consumer Law**

No clause of the Agreement will apply to the extent that it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

- (a) the application of all or any of the provisions of Division 1 of Part 3-2 of the Australian Consumer Law (as defined in the Competition and Consumer Act 2010 (Cwlth));
- (b) the exercise of a right conferred by such a provision;
- (c) any liability of a corporation for breach of a guarantee implied by such a provision.

## **29.9 Interpretation**

For the purposes of sub-clause 29.8, a clause of the Agreement will not be taken to exclude, restrict or modify the application of a provision or section unless the clause does so expressly or is inconsistent with that provision or section.

## **29.10 Statutory Immunity**

Nothing in the Agreement is intended to vary or exclude any immunity conferred on Envestra by any law.<sup>9</sup>

# **30. CONSUMER CONTRACT LIMITATION**

## **30.1 Application of Clause**

Sub-clause 30.2 only applies if the Agreement is a contract for the supply by a corporation of goods or services to a consumer (other than goods or services of a kind ordinarily acquired for personal, residential or household use or consumption).

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<sup>9</sup> Section 213 of the Gas Industry Act provides immunity to persons acting in good faith in the execution of any directive issued under Part 9 of that Act (see footnote below).

Section 109A of the Gas Safety Act provides immunity for complying with a direction given by the Director under section 107 of that Act (see footnote below).



## 30.2 Limitation of Liability

Subject to sub-clause 30.3, if this sub-clause applies, the liability of Envestra for failure to comply with a guarantee under the Australian Consumer Law (as defined in the Competition and Consumer Act 2010 (Cwlth))(other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law) is limited:

- (a) in the case of goods, to any one or more of the following (at the option of Envestra):
  - the replacement of the goods or the supply of equivalent goods;
  - the repair of the goods;
  - the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - the payment of the cost of having the goods repaired; and
- (b) in the case of services, to one of the following (at the option of Envestra):
  - the supplying of the services again; or
  - the payment of the cost of having the services supplied again.

## 30.3 Section 64A(3) Exclusion

Sub-clause 30.2 will not apply in the circumstances specified in section 64A(3) of the Australian Consumer Law.

## 30.4 Interpretation

Terms used in sub-clauses 30.1 and 30.2 have the same meanings for the purposes of those sub-clauses as they have for the purposes of the Australian Consumer Law.

# 31. FORCE MAJEURE

## 31.1 Definition

For purposes of the Agreement, Force Majeure, in relation to a Party, means any event or circumstance not within the control of that Party or that Party's officers, servants, agents or contractors. It includes (but is not limited to) each of the following, to the extent that they are not within the control of that Party or its officers, servants, agents or contractors:

- (a) acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- (b) strikes, lockouts, bans, slowdowns or other industrial disturbances;
- (c) acts of enemy, terrorism, wars, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
- (d) fire or explosion;
- (e) epidemic or quarantine;
- (f) any act or omission of any government or regulatory authority including, but without limitation
  - (i) the making of any direction, or notice with which a Party reasonably believes it is required by law to comply; and

- (ii) any omission to grant any consent or approval which a Party requires in order to perform its obligations under this Agreement (and which the Party has made a reasonable attempt to obtain),  
but in each case, only to the extent that the act or omission of the government or regulatory authority is not the result of any negligence or wrongful act or omission of the relevant Party;<sup>10</sup> or
- (g) equipment breakdown, accident, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance or where the cause of such breakdown or breakage is a lack of proper maintenance).

### 31.2 Consequences of Force Majeure

Non-performance as a result of Force Majeure by either Party of any obligation or condition required by the Agreement to be performed by it:

- (a) will be excused during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure (provided that the Party and its officers, servants, agents and contractors took whatever precautions ought reasonably to have been taken to ensure that the Force Majeure would not prevent performance); and
- (b) will not to that extent give rise to any liability to the other Party for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with, that non-performance.

### 31.3 Payment Obligations

Nothing in this clause will relieve Envestra or the Network User from non-performance of an obligation to pay money (including, without limitation, an obligation to pay the Distribution Service Charges or an obligation to pay money under an indemnity in the Agreement).

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<sup>10</sup> This clause is included to cover several scenarios.

Part 9 of the Gas Industry Act 2001 applies where the supply of gas is likely to become less than is sufficient for the reasonable requirements of the community. Section 207 allows the Minister in those circumstances to give any directions the Minister thinks are necessary. This can include directions in relation to the distribution of gas, including prohibiting the operation of services. The inserted clause is designed to relieve Envestra of any liability where it complies with a relevant direction/law and as a result would be in breach of the Agreement.

Envestra may need to take action that would otherwise constitute a breach of the Agreement to comply with its statutory obligations under the Gas Safety Act. For example, Sections 32 and 33 impose obligations on Envestra in relation to the safe operation of the Network. Section 34 and 35 impose an obligation on Envestra to not knowingly sell or supply where the installation is unsafe. Section 44 obligates Envestra to comply with the Safety Case for the Network. Section 90 gives an inspector the power to disconnect or seize/remove gas pipe, fittings or equipment. Section 106 gives the Director power to direct a person to cease supply, disconnect a customer etc. Section 107 gives the Director the power to do anything to make a gas emergency safe. Section 112 enables the Director or inspector to issue a notice prohibiting activity that impacts on the safe conveyance, sale, supply etc of gas.

#### **31.4 Obligation to Remedy**

A party must use all reasonable endeavours to overcome or remedy any Force Majeure which prevents its performance of any obligation under the Agreement as soon as is reasonably practicable.

### **32. NETWORK USER TO ASSIST**

#### **32.1 Information**

Each Party will provide the other Party, at no cost and in a timely manner, with whatever information, assistance or co-operation the other Party might reasonably require from time to time in connection with the Agreement or the Distribution Services, including information, assistance or co-operation the other Party requires to comply with its obligations under any law from time to time.

#### **32.2 Assistance**

The Network User will use its best endeavours to cause or procure each Upstream Operator (and, if the Network User is a Gas Retailer, each Shared Customer) to provide Envestra, at no cost and in a timely manner, with whatever information, assistance or co-operation Envestra might reasonably require from time to time in connection with the Agreement or the Distribution Services, including any information, assistance or co-operation Envestra reasonably requires to comply with its obligations under any law from time to time.

#### **32.3 Consultation**

Envestra will provide each Upstream Operator with whatever information that Upstream Operator may require to operate transmission pipelines or other pipelines through which Gas is delivered into the Network to or for the account of the Network User. This information may include (but is not limited to) information to enable that Upstream Operator to balance the Quantity of Gas delivered through each Receipt Point with the Quantity of Gas delivered through each DP to or for the account of the Network User.

#### **32.4 Survival**

This clause will survive the termination of the Agreement.

### **33. USER'S INDEMNITIES**

#### **33.1 [Not Used]**

#### **33.2 Network Damage**

The Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur in relation to any Receipt Point, Metering Installation or the operation, administration, maintenance, repair or management of the Network (other than those associated with any curtailment or interruption of the delivery of Gas referred to in sub-clause 33.5) that is caused by any of the following:

- (a) the Network User or any of its officers, servants, agents, contractors or invitees; or

- (b) if the Network User is a Gas Retailer, any Shared Customer or any of its officers, servants, agents, contractors or invitees,

arising out of:

- (c) any negligence or wrongful act or omission by the Network User or, if the Network User is a Gas Retailer, any Shared Customer (or any of their respective officers, servants, agents, contractors or invitees); or
- (d) any breach of this Agreement by the Network User.

### **33.3 Death and Personal Injury**

Subject to the other terms of this Agreement, the Network User will indemnify Envestra against injury caused to an officer, servant, agent or contractor of Envestra as a result of any negligent act or omission on the part of the Network User, its officers, servants or agents in connection with the provision to the Network User of Distribution Services pursuant to the Agreement or the operation, maintenance, repair, administration or management of the Network or any part of it

### **33.4 Service Indemnity**

Subject to sub-clause 33.6, the Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer as a result of any negligent or wrongful act or omission on the part of the Network User (or, if the Network User is a Gas Retailer, on the part of any Shared Customer) in connection with, or in relation to, any Service provided by Envestra to the Network User pursuant to the Agreement (including, in particular (but without limitation), in connection with or in relation to the Disconnection or Reconnection of any User DP pursuant to the Agreement).

### **33.5 Curtailment Indemnity**

Subject to sub-clause 33.6, the Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur in connection with, or in relation to any curtailment or interruption of the delivery of Gas as a result of any negligent or wrongful act or omission on the part of a Network User or, if the Network User is a Gas Retailer, a Shared Customer (or any of their respective officers, servants, agents, contractors or invitees).

### **33.6 Indemnity Qualification**

The Network User's obligation to indemnify Envestra under this clause will be reduced in proportion to the extent that any negligent or wrongful act or omission of Envestra contributes to the loss or liability.

## **34. USER'S INSURANCE**

### **34.1 Insurance Required**

The Network User must obtain and maintain insurance throughout the Term against whatever risks a person carrying on a business of retailing gas would prudently insure, with reputable insurers approved by Envestra (which approval shall not be unreasonably withheld).

#### **34.2 Insurance Information**

Whenever reasonably requested by Envestra, the Network User must give Envestra a certificate of currency for the insurance.

#### **34.3 Notice of Claims**

The Network User must promptly notify Envestra whenever an event occurs in relation to the Network which gives rise to, or might give rise to, a claim under any insurance which the Network User maintains under the Agreement.

#### **34.4 Claims Enforcement**

Whenever a claim arises, or might have arisen, in relation to the Network under any insurance which the Network User maintains under the Agreement, the Network User must take whatever steps Envestra reasonably requires to make and enforce or settle that claim.

#### **34.5 Claims Settlement**

If Envestra requires, the Network User must not settle or compromise a claim in relation to the Network under any insurance which the Network User maintains under the Agreement, except with the consent of Envestra, which consent shall not be unreasonably withheld.

#### **34.6 Failure to Insure**

The Network User must promptly notify Envestra if the Network User fails to obtain or maintain any insurance required under the Agreement. In this case,

#### **34.7 Insurance Required**

Envestra must obtain and maintain insurance throughout the term against whatever risks a person carrying on a business of managing and operating a gas delivery network would prudently insure, with reputable insurers

#### **34.8 Insurance Information**

Whenever reasonably requested by the Network User, Envestra must give the Network User a certificate of currency for the insurance

#### **34.9 Notification**

Envestra must promptly notify the Network User if Envestra fails to obtain or maintain any insurance required under this Agreement.

### **35. ACCESS TO PREMISES**

#### **35.1 Right of Access**

Subject to the Agreement, Envestra may from time to time enter any premises or place owned or occupied by the Network User at any reasonable time to operate, inspect, test, read, maintain, repair, remove, replace, alter or improve any Metering Installation, any DP, any Receipt Point or any other part of the Network.

#### **35.2 Notice of Entry**

Subject to the Agreement, if Envestra intends to enter any premises or place owned or occupied by the Network User (or, if the Network User is a Gas Retailer, any Shared Customer), it must give notice of its intention to the owner or occupier of that premises or place as required by law or, if no notice is required by law, it must give reasonable notice.

#### **35.3 No Notice**

Unless required by law, Envestra will have no obligation to give notice pursuant to the previous sub-clause in the event of an emergency or if it wishes to enter the premises or place to undertake a routine meter replacement or reading or to investigate suspected illegal use or interference.

#### **35.4 Network User's Obligation**

The Network User must use reasonable endeavours to ensure that Envestra (and its officers, servants, agents or contractors) are given safe, reasonable and unhindered access whenever they require to any premises owned or occupied by the Network User (or, if the Network User is a Gas Retailer, any Shared Customer) for the purposes of:

- (a) performing the Agreement; or
- (b) exercising any right given to Envestra under the Agreement.

### **35.5 Failure to Provide Access**

Envestra will have no liability to the Network User for any failure to perform the Agreement to the extent that Envestra is unable to perform the Agreement because it could not obtain safe, reasonable and unhindered access to any premises or place, at the time or times it required, after exercising its reasonable endeavours to do so (provided that reasonable endeavours will not require Envestra or any of its officers, employees, agents or contractors:

- (a) to enter, or attempt to enter, any premises by force or to take any steps that might involve damage, or the risk of damage, to any property; or
- (b) to take any steps that might involve a reasonable risk of physical injury or harm or a reasonable risk to the safety of any person.

### **35.6 Special Meter Reading**

If the Network User requests Envestra to read any meter pursuant to the Agreement and Envestra is unable to obtain safe, reasonable and unhindered access to that meter at the time or times Envestra requires, the Network User will remain responsible to pay Envestra for reading that meter even though no reading is actually taken.

### **35.7 Further Assurances**

Whenever reasonably requested by Envestra, the Network User will grant Envestra (or, if the Network User is a Gas Retailer, exercise reasonable endeavours to cause or procure a Shared Customer to grant Envestra) an easement, licence or other document which Envestra requires to further assure to Envestra its rights of access under the Agreement in respect of premises and places owned or occupied by the Network User or, if the Network User is a Gas Retailer, by any Shared Customer.

### **35.8 Statutory Rights**

Nothing in this clause restricts or limits any right or obligation which Envestra might have under any law to enter any premises or place.

## **36. CONFIDENTIALITY**

### **36.1 Network User's Obligations**

The Network User must keep confidential any information related to or received from Envestra pursuant to the Agreement which Envestra requires the Network User to keep confidential or which the Network User is required by law to keep confidential.

### **36.2 No Disclosure**

The Network User must not disclose to any third person any of the information it is required to keep confidential ('Confidential Information') except where disclosure is permitted pursuant to the Agreement.

### **36.3 Disclosure to Employees**

The Network User may disclose Confidential Information to those of its officers, servants and agents to whom it is necessary to make disclosure. However, the Network User must ensure that any officers, servant or agent to whom

Confidential Information is disclosed does not disclose that Confidential Information to any third person to whom the Network User could not make disclosure pursuant to the Agreement.

#### **36.4 Disclosure By Law**

The Network User may disclose Confidential Information to the extent that disclosure is required by law.

#### **36.5 Envestra's Obligations**

Envestra must comply with any confidentiality obligations imposed on it pursuant to the National Gas Law or the National Gas Rules. Envestra may disclose Confidential Information to the extent that disclosure is required by law.

#### **36.6 Survival**

This clause 36 will survive the termination or expiration of the Agreement.

### **37. DISPUTE RESOLUTION**

#### **37.1 Interpretation**

In the Agreement, unless the context otherwise requires, the following words will have the following meanings:

'**Dispute**' means a dispute between Envestra and the Network User in relation to the Agreement (other than an access dispute to which the National Gas Law applies or a dispute that is susceptible to resolution by a dispute resolution process which Envestra or the Network User are required by law to follow).<sup>11</sup>

'**Independent Expert**', in relation to a Dispute, means the person appointed or to be appointed pursuant to the Agreement to resolve that Dispute.

#### **37.2 Referral to Dispute Resolution**

If any Dispute arises, either Party may notify the other Party that it wishes to refer that Dispute for resolution in accordance with the Agreement. The notice must specify the issues in dispute.

#### **37.3 Negotiations**

If any Party gives notice that it wishes to refer a Dispute for resolution, then the Parties must meet as soon as is reasonably practicable and endeavour to resolve that Dispute through negotiation.

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<sup>11</sup> For example clause 7(a)(ii) of Envestra's distribution licence requires Envestra to implement a scheme for the fair, reasonable and effective investigation and resolution of disputes between Envestra and a person aggrieved about the way in which Envestra conducts its business generally. Clause 7(b) requires Envestra to participate in an Ombudsman scheme. Section 31 of the Gas Industry Act 2001 gives the Essential Services Commission power to resolve disputes between the licensee and any person relating to industry codes, standards, rules and guidelines. Section 36 requires Envestra to implement a customer dispute resolution scheme.



#### **37.4 Referral to Expert**

If the Parties are unable to resolve a Dispute through negotiation within 10 Business Days after notice was given referring that Dispute for resolution (or within whatever longer period the Parties may agree) then either Party may notify the other that it wishes to refer that Dispute to an Independent Expert.

#### **37.5 Selection of Expert**

Within 5 Business Days after a notice is given under the previous sub-clause, the Parties will endeavour to agree on a person to be appointed as Independent Expert to resolve the Dispute. If they are unable to agree within that period, the Parties will jointly request the Institute of Arbitrators and Mediators Australia to nominate a person who has appropriate commercial, technical and practical expertise in relevant areas.

#### **37.6 Appointment of Expert**

The Parties will jointly appoint the person selected as the Independent Expert on terms agreed between the Parties and that person.

#### **37.7 Expert not Arbitrator**

The Independent Expert will act as an expert and not as an arbitrator. The Independent Expert will not be bound by the rules of evidence and will have power to inform himself or herself independently as to the facts to which that Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute. The Parties must provide the Independent Expert with whatever information or other assistance he or she reasonably requires.

#### **37.8 Basis of Decision**

The Independent Expert may resolve the Dispute in whatever manner the Independent Expert thinks fit except that the Independent Expert has no power to make a decision that is inconsistent with, or does not give full effect to, the terms of the Agreement.

#### **37.9 Decision Binding**

The Independent Expert must give the Parties a decision in writing as soon as is reasonably practicable. The decision must record the facts as determined by the Independent Expert and the reasons for that decision. The decision will be final and binding on the Parties unless the decision is beyond the power of the Independent Expert.

#### **37.10 Costs of Expert**

Envestra and the Network User will each pay one half of the costs of the Independent Expert unless the Independent Expert finds that either or both of them has acted unreasonably in relation to the Dispute, in which case Envestra and the Network User will pay those costs in such proportions as the Independent Expert thinks fit having regard to the degree to which the Independent Expert considers they acted unreasonably.

### **37.11 Legal Proceedings**

Neither Party may commence legal proceedings in any court in any jurisdiction in respect of any Dispute unless the Independent Expert has made a determination in relation to that Dispute or the Independent Expert has failed to make a determination, in relation to that Dispute, within the time required under the Agreement.

### **37.12 Interlocutory Relief**

Sub-clause 37.11 does not prevent a Party seeking or obtaining an interlocutory injunction from a court of competent jurisdiction.

### **37.13 Mediation**

The Parties may agree to refer a Dispute to mediation, in which case the Parties will select and appoint a person to act as a mediator and, with the assistance of that mediator, the Parties will endeavour to resolve the Dispute through mediation. The mediator's role is to assist the Parties negotiate a resolution of the Dispute. The mediator has no power to make any decision binding on any Party (unless that Party agrees to be bound by that decision).

### **37.14 Agreement Continues**

Each Party is entitled to exercise all of its rights, powers and remedies under the Agreement, and is obliged to perform and discharge all of its obligations and liabilities under the Agreement, notwithstanding the existence of a Dispute or the fact that a Dispute remains unresolved.

### **37.15 Survival**

This clause will survive the termination of the Agreement.

## **38. NOTICES**

### **38.1 Notices**

Unless otherwise specified or agreed or permitted or required by law, notice given by any Party under the Agreement will be given in writing and will be considered as having been given if delivered:

- (a) personally by being left at the address of the Party to whom the notice is given between the hours of 9:00am and 5:00pm on any Business Day;
- (b) by facsimile;
- (c) by mail with all postage and charges prepaid to either the Network User or Envestra (as the case may be) at the address for notices specified in the Agreement; or
- (d) by e-mail.

Any communications sent by facsimile will be deemed to have been received on the date of dispatch if a transmission report from the sending facsimile machine indicates that the facsimile was sent in its entirety to the facsimile number of the addressee. If a notice is sent by facsimile after 5pm in the place to which the notice is sent, then the notice will be deemed to be received on the next Business Day.

Any communications by mail will be deemed to have been received on the third Business Day following the date of mailing. Normal operating instructions may be made by telephone, e-mail or facsimile.

### **38.2 Address for Notices**

Unless notified otherwise, the address for notices under the Agreement for the Network User is as specified in the Specific Terms and Conditions and for Envestra is:

Envestra Limited  
Level 10, 81 Flinders Street  
ADELAIDE SA 5000

Attention: Group Manager, Commercial  
Telephone: (08) 8227 1500  
Fax: (08) 8227 1511

## **39. ASSIGNMENT**

### **39.1 Assignment by the Network User**

The parties must not transfer, assign or otherwise deal with any of its rights or obligations under the Agreement except in accordance with the Access Arrangement.

### **39.2 Assignment by Envestra**

Envestra may assign or transfer its rights or obligations under the Agreement to any person who purchases or acquires the Network or possession and control of the Network.

### **39.3 Release from Obligations**

If Envestra assigns or transfers its rights and obligations under the Agreement, Envestra will be automatically released and discharged from its obligations and liabilities under and in relation to the Agreement to the extent that those obligations and liabilities are assumed by the person who purchases or acquires the Network or possession and control of the Network.

### **39.4 Deed of Assumption**

For the purposes of sub-clause 39.3, a person will be taken to have assumed Envestra's obligations and liabilities if that person executes a deed poll in favour of the Network User (whether alone or with any other person or persons) under which that person undertakes to perform and discharge those obligations.

### **39.5 Encumbrances**

Envestra may mortgage, charge or otherwise encumber any of its rights or obligations under the Agreement in favour of any person.

### **39.6 Preconditions**

The Network User must not assign any of its rights or obligations under this Agreement unless it has:

- (a) Received the explicit informed consent to the registration of the assignee in AEMO's Metering Register as the FRO for that Supply Point from the Subject Customer in relation to each Supply Point that is the subject of the assignment (defined terms have the meaning given in version 5.0 of AEMO's Retail Market Procedures (Victoria));
- (b) A transfer request has been delivered to AEMO in relation to each Supply Point for which explicit informed consent has been obtained, specifying a prospective date for registration of the transfer (defined terms have the meaning given in version 5.0 of AEMO's Retail Market Procedures (Victoria));
- (c) Envestra has delivered a Transfer Request Notification in respect of the Transfer Request (defined terms have the meaning given in version 5.0 of AEMO's Retail Market Procedures (Victoria));
- (d) The prospective assignee has entered into an agreement with Envestra under which the assignee agrees to be bound, from the commencement of the assignment, by the agreement between Envestra and the assignor as if the assignee stood in the shoes of the assignor;
- (e) the prospective assignee meets the requirements of Envestra's Network User Policy;
- (f) the prospective assignee holds the requisite licences or authorisations to retail gas and is registered as a participant in the relevant gas markets;
- (g) the prospective assignee has provided Envestra with the same credit support as Envestra holds from the assignor for the charges payable by the assignee; and
- (h) Envestra has given its consent to the assignment of rights and obligations to the assignee (with such consent not to be unreasonably withheld).

## **40. AMENDMENT OF AGREEMENT**

The Agreement may only be amended in writing executed by or on behalf of the Network User and Envestra.

## **41. MISCELLANEOUS PROVISIONS**

### **41.1 Modification, Waivers and Forbearance**

No failure or delay by a party in exercising any right, power or privilege under the Agreement will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

No waiver by either party of any one or more defaults by the other party in the performance of the Agreement will operate or be construed as a waiver of any future default or defaults by the same party or the other party, whether of a like or of a different character.

No granting of time or other forbearance or indulgence by a party will in any way release, discharge or otherwise affect the liability of the other party under the Agreement.

#### **41.2 Indemnities**

Each indemnity in the Agreement is a continuing indemnity which will survive the termination of the Agreement. It is not necessary to incur a loss, cost, expense or damage before enforcing any indemnity.

#### **41.3 Consents**

Where any consent or approval is required from Envestra under the Agreement, Envestra must not unreasonably withhold that consent or approval. Envestra may make any consent or approval subject to whatever conditions are reasonably necessary.

#### **41.4 Governing Law**

The Agreement will be construed in accordance with the laws of the State of Victoria. Envestra and the Network User submit to the jurisdiction of the courts of that State and agree to be bound by any decisions of those courts and any courts having jurisdiction to hear appeals from those courts.

#### **41.5 Severability**

If any provision of the Agreement is or becomes invalid, illegal or void, then the legality or validity or enforceability of any other provision of the Agreement will not be affected, and the illegal or invalid or void provision will be deemed to be deleted from the Agreement, to the same extent and effect as if it was never incorporated in the Agreement. All other provisions of the Agreement will continue in force, unless the deletion of the provision has substantially altered the commercial efficacy of the Agreement.

#### **41.6 No Benefit to Other Persons**

Neither Envestra nor the Network User intends that the provisions of the Agreement are to benefit, or affect contractually, in any way any other person. No person, other than valid assignees, will have any right to enforce the terms of the Agreement against the Network User or Envestra.

#### **41.7 Delegation**

Envestra may from time to time appoint an agent or contractor to exercise some or all of Envestra's rights under the Agreement for and on behalf of Envestra (including, but without limitation, this right to delegate). Envestra may also from time to time appoint an agent or contractor to perform some or all of Envestra's obligations under the Agreement for and on behalf of Envestra. The appointment by Envestra of an agent or contractor will not relieve Envestra from any liability in connection with the performance of its obligations under the Agreement.

#### **41.8 Enforceability**

Each party represents that it has all necessary power and authority to enter into and perform its obligations under the Agreement and that the Agreement is binding on that party and enforceable against it in accordance with its terms.

#### **41.9 No Partnership**

Nothing in or arising out of the Agreement will constitute a partnership between the Network User and Envestra or either of them for any purpose.

#### **41.10 Costs**

Each party will bear its own costs in connection with the preparation, settlement, execution and delivery of the Agreement.

#### **41.11 Stamp Duty**

The Network User will pay all stamp duty payable in any jurisdiction on or in respect of:

- (a) the Agreement;
- (b) any statement of charges, invoice or notice issued pursuant to the Agreement;
- (c) any easement, licence or other document required under sub-clause 35.7 of the Agreement; and
- (d) any other document reasonably necessary pursuant to the Agreement (other than any transfer or assignment executed pursuant to sub-clause 39.2 or any deed poll executed pursuant to sub-clause 39.4).

#### **41.12 Further Assurances**

The Network User will sign all such documents and do and procure to be done all such acts and things which Envestra considers necessary or desirable from time to time to give full effect to the Agreement.

### **42. INTERPRETATION**

#### **42.1 Interpretation**

In interpreting these terms and conditions or the Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a regulatory authority includes a reference to any court or other body exercising judicial powers and to any other person established by law or authorised by law to act;
- (c) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes a reference to each other gender;
- (e) a reference to Distribution Service Charges payable in respect of a Shared Customer includes a reference to Distribution Service Charges that accrue, in relation to a User DP, whilst the Network User is the FRO under the Retail Market Procedures;
- (f) a reference to a Shared Customer's premises is a reference to any premises in respect of which a Shared Customer has a contract with a Gas Retailer for the purchase of Gas or for which the Shared Customer has a customer connection contract under the National Energy Retail Law, whether or not those premises are owned or occupied by the Shared Customer;
- (g) where any expression is defined in the Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) clause headings, sub-clause headings and footnotes are inserted for convenience only and do not affect the interpretation of the Agreement;
- (i) references to 'dollars' and '\$' are references to Australian dollars;

- (j) a reference to law is a reference to the legislation and common law of any relevant jurisdiction;
- (k) a reference to legislation includes a reference to subordinate legislation;
- (l) a reference to subordinate legislation includes a reference to any direction, rule, regulation, proclamation, code, notice, order or other instrument or document of any nature whatsoever issued pursuant to any legislation;
- (m) a reference to legislation (or any part of any legislation) includes that legislation (or part) as amended or replaced from time to time;
- (n) a reference to paragraphs, sub-clauses, clauses and schedules is a reference to paragraphs, sub-clauses, clauses and schedules of and to the Agreement;
- (o) a reference to any agreement (including the Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (p) a reference to a party to the Agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns; and
- (q) where two or more parties make a joint covenant, undertaking, representation or warranty, the same will be construed to refer to each and bind each of such parties jointly and each of them severally.

## 42.2 Terminology

Terminology used to describe units will, unless otherwise agreed, be in accordance with Australian Standard AS1000 'The International System of Units (SI System) and Its Application', the Commonwealth 'National Measurement Act 1960' and regulations thereunder, Australian Standard AS1376-1973 'Conversion Factors' and the Australian Gas Association publication 'Metric Units and Conversion Factors for Use in the Australian Gas Industry'.

## 42.3 Contra Proferens

In the interpretation of the Agreement, no presumption will be made against any party on the grounds that the Agreement or any provision of it was drafted by that party or its counsel.

## 42.4 Entire Agreement

The Agreement constitutes the entire agreement between the Network User and Envestra in relation to its subject matter. It supersedes all prior agreements, representations and understandings (except that, where Envestra and the Network User have agreed on terms in relation to a single specific User Delivery Point, those terms will continue to apply to the extent that they are inconsistent with the Agreement, unless stated otherwise). All implied warranties, terms and conditions are excluded to the extent permitted by law.

# 43. GOODS AND SERVICES TAX

## 43.1 GST included in price

Notwithstanding anything to the contrary, any amount payable to Envestra by the Network User in accordance with this clause shall form part of the *price* payable by the Network User in respect of a *taxable supply* made to the Network User.

#### 43.2 GST in respect of Taxable Supply

- (a) Where any *supply* by one party ("**the Supplier**") to another party ("**the Recipient**") under or in connection with the Agreement is a *taxable supply*, the Recipient must pay the Supplier any *GST* which is payable by the Supplier or, if the Supplier is a member of a *GST group*, by the *representative member* of that *GST group* on the *taxable supply*.
- (b) The *GST* on a *taxable supply* is the amount ascertained by multiplying the amount that would otherwise be payable under this Agreement in respect of the *taxable supply* if the *GST* payable were nil, by the prevailing rate of *GST* for that *taxable supply*.
- (c) The Recipient must pay the Supplier the *GST* on a *taxable supply* at the same time and in the same manner as the Recipient is required to pay any other amount to the Supplier in respect of that *taxable supply*. If no other amount is payable by the Recipient to the Supplier in respect of that *taxable supply*, the Recipient must pay the Supplier the *GST* on that *taxable supply* within 7 days of the receipt by the Recipient of a valid tax invoice from the Supplier or, if the Supplier is a member of a *GST group*, from either the Supplier or the *representative member* of that *GST group*.
- (d) The Recipient must pay the *GST* on a *taxable supply* in full.

#### 43.3 Adjustments

- (a) If an *adjustment event* has occurred in respect of a *supply* made pursuant to or in connection with the Agreement, the party that becomes aware of the *adjustment event* agrees to notify each other party on becoming aware of the *adjustment event*, and the parties agree to take whatever steps are necessary and to make whatever adjustments are required to ensure that any *GST* or additional *GST* on that *supply* or any refund of any *GST* (or part thereof) is paid as soon as is practicable but no later than 14 days after that notice is given.
- (b) If required by law, the Supplier will issue to the Recipient an *adjustment note* in respect of a *supply* that is subject to an *adjustment event* covered by paragraph (a) of this sub-clause. An *adjustment note* required by that paragraph will be issued no later than 14 days after the Supplier becomes aware of the *adjustment event*.

#### 43.4 Definitions

In this clause, all italicised terms except for *adjustment event* shall have the same meaning as they have from time to time in the *GST Act*.

In this clause, "adjustment event" means an *adjustment event* for the purposes of the *GST Act* and includes any matter or thing that arises out of any error, any decision of any court in relation to the *GST Act* or a related Act, any ruling issued by the Commissioner of Taxation, any audit of the tax affairs of the Supplier or the Recipient (or any related entity of the Supplier or the Recipient) or the settlement of any dispute (including a dispute with the Commissioner of Taxation).

In this clause, a reference to the *GST Act* is a reference to the *A New Tax System (Goods and Services Tax) Act 1999* as that Act is varied in its effect on an event, matter, thing, agreement, transaction or the like by *A New Tax System (Goods and Services Tax Transition) Act 1999*.



#### 43.5 Reimbursements

If a party reimburses the other party for or in respect of any *creditable acquisition* or *creditable importation* made by that other party, the amount reimbursed shall be net of any *input tax credit* that relates to that *creditable acquisition* or *creditable importation* (as the case may be). If a party reimburses the other party for or in respect of any *acquisition* that is not a *creditable acquisition* or for an *importation* that is a *taxable importation* but is not a *creditable importation* made by the other party, the amount to be reimbursed shall include any amount that relates to that *acquisition* or *importation* (as the case may be) which that other party (or, if that other party is a member of a *GST group*, the *representative member* of that *GST group*) is not entitled to claim as an *input tax credit*.

## Appendix 1

[Not Used]

## Appendix 2

### Undertaking<sup>12</sup>

(Sub-clause 27.3)

In this deed:

- (a) [\*\*\*\*\*] (ACN ... ..) is the retailer; and
- (b) Vic Gas Distribution Pty Ltd (ACN 085 899 001) is the distributor; and
- (c) [\*\*\*\*\*] (ACN ... ..) is the Financial Institution.

The Financial Institution unconditionally undertakes to pay, on demand by the distributor, to the distributor any sum or sums up to a maximum aggregate of \$.....

The payment or payments are to be made forthwith and unconditionally, without reference to the retailer, and despite any instruction from the retailer not to make the payment or payments.

A demand for payment under this deed is to be made on behalf of the distributor by .....[*name of person authorised to act on behalf of the distributor*]

This deed is terminated if:

- (a) the distributor notifies the Financial Institution that it no longer requires the Financial Institution's undertaking; or
- (b) the Financial Institution pays to the distributor a sum or sums amounting to its maximum aggregate liability under this deed; or
- (c) the parties agree to terminate it.

Executed as a deed at ..... this day of ..... 20 ...

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<sup>12</sup> Where the Network User is not a Gas Retailer, replace "retailer" (wherever it appears) with "Network User".