



**Access Arrangement**  
for Envestra's  
Albury Distribution System

8 April 2002

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## **Part B Reference Tariffs and Reference Tariff Policy**

## **Part C Terms and Conditions**

## **DISCLAIMER**

This document has been prepared solely for the purpose of compliance with the *Gas Pipelines Access (Victoria) Act 1998* and the *National Third Party Code for Natural Gas Pipeline Systems*, (“the Access Code”).

It is designed solely to enable Users and Prospective Users to understand the derivation of elements in the accompanying Access Arrangement and to form an opinion as to the compliance of that Access Arrangement with the provisions of the Access Code.

This document is not intended for any other purpose and should not be relied upon as the basis for any decision to transport or retail gas through the Distribution System or to buy or sell, or otherwise deal in, Envestra’s securities or for any other purpose.

# Part A

## Principal Arrangements

### 1 Introduction

#### 1.1 Background

This revision to the Access Arrangement, approved by the Independent Pricing and Regulatory Tribunal (IPART) in February 2000, is submitted by Envestra (“the Service Provider”) to the Essential Services Commission (now the Relevant Regulator following cross-vesting of the Distribution System in January 2002) in accordance with section 2 of the National Third Party Access Code for Natural Gas Pipeline Systems (the Access Code). The Access Arrangement as revised describes the terms and conditions on which Envestra will grant access to its Distribution System. These terms are materially the same terms on which access is provided to Envestra’s Victorian distribution system (the Victorian Network), with differences occurring primarily as a result of differences in State laws and licensing provisions.

Envestra submits this revision on behalf of Albury Gas Company Ltd, a subsidiary of Vic Gas Distribution Pty Ltd, which is a controlled entity within the Envestra Group. Envestra Victoria Pty Ltd, a wholly owned subsidiary of Envestra, has entered into a Business Management Agreement (BMA) with Vic Gas Distribution Pty Ltd (owned by the Origin Energy Group of Companies), whereby Envestra Victoria becomes entitled to and exposed to the full economic rewards and risks of operating the business. Under the BMA, Envestra Victoria is appointed by Vic Gas Distribution to operate and manage the Distribution System.

#### 1.2 Composition of Access Arrangement

This revised Access Arrangement as revised comprises this document together with the plans of the Distribution System lodged with the Regulator.

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

The document is in three Parts:

Part A - Principal Arrangements

Part B - Reference Tariffs and Reference Tariff Policy

Part C – Terms and Conditions

#### 1.3 Effective Date

The Access Arrangement came into effect on 1 March 2000. Revisions to the Access Arrangement will come into effect in accordance with section 2.48 of the Access Code.

## 2 Definitions and Interpretation

- (a) In this Access Arrangement and supporting documents, where a word or phrase is capitalised:
- (1) it has the definition given to that word or phrase in the Access Code (unless the word or phrase is also defined in the glossary ("Glossary") contained in clause 6, in which case the word or phrase has the definition given to that word or phrase in the Glossary); or
  - (2) if the word or phrase is not defined in the Access Code, the definition given to that word or phrase in the Glossary,
- unless the context otherwise requires.
- (b) In this Access Arrangement, unless the context requires another meaning, a reference:
- (1) to Tariff D or Tariff V includes a reference to a new Haulage Reference Tariff introduced pursuant to the Reference Tariff Policy which supplements or replaces Tariff D or Tariff V respectively and related terms shall be construed accordingly;
  - (2) to the singular includes the plural and vice versa;
  - (3) to a gender includes all genders;
  - (4) to a document (including this Access Arrangement and a Regulatory Instrument) is a reference to that document (including any Appendices, Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
  - (5) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (6) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Access Arrangement;
  - (7) to a person (including a party) includes:
    - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
    - (B) the person's agents, successors, permitted assigns, substitutes, executors and administrators; and
    - (C) where that person ceases to exist, is reconstituted, renamed or replaced, or where its powers or functions are transferred to another body, a reference to the body which replaces it or which serves substantially the same purpose or has the same powers or functions;
  - (8) to a law:
    - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
    - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and

- (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
- (9) to a thing (including, but not limited to, a right) includes any part of that thing;
- (10) to a right includes a remedy, power, authority, discretion or benefit.
- (11) to time is to Melbourne time; and
- (12) to the word ‘including’ or ‘includes’ means ‘including, but not limited to’, or ‘includes, without limitation’.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) Headings are for convenience only and do not affect interpretation.
- (e) If a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (f) All Reference Tariffs and Reference Tariff Components calculated under this Access Arrangement will be rounded to the accuracy, in terms of the number of decimal places, required by the relevant Service Provider’s charging and billing systems.
- (g) A Reference Tariff which has been calculated and rounded under the principles in part (f) above will not be rounded to a different level of accuracy when utilised in calculations made under this Access Arrangement.
- (h) All values used in calculations made under this Access Arrangement, except those values to which parts (f) and (g) above apply, will not be rounded.
- (i) When a calculation is required under this Access Arrangement:
- a year “t” is the year in respect of which the calculation is being made;
  - a year “t-1” is the year immediately preceding year “t”; and
  - a year “t-2” is the year immediately preceding year “t-1”.

### **3 Contact Details**

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

National Manager, Regulatory Affairs  
Envestra Limited  
Level 10, 81 Flinders Street  
Adelaide SA 5000  
Ph: 08 8227 1500 Fax: 08 8227 1511

### **4 Prior contractual rights**

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

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

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

### 5.1 Services Policy

5.1.1 Envestra will make Haulage Reference Services and Ancillary Reference Services available to Users or Prospective Users of the Distribution System at the Reference Tariffs and in accordance with the Reference Tariff Policy and Terms and Conditions referred to in sections 5.2 and 5.3 respectively. The Reference Services, detailed below, are likely to be sought by a significant part of the market.

(a) Haulage Reference Services

A Haulage Reference Service consists of

- (i) allowing the injection of Gas at a Transfer Point;
- (ii) haulage of Gas from a Transfer Point to a DSP; and
- (iii) allowing the withdrawal of Gas at a DSP.

Two Haulage Reference Services will be provided at the commencement of the Second Access Arrangement Period:

- (i) Tariff D Haulage Reference Service; and
- (ii) Tariff V Haulage Reference Service

The Tariff V Haulage Reference Tariff includes

- the provision and maintenance of Connection assets that includes a 'standard metering installation' as defined in the Distribution System Code; and
- meter reading on a bi-monthly basis and the provision of meter reading data.

The Tariff D Haulage Reference Tariff does not include the provision or maintenance of Connection and metering assets, as these are Negotiated Services.

(b) Ancillary Reference Services

The following Ancillary Reference Services are provided in relation to DSPs at which Gas is withdrawn by or in respect of a Residential Customer:

- (i) Meter and Gas Installation Test – on-site testing to check the accuracy of a Meter and the soundness of a Gas Installation, in order to determine whether the Meter is accurately measuring the Quantity of Gas delivered.
- (ii) Disconnection Service – Disconnection by the carrying out of work being
  - removal of the Meter at a Metering Installation; or
  - the use of locks or plugs at a Metering Installationin order to prevent the withdrawal of Gas at the DSP.
- (iii) Reconnection Service - Reconnection by turning on Supply including the removal of any locks or plugs used to isolate Supply or reinstallation of a Meter if it has been removed, performance of a safety check and the lighting of appliances where necessary.

The Ancillary Reference Services will be provided on Business Days during normal business hours as advised by Envestra from time to time.

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

5.1.3 The Service Provider will make Services other than Reference Services (“Negotiated Services”) available to Users or Prospective Users as agreed or as determined in accordance with Section 6 of the Access Code.

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

Reference Tariffs and the Reference Tariff Policy are set out in Part B, which covers the following key areas:

- Reference Tariffs

Section 1 of Part B describes the assignment of Reference Tariffs to DSPs. The Reference Tariffs for Haulage Reference Services and Ancillary Reference Services applicable from 1 January 2003 are set out in the schedules attached to Part B.

- Haulage Reference Tariff Control Formula

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

- Processing changes to Reference Tariffs

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

- Calculation of Charges for Haulage Reference Tariffs

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

- Effect of New Facilities Investment on Reference Tariffs

- Fixed Principles

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

- Change in Tax Pass-Through

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

## **5.3 Terms and Conditions**

The Terms and Conditions on which Envestra will supply each Reference Service are set out in Part C.

## **5.4 Capacity Management Policy**

The Distribution System is a Market Carriage Pipeline.

## **5.5 Queuing Policy**

### **5.5.1 Applicability**

This Queuing Policy is applicable to requests for access to the Distribution System and is subject to the Extensions and Expansions Policy.

### **5.5.2 Procedure**

Subject to the remainder of this clause, requests from Prospective Users will be processed in the order they are received.



Where there is sufficient Spare Capacity available in the Distribution System to meet the needs of a Prospective User (who is at the top of the queue) at a nominated point in the Distribution System, Envestra will offer the Spare Capacity at that point in the Distribution System to that Prospective User.

Where there is insufficient Spare Capacity available at a nominated point in the Distribution System to meet a Prospective User's request (having reached the top of the queue), Envestra will first offer that Prospective User any Spare Capacity that is capable of partly satisfying its request at that nominated point. The Service Provider may then undertake an investigation of Developable Capacity alternatives. Under these circumstances, Envestra may elevate the priority of other Prospective Users' requests affected by the proposed augmentation in the interests of optimising design and achieving efficiency in the structure and level of Reference Tariffs. The Service Provider will only take such action where it is reasonable to do so and where it will not foreseeably disadvantage other Prospective Users, other than in relation to their position in the queue.

## **5.6 Extensions/Expansions Policy**

### **5.6.1 Coverage**

- (a) Subject to sections 5.6.1(b), an Extension or Expansion to the Distribution System will be covered by this Access Arrangement where that Extension or Expansion is owned by Envestra.
- (b) An Extension will not be covered by this Access Arrangement:
  - 1. where the Extension is considered by Envestra to be a significant Extension ("Significant Extension") and Envestra gives written notice to the Regulator before the Extension comes into service that the Extension will not form part of this Access Arrangement; or
  - 2. where the Extension is not a Significant Extension, the Regulator agrees, unless the Extension was included in the calculation of the Reference Tariffs.
- (c) For the purposes of section 5.6.1(b), a Significant Extension is an Extension which will service a minimum of 500 customers.

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

- (a) This section 5.6.2 describes how Users will be charged for a Reference Service where the provision of the Reference Service requires New Facilities Investment constituted by an Extension or Expansion covered by this Access Arrangement (such Users are Incremental Users). Where New Facilities Investment is required to provide a Service other than a Reference Service, Envestra will negotiate the charge in good faith with the relevant Users (subject to the relevant provisions of the Access Code).
- (b) Where New Facilities Investment passes the Economic Feasibility Test, Incremental Users will be charged at the prevailing Reference Tariffs and as permitted by section 8.15 of the Access Code, Envestra will seek to include the New Facilities Investment in the Capital Base at the next review of the Access Arrangement. The Service Provider may, at its discretion, seek the Regulator's agreement prior to the next review of the Access Arrangement that the New Facilities Investment passes the requirements of section 8.16 of the Access Code.
- (c) Where New Facilities Investment does not pass the Economic Feasibility Test:
  - (1) The Service Provider will seek to include the relevant part of the New Facilities Investment in the Capital Base at the next review of the Access Arrangement. Envestra may, at its discretion, seek the Regulator's agreement prior to the next review of the Access Arrangement that the relevant part of

- the New Facilities Investment passes the requirements of section 8.16 of the Access Code (as permitted by 8.21 of the Access Code);
- (2) the remaining New Facilities Investment may be (subject to the Access Code):
    - (A) recovered by charging Incremental Users according to the prevailing Reference Tariffs plus a Surcharge approved by the Regulator under section 8.25 of the Access Code;
    - (B) included in a Speculative Investment Fund under the Reference Tariff Policy in Part B, section 6.3 (in which case Incremental Users would be charged according to the prevailing Reference Tariffs); or
    - (C) recovered by a combination of these approaches (in which case Incremental Users would be charged according to the prevailing Reference Tariffs plus a Surcharge approved by the Regulator under section 8.25 of the Access Code); and
  - (3) The Service Provider will notify the relevant Users of its choice between these approaches prior to the relevant New Facility entering in to service.
  - (d) The Service Provider may, at its discretion, negotiate a Capital Contribution with a specific User or Users in respect of a New Facility, in which case, the charge for the User or Users shall be as agreed between the parties (for the purposes of determining Reference Tariffs, this New Facilities Investment shall be treated as if it were funded by Envestra and the User or Users shall be assumed to be paying a Surcharge (if any) that would be approved by the Regulator under section 8.25 of the Access Code).
  - (e) Notwithstanding sections 5.6.2(c) to 5.6.2(d) above, where:
    - (i) The Service Provider considers that some or all of the New Facilities Investment that does not pass the Economic Feasibility Test may pass the System Wide Benefits Test, Envestra may propose revisions to the Access Arrangement which have the effect of raising Reference Tariffs immediately (and thus permitting the part of the New Facilities Investment that would pass the System Wide Benefits Test to be included in the Capital Base and recovered through Reference Tariffs immediately);and
    - (ii) The Service Provider considers that some or all of the New Facilities Investment that does not pass the Economic Feasibility Test nor pass the System Wide Benefits Test is necessary to maintain the safety, integrity or Contracted Capacity of Services, Envestra may propose revisions to the Access Arrangement which have the effect of raising Reference Tariffs immediately (and thus permitting the part of the New Facilities Investment that is necessary to maintain the safety, integrity or Contracted Capacity of Services to be included in the Capital Base and recovered through Reference Tariffs immediately).

These revisions will be proposed and considered according to the process in section 2 of the Access Code and, if accepted, would amount to a change to this Access Arrangement.

### 5.6.3 Unreticulated Townships

Where an Extension to an unreticulated township was not included in the calculation of the Reference Tariffs or the subject of a competitive tender:

- 1) Envestra may approach the Regulator with details of the proposed extension with a view to agreeing on the regulatory treatment of the extension project.
- 2) where the agreed regulatory treatment is that the Extension is, if it proceeds, to be covered by this Access Arrangement:

- The Service Provider will be permitted to recover in the subsequent Access Arrangement Period any cost (which includes the time value of money) not recovered in the Access Arrangement Period in which the extension commenced;
  - The Capital Base for the Access Arrangement Period commencing immediately after the commencement of the extension will be increased by the amount of the New Facilities Investment or Recoverable Portion;
  - The New Facilities Investment will not reduce the carry-over of cost-related efficiencies from the Access Arrangement Period in which the extension is commenced to any subsequent Access Arrangement Period.
- 3) The Service Provider's funding of extensions to unreticulated townships is, in accordance with 3.16(c) of the Access Code, conditional upon (among other things) Envestra having sufficient funds available on commercial terms acceptable to Envestra

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

The Revisions Submission Date will be 30 March 2007.

The Revisions Commencement Date will be 1 January 2008.

## 6 Glossary

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

**Access Arrangement** means this arrangement for access for third parties to the Distribution System approved under the Access Code;

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

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

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

**Ancillary Reference Service** means a Reference Service as set out in clause 5.1 of Part A of this Access Arrangement;

**Ancillary Reference Tariff** means the tariff for Ancillary Reference Services;

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

**Authority** means any:

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

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

- (a) the “bid rate” (rounded up to four decimal places) quoted on the page entitled “BBSY” of the Reuters Monitor System at or about 10:00 am on any Business Day for bank accepted bills of exchange which have a term of 30 days; or
- (b) if the Bank Bill Rate cannot be determined in accordance with paragraph (a), the rate in percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the current bill market, and in default of agreement within 14 days, the rate nominated by Envestra and approved by the Regulator as an appropriate rate;

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

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

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

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

**Change in Taxes Event** means a variation, withdrawal or introduction of a Relevant Tax, or a change in the way or rate at which a Relevant Tax is calculated, or a cost incurred under paragraphs (a) and (b):

- (a) any cost, expense or other amount of any nature whatsoever which Envestra is directed, ordered or required to incur by any Authority in respect of the repair, maintenance, administration or management of the Distribution System (or any part of it) or in respect of the provision of Reference Services; and
- (b) any cost, expense or other amount of any nature whatsoever which Envestra incurs in complying with (or attempting to comply with) any direction, order or requirement of any Authority or any change in a Regulatory Instrument in or in respect of the repair, maintenance, administration or management of the Distribution System (or any part of it) or in respect of the provision of Reference Services.

For the Second Access Arrangement Period only, a Change in Taxes Event includes costs associated with the introduction of FRC where those costs have not already been included in the Access Arrangement.

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

- (a) the amount determined from the application of the Reference Tariffs in respect of the Reference Services provided to the User in respect of its Customers or such other amount as agreed in writing;
- (b) where the User is a gas retailer, the prices, fees and charges notified by Envestra in accordance with any relevant legislation;
- (c) where Services other than Reference Services are provided by Envestra as set out in Schedule 3 of the Terms and Conditions, the Non-Reference Service Charge; and
- (d) Additional Charges;

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

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

**Confidential Information** means all:

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

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

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

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

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

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

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

**divided by**

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

**minus one;**

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

**Customer** means a customer of the User who is capable of withdrawing Gas at a DSP;

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

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

**Disconnection** means the carrying out of work to prevent the withdrawal of Gas at a DSP;

**Disconnection Request** means a request in a form reasonably required by Envestra given by the User to Envestra requesting the Disconnection and which must include the reason for requesting the Disconnection;

**Distribution Area** means the area in which Envestra is authorised to distribute Gas under a Distribution Licence;

**Distribution Demand Tariff Component** means a Haulage Reference Tariff Component of Tariff D (as varied from time to time) expressed in \$/GJ of Annual MHQ;

**Distribution Fixed Tariff Component** means a Haulage Reference Tariff Component of Tariff V that does not vary according to the Quantity of Gas supplied each day, as set out in Schedule 1 of Part B (as varied from time to time) and is expressed in \$/day;

**Distribution Licence** means the licence or authority granted to the Albury Gas Company by the relevant regulatory authority that permits the distribution of Gas;

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

**Distribution Services** means:

- (a) Reference Services in relation to Customers;
- (b) such Services other than Reference Services that Envestra has agreed to provide to the User as set out in Schedule 3 of Part C of the Access Arrangement, as amended from time to time; and
- (c) Connection;

**Distribution System** is the Covered Pipeline which is the subject of this Access Arrangement, described in the plans lodged with the Regulator and any Extension or Expansion of the Distribution System that is covered by the Access Arrangement;

**Distribution System Code** means the Victorian Gas Distribution System Code issued by the Regulator;

**Distribution Volume Tariff Component** means a Reference Tariff Component of Reference Tariff V, as set out in Schedule 1 of Part B (as varied from time to time), expressed in \$/GJ for GJs of Gas withdrawn in the Peak Period or in the Off-Peak Period ;

**DSP (Distribution Supply Point)** means a point on the Distribution System at which Gas is capable of being withdrawn from the Distribution System for delivery to a Customer, which is normally located at the outlet of a Meter;

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

**Emergency** has the same meaning as in the Distribution System Code and includes a Gas leak;

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

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

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

**Fault** means any problem in Supply to a DSP or any damage to or breakdown of Envestra's Distribution System;

**First Access Arrangement Period** means the period ending on 31 December 2002;

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

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

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

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

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

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

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

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

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

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

**Gas Retail Regulation** means the Gas Supply (Natural Gas Retail Competition) Regulation (NSW) 2001;

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

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

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

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

**Haulage Reference Services** means those services described in clause 5.1.1.

**Haulage Reference Tariff** means the tariff for Haulage Reference Services;

**Haulage Reference Tariff Component** refers to an individual price element comprising part of a Haulage Reference Tariff

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

**Inquiry** means an inquiry or complaint that is investigated by IPART;

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

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

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

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

**IPART** means the NSW Independent Pricing and Regulatory Tribunal;

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

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

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

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

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

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

**Mid-Month Invoice** means the invoice of that name referred to in clause 7.4 of the Terms and Conditions;

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

**Monthly Invoice** means the invoice of that name referred to in clause 7.4 of the Terms and Conditions;

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





**Albury Distribution System  
Access Arrangement  
Part B**

**Reference Tariff Policy  
and  
Reference Tariffs**

**8 April 2002**

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# Reference Tariff Policy

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## 1 Haulage Reference Tariffs

### 1.1 Initial Haulage Reference Tariffs

For Calendar Year 2003, the Haulage Reference Tariffs are set out in Schedule 1.

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

### 1.2 Assignment of Haulage Reference Tariffs

#### (a) Assigned Reference Tariffs

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

Tariff D will be assigned to a DSP at a given time if either the Quantity of Gas delivered at that DSP:

- exceeds 10 TJ in the preceding 12-month period (of if less than 12 months of data is available, the Quantity of Gas delivered pro-rata for 365 days); or
- exceeds 10 GJ in any hour in the preceding 12-month period.

Tariff V will be assigned to a DSP if it is not assigned Tariff D.

#### (b) Reference Tariffs assigned to New DSPs

The Service Provider will assign a Haulage Reference Tariff to a new DSP. In determining the Haulage Reference Tariff assigned to a DSP, the Service Provider will take into account:

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

#### (c) No Meter

Tariff V will be assigned to any DSP which does not have a Meter, unless otherwise agreed between the Service Provider and the relevant User.

#### (d) Change in characteristics of a DSP

If, after the initial assignment of a Haulage Reference Tariff to a particular DSP, the Service Provider becomes aware or is advised that

- the Quantity of Gas withdrawn has changed or will change; or
- the Connection or gas demand characteristics have changed or will change

such that a different Haulage Reference Tariff should be assigned to the DSP, the Service Provider will, subject to clause 1.2(e), notify the relevant User accordingly in writing, prior to the reassignment occurring.

In determining the Haulage Reference Tariff assigned to a DSP, the Service Provider will take into account:

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

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

Where a User receives notice under clause 1.2(d), that a different Haulage Reference Tariff is to be assigned to a DSP, it will be assigned that different Haulage Reference Tariff unless the User submits a written and reasonable request to the Service Provider to remain on the original Haulage Reference Tariff and the Service Provider approves the request.

**(f) Assignment of New Reference Tariffs**

If a new Reference Tariff is introduced, the Service Provider will specify the characteristics or conditions under which a DSP will be assigned the new Reference Tariff.

**1.3 New Haulage Reference Service or Haulage Reference Tariff Component**

**(a) Time Period for Reassignment**

When introducing a new Haulage Reference Service and/or Haulage Reference Tariff Component, the Service Provider will, if necessary, reassign the Haulage Reference Tariff and/or Haulage Reference Tariff Component to a DSP within 30 Business Days of the earlier of:

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

**(b) Information to be supplied to Regulator**

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

- (1) a parent Haulage Reference Tariff(s), which is the Haulage Reference Tariff(s) currently assigned to those DSPs to which the new Haulage Reference Tariff is proposed to apply;
- (2) reasonable estimates of the quantities that would have been distributed (to Customers affected by the change) if the new Haulage Reference Tariff Components had existed in the Calendar Year immediately prior to the current Calendar Year for each new Haulage Reference Tariff Component; and

- (3) reasonable estimates of the quantities that would have been distributed (to Customers affected by the change) if the new Haulage Reference Tariff Components had existed in the Calendar Year immediately prior to the current Calendar Year for each Haulage Reference Tariff Component of the parent Haulage Reference Tariff(s).

**(c) Separate identification of Gas distributed in 2003**

For Calendar Year 2003, the information submitted under clause 1.3(b) will separately identify quantities of Gas that would have been distributed in relation to each Reference Tariff Class.

**(d) Switching rates**

If necessary, the Service Provider will submit information to the Regulator in relation to the switching rate of Customers moving from a given parent Haulage Reference Tariff to a new Haulage Reference Tariff.

**(e) Details of estimates**

The Service Provider will provide details to the Regulator of and the basis for all estimates under this clause 1.3. The Regulator can request that the Service Provider resubmit quantity estimates provided under this clause 1.3 where the Regulator considers the estimates to be incomplete, inconsistent or unsubstantiated. The Regulator must provide reasons for requesting such a resubmission.

**(f) Timing of information**

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

## **1.4 Withdrawal of Haulage Reference Tariff**

**(a) Time period for effecting withdrawal**

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

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

**(b) Notification of Users**

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

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

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

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

## **2 Ancillary Reference Tariffs**

The Tariffs for Ancillary Reference Services for 2003 are set out in Schedule 2.

The Service Provider may adjust the Ancillary Reference Tariffs from time to time. Ancillary Reference Tariffs are to be adjusted by the change in CPI. For the avoidance of doubt, Ancillary Reference Tariffs are not adjusted in accordance with the Tariff Control Formula in clause 3.

## **3 Haulage Reference Tariff Control Formula**

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

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

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

Whenever the Service Provider proposes to vary, withdraw or introduce any new Haulage Reference Tariff, it will ensure that the proposed charge will be compliant with the Tariff Control Formula set out in this clause 3 to the reasonable satisfaction of the Regulator, and it will comply with the procedures set out in clause 4.

### **3.1 The Tariff Control Formula**

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

The Tariff Control Formula is:

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

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

$p_{t-1}^{ij}$  for the 2003 Calendar Year, is the relevant Haulage Reference Tariff as set out in Schedule 1; and

for the Calendar Years 2004-07, is the Haulage Reference Tariff being charged in Calendar Year  $t-1$  for component  $j$  of Haulage Reference Tariff  $i$ ;

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

$q_{t-2}^{ij}$  is the quantity of component  $j$  of Haulage Reference Tariff  $i$  that was distributed in Calendar Year  $t-2$ ;

$CPI_t$  is defined as set out in the Glossary; and

$X_t$  is [tba] for Calendar Years 2004-2007.

### 3.2 New Haulage Reference Tariffs

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

### 3.3 Withdrawal of Haulage Reference Tariffs

- (a) Where the Service Provider is proposing to withdraw a Haulage Reference Tariff and to reassign only one other Haulage Reference Tariff to the DSPs to which the Haulage Reference Tariff to be withdrawn applied, the  $p_t^{ij}$



term in clause 3.1 for the Haulage Reference Tariff that is proposed to be withdrawn will be interpreted in relation to the Haulage Reference Tariff Components of the Haulage Reference Tariff which will be reassigned to those DSPs in Calendar Year  $t$ , in accordance with information submitted under clause 1.4.

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

### 3.4 Haulage Reference Tariff information

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

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

### 3.5 Rebalancing controls on Haulage Reference Tariffs

(a) The Service Provider will maintain Haulage Reference Tariffs between:

- (1) an upper limit of the cost to bypass the network; and
- (2) a lower limit of the marginal cost of supply.

In undertaking any rebalancing, the Service Provider must have consideration for the establishment of cost-reflective levels and that cost-reflective charging is maintained over time. The Service Provider should also use rebalancing as the means by which cross-subsidisation between Haulage Reference Tariffs or between Haulage Reference Tariff Components is removed.

(b) The rebalancing control on Tariff V is set out below:

$$(1 + CPI_t)(1 + 0.05) \geq \frac{\sum_{j=1}^m p_t^j q_{t-2}^j}{\sum_{j=1}^m p_{t-1}^j q_{t-2}^j}, j = 1, \dots, m$$

The rebalancing control on Tariff D is set out below:

$$(1 + CPI_t)(1 + 0.15) \geq \frac{\sum_{j=1}^m p_t^j q_{t-2}^j}{\sum_{j=1}^m p_{t-1}^j q_{t-2}^j}, j = 1, \dots, m$$

where the Haulage Reference Service Tariff has up to  $m$  *distribution tariff components* and where:

$p_{t-1}^j$  for the 2003 Calendar Year, is the relevant Haulage Reference Tariff for component  $j$  as set out in clause 1; and  
for the Calendar Years 2004-07, is the Haulage Reference Tariff being charged in Calendar Year  $t-1$  for component  $j$ ;

$p_t^j$  is the proposed Haulage Reference Tariff for component  $j$  in Calendar Year  $t$ ;

$q_{t-2}^j$  is the quantity of component  $j$  that was distributed in Calendar Year  $t-2$ ;

$CPI_t$  is defined as set out in the Glossary.

## 4 Approval of annual and intra-year variations to Reference Tariffs and new Reference Tariffs

### 4.1 Submission to the Regulator

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

### 4.2 Assessment by the Regulator

- (a) The Regulator will provide the Service Provider with written notice of whether or not it has verified the Reference Tariffs proposed by the Service Provider and submitted under clauses 4.1(a), (b) or (c) as compliant with the relevant price controls. If the Regulator declines to verify the proposed Reference Tariffs as compliant, the Regulator must provide a written statement of reasons for that decision.
- (b) The proposed Reference Tariffs will be deemed to have been verified as compliant in writing by the Regulator by the end of 20 Business Days from the date on which the Regulator received the Service Provider's notification under clauses 4.1(a), (b) or (c) unless the Regulator has notified the Service Provider in writing that it has declined to verify the proposed Reference Tariffs as compliant.
- (c) If the Regulator issues a written notice to the Service Provider that it has declined to verify proposed Reference Tariffs and/or Reference Tariff Components (including but not limited to any new Reference Tariff and/or any new Reference Tariff Component) as compliant for a new Calendar Year  $t$ , then each component of the Haulage Reference Tariffs applying in the current Calendar Year as adjusted by  $(1+CPI_t)(1-X_t)$  will continue to apply from the start of the new Calendar Year  $t$  and each Ancillary

Reference Tariff as adjusted by CPI will apply from the start of the new Calendar Year t.

- (d) If the Regulator has notified the Service Provider in writing that it has declined to verify as compliant the withdrawal of any existing Reference Tariffs and/or the withdrawal of any existing Reference Tariff Components proposed for Calendar Year t, the existing Haulage Reference Tariffs and/or Haulage Reference Tariff Components will continue to apply from the start of new Calendar Year t as adjusted by  $(1+CPI_t)(1-X_t)$  and each component of the Ancillary Reference Tariffs applying in the current Calendar Year as adjusted by the CPI will continue to apply from the start of the new Calendar Year t.
- (e) The Service Provider may provide additional information and resubmit or revise its proposed Reference Tariffs in accordance with clauses 4.1(a), (b) or (c), if the Regulator declines to verify as compliant proposed Reference Tariffs under clause 4.2(a).
- (f) Where in a Calendar Year, changes to Reference Tariffs have been verified as compliant by the Regulator, the Service Provider will notify in writing all Users affected by the changes as soon as practicable.

#### 4.3 Information Required from the Service Provider

At the same time as submitting proposed Reference Tariffs to the Regulator, the Service Provider will also provide to the Regulator information demonstrating that the proposed Reference Tariffs are, to the extent relevant, consistent with clause 2 and the Tariff Control Formula in clause 3.

## 5 Calculation of Charges for Haulage Reference Tariffs

Haulage Reference Tariffs are charged in accordance with the calculations described below.

### (1) General

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

### (2) Distribution Volume Tariff Components

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

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

(i) The GJs of Gas withdrawn in the Peak Period are:

$$GPP = TAG \times \frac{2 \times PPBP}{(2 \times PPBP) + (TBP - PPBP)}$$

where:

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

TAG is defined as the total actual GJs of Gas withdrawn in the billing period, or an estimate of the total GJs of Gas withdrawn in the billing period which is acceptable to the Service Provider;

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

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

- (ii) The GJs of Gas withdrawn in the Off-Peak Period are:

$$GOPP = TAG - GPP$$

where:

GOPP is the GJs of Gas withdrawn in the Off-Peak Period;

TAG is defined in clause 5(2)(B)(i); and

GPP is calculated in accordance with clause 5(2)(B)(i).

- (3) Distribution Demand Tariff Components

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

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

where:

MC is the charge for a particular month in Calendar Year t.

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

CBTD is the sum of the charges for all prior billing periods of Calendar Year “t”;

RBP is the remaining billing periods in Calendar Year t, as set out below:

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

EAD is:

- (i) for billing periods between January and September, the higher of:
    - (I) the forecast Annual MHQ for Calendar Year t; and
    - (II) the Annual MHQ, as measured to date during Calendar Year t,
 where the forecast Annual MHQ for Calendar Year t is either:
    - (III) the actual Annual MHQ for Calendar Year t-1; or
    - (IV) a Quantity agreed between the Service Provider and the User.
  - (ii) for billing periods between October and December, the actual Annual MHQ for Calendar Year t.
- (B) Where a User's Customer withdraws Gas at a DSP and ceases to withdraw Gas at that DSP in a month:
- (i) the Service Provider may charge the User in respect of that DSP, for the whole of the month in which the Customer ceased withdrawal of Gas;
  - (ii) the Service Provider will not charge the User in respect of that DSP, for any month after the month in which the Customer ceased withdrawal of Gas; and
  - (iii) where another Customer starts to withdraw Gas at that DSP, the quantity of forecast highest MHQ for the year for that DSP must be agreed between the Service Provider and the relevant User in respect of that DSP.

- (C) Where a User's Customer withdraws Gas at a DSP and ceases to be a Customer of that User during a month and becomes:
- (i) a Customer of another User; or
  - (ii) a User,
- the Service Provider will charge:
- (iii) the User from whom the Customer purchases its Gas at that DSP in that month; or
  - (iv) the Customer as a User in that month,
- respectively, for that month.

(4) Unmetered Reference Tariff Components

Where Tariff V has been assigned to a DSP because it is an unmetered DSP, there is deemed to be no withdrawal of Gas at that DSP for charging purposes. For the avoidance of doubt, in such circumstances Tariff V is deemed to apply and the fixed component of the tariff may be charged as a fixed charge.

## 6 Effect of New Facilities Investment on Tariffs

### 6.1 New Facilities Investment

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

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

### 6.2 Speculative Investment Fund

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

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

## 7 Fixed Principles

### 7.1 General Fixed Principles

- (a) Section 8.47 of the Access Code provides that a Reference Tariff Policy will include certain Fixed Principles, being an element of the Reference Tariff Policy which cannot be changed when the Service Provider submits reviews to an Access Arrangement, without the agreement of the Service Provider.
- (b) No Fixed Principle can be changed by the Regulator at a review of the Access Arrangement without the approval of the Service Provider.
- (c) Each Fixed Principle will apply for the periods specified.
- (d) The period during which each Fixed Principle may not be changed is the Fixed Period.
- (e) In reviewing the Access Arrangement, the Regulator is to adopt the Fixed Principles set out below.

- (1) The Regulator will use incentive-based regulation adopting a CPI-X approach and not rate of return regulation.

This Fixed Principle will apply for a period of 30 years from the commencement of the Second Access Arrangement Period.

- (2) The Capital Base for the Service Provider at the commencement of the Third Access Arrangement Period will be the Capital Base at the commencement of the Second Access Arrangement Period, adjusted to take account of:

- (A) changes to CPI since 1 January 2003
- (B) depreciation;
- (C) New Facilities Investment meeting the requirements of section 8 of the Access Code;
- (D) the value in the Capital Base of assets that are disposed of in the ordinary course of business since 1 January 2003, other than a disposal of:
  - (i) all of the assets and liabilities of the Service Provider;
  - (ii) assets pursuant to which the assets of the Service Provider are sold and leased back to the Service Provider;
- (E) the Capital Base will not be reduced as a result of assets forming part of the Capital Base becoming redundant.

This Fixed Principle will apply for a period of 30 years from the commencement of the Second Access Arrangement Period.

- (3) Where prudent, efficiently incurred capital and non-capital costs incurred in the Second Access Arrangement Period and which are required to ensure the Service Provider has the capability to implement FRC within the timeframe prescribed by the Government have not been incorporated in Reference Tariffs established under this Access Arrangement, the Regulator will permit the recovery of these costs, including an interest component using an interest rate set at the weighted average cost of capital applied to the Capital Base in the Third Access Arrangement Period.



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

- (3) In the event that the Regulator applies a post-tax formulation of the CAPM to the Capital Base in the Second Access Arrangement Period, then the same post-tax approach will be applied to the Capital Base in the Third Access Arrangement Period and subsequent Access Arrangement Periods.

This Fixed Principle will apply for a period of 30 years.

- (4) Costs incurred in complying with any obligations as a result of a Gas *Retailer of Last Resort* scheme (RoLR) or any guidelines or consultation papers issued by the Regulator or an Authority which relate to obligations under a RoLR scheme will be passed through to Users via an increase in Reference Tariffs, in accordance with the procedures established in section 8 for a Change in Taxes Event.

- (5) This Fixed Principle will apply until the end of the Third Access Arrangement Period.

- (6) If the Access Code is amended so that:

- (A) there is no longer a requirement for the Regulator and the Service Provider to adopt and be bound by some or all of the Fixed Principles; and/or;
- (B) one or more of the Fixed Principles becomes or may be construed as being inconsistent with the amended Access Code,

the Service Provider may, at its absolute discretion, delete one or more of the Fixed Principles to the extent that such deletions are not or do not thereby become inconsistent with the amended Access Code.

## 7.2 Efficiency incentive and carry-over mechanism

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

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

### (a) General principles

An efficiency sharing mechanism will operate to provide the Service Provider with an incentive to achieve efficiency savings and meet efficient growth in demand. Under this efficiency sharing mechanism:

- there will be no claw-back of gains that have already been made (or losses that have been incurred) during an Access Arrangement Period; and
- efficiency gains (or losses) that are achieved in an Access Arrangement Period will be added to (or subtracted from) the Total Revenue across future Access Arrangement Periods until they have been retained by the Service Provider for a total period of 10 years.

**(b) Calculating the Efficiency Gain**

The efficiency gain (or loss) will be calculated as follows

- (1) Efficiency gains (or losses) related to capital expenditure in any Calendar Year t will reflect the difference between the actual expenditure and the original forecast expenditure level, as follows:

$$\text{Efficiency Gain}_t = \text{Pre-tax WACC} \times (\text{Capex}_t^{\text{Forecast}} - \text{Capex}_t^{\text{Actual}})$$

where:

Pre-tax WACC is the pre-tax weighted average cost of capital applied to the Capital Base in the Access Arrangement Period in question.

- (2) Efficiency gains (or losses) related to non-capital costs in any Calendar Year t will be calculated as:

$$\text{Efficiency Gain}_t = \text{Underspending}_t - \text{Underspending}_{t-1}$$

where:

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

- (3) There will be no adjustment to the original expenditure forecasts against which the efficiency gains (or losses) will be calculated. However, actual expenditure will be adjusted such that it is consistent with the basis upon which the original expenditure was forecast. In particular:

- (A) actual expenditure will be adjusted to reflect the costs associated with the Service Provider undertaking an additional range of activities to those contemplated when determining the forecasts;
- (B) actual expenditure will also be adjusted to take account of the difference between forecast and actual output;

- (4) The costs associated with a Change in Taxes Event, complying with RoLR requirements, or the reticulation of unreticulated townships which were not included in the calculation of Reference Tariffs, will be excluded from the operation of the efficiency carryover mechanism;

- (5) Any other activity that the Service Provider and the Regulator have agreed to be excluded from the operation of the efficiency carryover mechanism will be so excluded;

- (6) where Calendar Year t is the last year of an Access Arrangement Period it will be assumed that both the operating expenditure and capital expenditure efficiency gain (or loss) are zero. Consistent with these assumptions:

- (A) the operating expenditure forecast for the first year of the next Access Arrangement Period will reflect the actual level of expenditure achieved in the penultimate year of the previous Access Arrangement Period; and

- (B) the Capital Base in place at the commencement of the next Access Arrangement Period will assume that the forecast capital expenditure in year t was undertaken.
- (c) **The Mechanism for Carrying Over the Efficiency Gain**
- (1) An efficiency gain that is achieved in Calendar Year t of an Access Arrangement Period will be added to each year of the Total Revenue requirement in future Access Arrangement Periods until it has been retained by the Service Provider for a total period of 10 years.
  - (2) Where a negative carryover amount would otherwise apply to the Total Revenue for any year in future Access Arrangement Periods, the carryover will be set to zero for that year and any negative amount will be used to offset the any positive gain in the following year. Negative carryovers will be carried over and accrued in each year until the end of the Access Arrangement Period.
  - (3) the Regulator will consider any submissions made by the Service Provider and exercise its discretion in choosing whether to apply any negative amounts from one Access Arrangement Period to the next , having regard to relevant matters.
  - (4) In any case, where a negative carryover amount would otherwise apply to any year of a future Access Arrangement Period, and where that negative carryover arises in full or in part from efficiency losses incurred in the First Access Arrangement Period, the carryover amount in that year will be set to zero and there will be no carryover of that negative amount into the subsequent year.

This Fixed Principle will apply to efficiency gains (or losses) incurred in the First and Second Access Arrangement Periods.

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## 8 Change in Tax Pass-Through

Whenever the Service Provider determines that its costs have increased or decreased materially or will increase or decrease materially as a result of a new Relevant Tax or a change in a Relevant Tax, the Service Provider may apply to the Regulator for approval to increase or decrease the Reference Tariffs, in accordance with the procedures contained in this clause 8.

### 8.1 Change in Taxes Event

If a Change in Taxes Event occurs, or will occur, the Service Provider may give a statement to the Regulator within 12 months of the Change in Taxes Event occurring specifying:

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

- (e) the basis on which the Pass Through Amount is to apply.

## 8.2 Obligations of the Regulator

- (a) If the Regulator receives a statement under clause 8.1, the Regulator must decide whether the Change in Taxes Event specified in the statement will occur, occurred or is continuing, and if the Regulator decides that the Change in Taxes Event will occur, occurred or is continuing, the Regulator must decide:
  - (1) the Pass Through Amount; and
  - (2) the basis on which the Pass Through Amount is to apply,
 and notify the Service Provider in writing of the Regulator's decision.
- (b) If the Regulator does not give a notice to the Service Provider under clause 8.2(a) within 20 Business Days of receiving a statement from the Service Provider under clause 8.1, on the 21st Business Day after receiving the statement from the Service Provider under clause 8.1 the Regulator is deemed to have notified the Service Provider of its decision under clause 8.2(a) that the Pass Through Amount and the basis on which the Pass Through Amount is to apply are as specified in the statement given by the Service Provider under clause 8.1.

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

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

## 8.4 Factors which the Regulator must consider

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

- (a) the relative amounts of Reference Services supplied to each User;
- (b) the time cost of money for the period over which the Pass Through Amount is to apply;
- (c) the manner in which and period over which the Pass Through Amount is to apply;

- (d) the financial effect to the Service Provider associated with the provision of Reference Services directly attributable to the Change in Taxes Event concerned, and the time at which the financial effect arises;
- (e) the amount of any change in another tax which, in the Regulator's opinion, was introduced as complementary to the Change in Taxes Event concerned;
- (f) the effect of any other previous Change in Taxes Event since the later of the date of:
  - (i) this Part B of the Access Arrangement ; and
  - (ii) the last decision made under clauses 8.2 and 8.3(b);
- (g) any Pass Through Amount applied under this clause 8 relating to a previous Change in Taxes Event which resulted in the Service Provider recovering an amount either more or less than the estimated financial effect on the Service Provider of that previous Change in Taxes Event; and
- (h) any other factors the Regulator considers relevant.

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

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

- (ii) started showing or identifying the Positive Pass Through Amount as required under clause 8.5(b).

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

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

- (a) taken into account in deciding whether the Service Provider's Reference Tariffs or Reference Tariff Components comply with the principles and Tariff Control Formula in clauses 2 and 3 of Part B of this Access Arrangement; and
- (b) subject to the procedures in clause 4.

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## Schedule 1 – Initial Tariffs V and D

### Tariff V

Tariffs for 2003, including GST.

Fixed Charge (daily) <sup>1</sup>	\$0.20060
<b>Band (GJ/day)</b>	<b>\$/GJ<sup>2</sup></b>
Peak 0 – 0.1	\$4.89022
Peak 0.1 – 0.2	\$4.71451
Peak 0.2 – 1.4	\$2.31322
Peak > 1.4	\$1.09809
Off Peak 0 – 0.1	\$4.40705
Off Peak 0.1 – 0.2	\$4.24604
Off Peak 0.2 – 1.4	\$1.97650
Off Peak > 1.4	\$0.92224

<sup>1</sup>Distribution Fixed Tariff Component

<sup>2</sup>Distribution Volume Tariff Component

### Tariff D

Tariffs for 2003, including GST.

<b>MHQ (GJ)</b>	<b>\$/GJ</b>
0 – 10	\$1093.73
10 – 50	\$696.94
> 50	\$165.45

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## Schedule 2 – Initial Ancillary Reference Tariffs

Tariffs for 2003, including GST.

Ancillary Reference Service	Tariff
Meter and Gas Installation Test	\$132
Disconnection	\$33
Reconnection	\$44





**Albury Distribution System  
Access Arrangement  
Part C**

**Terms and Conditions  
for  
Reference Services**

**8 April 2002**

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# 1 Definitions and Interpretations

## 1.1 Definitions:

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

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

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

## 1.2 Interpretation

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

- (C) where that person ceases to exist, is reconstituted, renamed or replaced, or where its powers or functions are transferred to another body, a reference to the body which replaces it or which serves substantially the same purpose or has the same powers or functions;
- (8) to a law:
  - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
  - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
  - (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
- (9) to proceedings includes litigation, arbitration and investigation;
- (10) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (11) to time is to Melbourne time; and
- (12) the word including or includes means including, but not limited to, or includes, without limitation.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) Headings are for convenience only and do not affect interpretation.
- (d) If a payment or other act must (but for this clause 1) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.
- (e) If a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (f) This Agreement may not be construed adversely to a party only because that party was responsible for preparing it.
- (g) A promise or agreement by 2 or more persons binds them jointly and individually.
- (h) A promise or agreement in favour of 2 or more persons is for the benefit of them jointly and individually.
- (i) A reference to a thing (including, but not limited to, a right) includes any part of that thing.
- (j) A reference to a right includes a remedy, power, authority, discretion or benefit.

### 1.3 Standards

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

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

---

## **2 Compliance with Regulatory Instruments**

### **2.1 Regulatory Instruments to take precedence**

In the event of any inconsistency between:

- (a) a party’s obligations or rights under a Regulatory Instrument; and
- (b) its obligations or rights under this Agreement,

its obligations and rights under the Regulatory Instrument shall take precedence to the extent of the inconsistency.

### **2.2 Parties must co-operate**

Each party will:

- (a) give to the other party all reasonable assistance; and
- (b) co-operate with the other party,

so as to allow that other party to comply with any obligations imposed upon that other party under this Agreement.

### **2.3 Preservation of rights**

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

### **2.4 Waiver of Compliance**

- (a) Notwithstanding clauses 2.1 (Regulatory Instruments to take precedence) to 2.3 (preservation of rights) (inclusive), if:

- (1) a party has been excused from strict compliance with any aspect of a Regulatory Instrument; or
- (2) the application of a Regulatory Instrument to a party has been varied,

by express written consent from the Authority responsible for enforcing that aspect of the Regulatory Instrument, the relevant party will not be obliged under this Agreement to comply with that aspect of the Regulatory Instrument to the extent of the consent.

- (b) A party who has received a written consent described in clause 2.4(a) must provide to the other party a copy of any such consent if that consent is



likely to affect the performance of that party's obligations under this Agreement.

## **2.5 Regulatory Relief**

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

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

---

## **3 Customer Relationship**

The parties agree that the Service Provider will provide the Distribution Services to the User in respect of each Customer except to the extent that:

- (a) the User notifies the Service Provider that the User and the Customer have entered into an agreement under which the User does not provide or procure Distribution Services for the Customer; and
- (b) the Service Provider and the Customer have entered into an agreement under which the Service Provider provides Distribution Services to the Customer.

---

## **4 Distribution Services**

### **4.1 Provision of Distribution Services**

- (a) Subject to the User providing or substituting credit support as required under clause 7.8, the Service Provider will provide to the User in relation to each Customer the Distribution Services in accordance with:
  - (1) good gas industry practice; and
  - (2) the terms and conditions of this Agreement.
- (b) In respect of each Customer, this Agreement applies:
  - (1) from and including the date that the User requests (or is deemed under clause 4.2 to have requested) the provision of the Distribution Services in respect of the Customer (or any later date nominated by the User in any such request); and
  - (2) subject to clause 12 (term and termination), until and including the earlier of the dates described in clause 4.3(a) or 4.3(b) in relation to that Customer or, if clause 4.3(c) applies to the Customer, the date that the Customer is no longer entitled to be Reconnected by a User under the Gas Retail Regulation.

#### **4.2 Deemed request for Distribution Services**

The User shall be deemed to have requested the Service Provider to provide Distribution Services in respect of a Customer whilst a person is a Customer.

#### **4.3 Cessation of provision of Distribution Services**

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

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

#### **4.4 Entitlement to refuse Service**

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

#### **4.5 Suspension for supplier of last resort**

The obligations of the Service Provider under this Agreement are suspended for so long as a "supplier of last resort" is appointed in respect of the User's business of retailing Gas in accordance with relevant legislation.

#### **4.6 Conditions of supply**

- (a) The User does not (and must not represent to any other person that the User or any other person can) acquire any right or title to, or interest in, the Distribution System or any part of the Distribution System under this Agreement.

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

#### **4.7 The User's obligations/Capacity Management**

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

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

#### **4.8 Title to Gas**

- (a) At all times, the User has title to Gas it causes to be injected into the Distribution System.
- (b) All Gas injected by the User into the Distribution System at any Transfer Point will (at that Transfer Point) be free of any lien, charge, encumbrance or adverse claim (as to title or otherwise), including any claim for any tax, royalty or other charge in respect of the production, gathering, processing and tendering of Gas arising on or before injection into the Distribution System and the User indemnifies the Service Provider and holds it harmless against any loss, liability, damage, claim, action, proceeding, cost

and expense suffered or incurred by or made or brought against the Service Provider in consequence of any breach by the User of this condition.

#### **4.9 Possession and control of Gas**

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

#### **4.10 Unaccounted for Gas**

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

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## **5 Connection**

- (a) In this clause 5 “Connection” includes “Turn On” but not Reconnection.
- (b) If the User receives a request for Connection from a prospective Customer, the User must submit to the Service Provider a Connection Request in respect of the prospective Customer without delay, but no later than the next Business Day following receipt of the prospective Customer’s request for Connection.
- (c) The User will provide to the Service Provider any information reasonably required by the Service Provider for the purposes of effecting the Connection . Without limiting the information required from a User under this clause 5(c), such information will include the information described in clause 9.4(a) (Customer details) and clause 9.5 (new DSP information).

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## **6 Disconnection and Interruption of Customer**

### **6.1 Disconnection and Curtailment**

- (a) The Service Provider may:
  - (1) Disconnect; or
  - (2) Curtail or Interrupt,a DSP in an Emergency or in accordance with any applicable Regulatory Instruments.
- (b) If the Service Provider can choose which DSPs it will Curtail, Interrupt or Disconnect, or the order in which it can Curtail, Interrupt or Disconnect DSPs, then such decisions will be made by the Service Provider, having regard to the relevant circumstances.

### **6.2 Disconnection at the request of the User**

- (a) The User may request, in a Disconnection Request, the Service Provider to Disconnect a Customer's DSP. Disconnections requested to be carried out outside of normal business hours (as notified by Envestra) will incur additional charges.
- (b) Subject to this clause 6.2, if the User provides a Disconnection Request to the Service Provider, the Service Provider will Disconnect the DSPs specified in the Disconnection Request on the later of:
  - (1) the time specified in the Disconnection Request; and
  - (2) the soonest practicable time, which must be no more than 2 Business Days from the date of receipt by the Service Provider of the Disconnection Request.

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

- (c) The Service Provider may refuse to Disconnect a DSP where the Service Provider reasonably considers that:
  - (1) such Disconnection would be detrimental to the health or safety of any person (including the Customer) or the security of the Distribution System;
  - (2) the User has issued a Disconnection Request in breach of the Regulatory Instruments; or
  - (3) where the User has issued a Disconnection Request for non payment of bills, the Customer does not have any outstanding amounts owing to the User in respect of the Customer's Connection to the DSP, provided that the Service Provider is not obliged to make enquiries of the Customer as to any outstanding amounts.

In the case of clause 6.2(c)(1), the Service Provider will use reasonable endeavours to remove or mitigate the risk of detriment. In each case under

clause 6.2(c), the Service Provider must notify the User of the reasons for its refusal to Disconnect without delay.

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

### **6.3 Disconnection at the request of a Customer**

- (a) If a Customer requests the Service Provider to Disconnect the Customer, the Service Provider must Disconnect the Customer and notify the User of the request.
- (b) If the User receives from a Customer a request for Disconnection, the User must pass on to the Service Provider that request in a Disconnection Request as soon as reasonably practicable, in which case clause 6.2(c) will apply.

### **6.4 Reconnection or restoration of Supply**

- (a) Subject to clause 6.4(b), the Service Provider must Reconnect and restore Supply to the affected DSP:
  - (1) when required to do so under the Regulatory Instruments, following Disconnection, Curtailment or Interruption; and
  - (2) when requested by the User in a form reasonably required by the Service Provider, following Disconnection at the request of the User. Reconnections requested to be carried out outside of normal business hours (as notified by Envestra) will incur additional charges.
- (b) The Service Provider may refuse to Reconnect or restore Supply to a DSP where the Service Provider is permitted by the Regulatory Instruments to do so or where in the Service Provider's opinion it is unsafe to do so.

- (c) The User will provide to the Service Provider any information reasonably required by the Service Provider in connection with the Reconnection or restoration of Supply to a DSP.

## **6.5 Assistance**

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

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# **7 Payment and invoicing for services**

## **7.1 Charges**

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

## **7.2 Retail Service Charges**

- (a) The Service Provider shall pay the User fair and reasonable fees in respect of any Retail Services provided by the User to the Service Provider at the request of the Service Provider.
- (b) The User may render an invoice to the Service Provider upon the provision of any Retail Services.
- (c) An invoice issued under clause 7.2(b) shall be in a format determined by the User and must contain sufficient information as is reasonable to allow the Service Provider to assess the accuracy of the charges specified in the invoice.
- (d) If the Service Provider receives an invoice from the User the Service Provider must pay the User the aggregate amount stated in the invoice not later than 14 days after having received the invoice.

- (e) If the Service Provider disputes the fairness or reasonableness of the charge for Retail Services or otherwise disputes its obligation to pay all or part of that invoice, the dispute will be resolved in accordance with the procedure set out in clause 7.7 (subject to the necessary amendments).
- (f) If an invoice is not paid in full in accordance with this clause 7.2, the Service Provider must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 7.7) from the day that the invoice was due for payment until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable from the date that the invoice was due to be paid and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

### 7.3 GST

- (a) For the purposes of this clause 7.3:
  - (1) terms defined in the GST Act have the same meaning in this clause 7.3 unless provided otherwise.
  - (2) **Adjustment Note** includes any document or record accepted by the Commissioner of Taxation as an adjustment note.
  - (3) **GST** includes any replacement or subsequent similar tax.
  - (4) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
  - (5) **Tax Invoice** includes any document or record accepted by the Commissioner of Taxation as a tax invoice.
- (b) If GST is or will be imposed on a taxable supply made under or in connection with this agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this agreement does not already include an amount in respect of GST on the supply:
  - (1) increase the consideration otherwise provided for that supply under this agreement by the amount of that GST; or
  - (2) otherwise recover from the recipient the amount of that GST.
- (c) The recovery of any amount in respect of GST by the supplier under this agreement is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- (d) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:
  - (1) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
  - (2) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
- (e) The recipient must pay any fine, penalty or other cost in respect of a failure to pay any amount described in clause 7.3(b) or 7.3(d) except to the extent



that the fine, penalty or other cost is caused by the supplier's failure to lodge money received from the recipient before the due date for lodgement.

- (f) Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

#### **7.4 Distribution Services - Invoicing, Payment and Interest**

- (a) The Service Provider may at any time render invoices for Distribution Services provided to the User at any time while a person was a Customer if the Distribution Services were obtained as a result of the Customer's or the User's fraud or the use of Gas otherwise than in accordance with the Regulatory Instruments.
- (b) Invoices issued under this clause 7.4 shall be in a format determined by the Service Provider and must contain sufficient information as is reasonable to allow the User:
  - (1) to assess the accuracy of the Charges specified in each invoice; and
  - (2) to comply with its obligation under the Regulatory Instruments in relation to the provision to the Customer of information concerning such Charges.
- (c) Subject to clause 7.5(c), if the Service Provider renders an invoice for Distribution Services that were provided more than 11 months prior to the date of the invoice, the User will not be obliged to pay that invoice to the extent that the User is precluded from recovering those costs from the relevant Customers by operation of the Regulatory Instruments.
- (d) On or before the 7<sup>th</sup> day of each month, the Service Provider must invoice the User for the Charges payable by the User in respect of the Distribution Services provided by the Service Provider in the preceding month (together with any arrears or adjustments under clause 7.5), less any Charges previously paid by the User under a Mid-Month Invoice (**Monthly Invoice**)
- (e) If the User receives a Monthly Invoice from the Service Provider:
  - (1) on or before the 7<sup>th</sup> day of the month, the User shall pay the Service Provider the aggregate amount stated in the Monthly Invoice not later than the 14<sup>th</sup> day of that month;
  - (2) after the 7<sup>th</sup> day of the month, the User must pay the Service Provider the aggregate amount stated in the Monthly Invoice not later than 10 days after having received the invoice.
- (f) On or before the 20<sup>th</sup> day of each month, the Service Provider may invoice the User for an amount equal to 50% of the Charges payable by the User in respect of the previous Monthly Invoice (**Mid-Month Invoice**).
- (g) If the User receives a Mid-Month Invoice:
  - (1) on or before the 20<sup>th</sup> day of the month, the User will pay to the Service Provider the aggregate amount stated in the Mid-Month

Invoice not later than the 29th day of that month (28th day in February, except if it is a leap year); or

- (2) after the 20th day of the month, the User will pay to the Service Provider the aggregate amount stated in the Mid-Month Invoice not later than 10 days after having received the Mid-Month Invoice.
- (h) All payments made under this clause 7.4 shall be made by way of deposit into a bank account nominated by the Service Provider, or in a manner otherwise agreed between the User and the Service Provider.
- (i) If an invoice is not paid in full in accordance with this clause 7.4, the User must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 7.7) from the day that the invoice was due for payment until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

## **7.5 Adjustment of Invoices**

- (a) Subject to clause 7.5(b), an incorrect charge in an invoice rendered under this Agreement must be altered by the party rendering the invoice in a subsequent invoice to rectify the error. Causes of error may include, but are not limited to:
- (1) meter tampering or bypass; or
  - (2) defective meters or defective meter readings; or
  - (3) errors by VENCORP in its provision of data to the Service Provider; or
  - (4) errors in the billed Gas consumption of a Customer; or
  - (5) differences between estimated or substituted meter readings and Metering Data obtained after the invoice is issued; or
  - (6) amounts imposed or adjusted by an Authority.
- (b) An adjusted invoice issued under clause 7.5(a) must include, or be accompanied by, an explanation of the reason why the adjusted invoice is being issued.
- (c) An alteration to an invoice to reflect an adjustment under clauses 7.5(a)(2), 7.5(a)(4) or 7.5(a)(5) must not be made where the User is precluded by the Regulatory Instruments from recovering the adjusted Charges from its Customers, except in the case where the incorrect charge arises as a result of an act or omission of the User (or its agent) or a Customer.

## **7.6 Payments for New Reference Services**

Unless agreed otherwise, this clause 7 will apply where Reference Tariffs are varied or new Reference Tariffs or Reference Services introduced

## 7.7 Disputed invoices

- (a) A party in receipt of an invoice (“**Disputing Party**”) must notify the party which issued the invoice (“**Invoicing Party**”) not less than 2 Business Days before the due date for payment of an invoice under clauses 7.2 or 7.4 (“**Notice of Dispute**”) if it disputes its obligation under this Agreement to pay all or part of that invoice (“**Disputed Invoice**”) and must include in that notice its grounds for disputing the Disputed Invoice and the amount disputed.
- (b) Unless the Disputing Party gives a Notice of Dispute to the Invoicing Party, the Disputing Party must pay the Disputed Invoice in full, subject to its right to seek a subsequent adjustment under clause 7.5 (adjustment of invoices) or to dispute the amount of the invoice under clause 7.7(d) after the invoice has been paid in full.
- (c) If the Disputing Party notifies the Invoicing Party of a Disputed Invoice under a Notice of Dispute, the parties will seek to resolve that dispute in accordance with clause 7.7(d), and the Disputing Party will be required to pay the greater of the following amounts by the due date for payment under clause 7.2 or 7.4:
  - (1) the amount of the invoice not genuinely disputed by the Disputing Party; or
  - (2) 80% of the amount of the previous undisputed invoice from the Invoicing Party (or any other reasonable amount agreed by the parties) subject to the following:
    - (A) where the Disputed Invoice is a Mid-Month Invoice, the Disputing Party shall pay 80% of the amount of the previous undisputed Mid-Month Invoice (or any other reasonable amount agreed by the parties); and
    - (B) where the Disputed Invoice is a Monthly Invoice, the Disputing Party shall pay 80% of the amount of the previous undisputed Monthly Invoice (or any other reasonable amount agreed by the parties).

For the purpose of this clause 7.7(c), where a dispute as to an invoice is resolved, the resolved amount will be deemed to be an undisputed invoice amount.

- (d) Any dispute as to an invoice shall be resolved in accordance with this clause and neither party may refer the dispute to the dispute resolution procedure under clause 14 until the parties have satisfied paragraph (1) of this clause 7.7(d) and, if applicable, paragraph (2) of this clause 7.7(d).

The Invoicing Party will:

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

review of the invoice within 10 Business Days after receipt of the request, and report its findings to the Disputing Party as soon as practicable after completion of that review.

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

- (e) If, following the resolution of a dispute in accordance with clause 7.7(d) or clause 14, it is determined that the amount that is properly due to the Invoicing Party in relation to that invoice is:
  - (1) more than the amount already paid by the Disputing Party, then the Disputing Party must pay within 3 Business Days to the Invoicing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the underpayment;
  - (2) less than the amount already paid by the Disputing Party, then the Invoicing Party must pay within 3 Business Days to the Disputing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the overpayment.
- (f) Interest on the difference payable under clause 7.7(e) shall be calculated at the Default Rate applicable on the first day of each month, capitalised on the first day of each month and calculated on actual days elapsed and a 365 day year for each day after that invoice was due to be paid up to and including the date the difference and any accrued interest payable under this clause 7.7(f) (if any) is paid.
- (g) Unless the parties otherwise agree, no party may set off or deduct any money which it owes to the other party against any money which the other party owes to the first party.
- (h) The payment by the Disputing Party of all or part of an invoice from the Invoicing Party (whether or not that invoice was disputed by the Disputing Party at the time) will not preclude the Disputing Party from subsequently challenging its liability to pay that invoice in accordance with this clause 7.7 or a part of that invoice (unless the challenge relates to a dispute which has already been finally determined in accordance with this clause 7.7).

## 7.8 Credit Support – Bank Guarantee

- (a) The Service Provider may require the User to provide a Bank Guarantee to secure payment of the Charges and the User must provide the Bank Guarantee to the Service Provider within 7 days of receipt of notice from the Service Provider as to the amount of the Bank Guarantee required.
- (b) The amount of the Bank Guarantee will be determined by the Service Provider after having regard to the User's average monthly Charges and payment history, provided that the Bank Guarantee shall not exceed the Service Provider's reasonable estimate of three months average Charges (calculated by reference to a twelve month period) ("**Required Bank Guarantee Amount**") payable by the User under this Agreement.

- (c) The Service Provider may require the User to increase the amount of the Bank Guarantee where the Service Provider's reasonable estimate of three months average Charges, calculated by reference to the immediately preceding twelve month period, is greater than the amount of the Bank Guarantee. The User must, within 10 Business Days of receipt of a request from the Service Provider, increase the amount of the Bank Guarantee to the amount calculated under this clause 7.8(c).
- (d) The User may request that the amount of the Bank Guarantee be decreased where the User's reasonable estimate of three months average Charges, calculated by reference to the immediately preceding twelve month period, is less than the amount of the Bank Guarantee. Where the Service Provider agrees that the amount of the Bank Guarantee should be reduced in accordance with this clause 7.8(d), the Service Provider must in conjunction with the User, do all things reasonably necessary to reduce the amount of the Bank Guarantee held by the Service Provider to the amount agreed by the Service Provider under this clause 7.8(d).
- (e) The Service Provider may present the Bank Guarantee for payment, in whole or in part, by the relevant bank to secure payment of the outstanding Charges where the User fails to pay the Charges invoiced by the Service Provider under clause 7.4 provided that the User has not paid the outstanding Charges within 7 days of the receipt by the User of a notice of default issued by the Service Provider under clause 12.2(a).
- (f) The User must within 7 days of the Service Provider informing the User in writing that the Bank Guarantee has been presented to the relevant bank for payment under clause 7.8(e), deliver to the Service Provider a further Bank Guarantee for the Required Bank Guarantee Amount in substitution for the Bank Guarantee previously provided by the User and which has been presented by the Service Provider to the bank for payment in whole or in part.
- (g) Payment under the Bank Guarantee does not limit the Service Provider's rights under this Agreement or operate as a waiver by the Service Provider of the User's breach of this Agreement.
- (h) No later than 90 Business Days after termination of this Agreement, if the Bank Guarantee has not been presented under clause 7.8(e) the Service Provider must return the Bank Guarantee to the User if there are no further Charges payable under this Agreement.

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## **8 Information Exchange**

### **8.1 Compliance with privacy laws**

Each party agrees that:

- (a) any obligation under this Agreement to provide information is subject to any applicable laws (including the Regulatory Instruments) imposing obligations in respect of privacy, disclosure, use or confidentiality of information; and

- (b) it will hold any information which it receives under this Agreement in accordance with any requirements of this Agreement and any applicable laws (including the Regulatory Instruments) relating to privacy, disclosure, use or confidentiality of information.

## **8.2 Provision of information**

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

## **8.3 Use of information**

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

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

## **8.4 Gas Interface Protocol**

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

## **8.5 Changes in information**

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

## **8.6 Accuracy of information**

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

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## 9 Communications regarding Customers and System Data

### 9.1 Answering Fault and Emergency Calls

- (a) Subject to clause 9.1(c), (f) and (g), if a Customer contacts the User by telephone about a Fault or an Emergency in the Service Provider's Distribution Area, the User must:
  - (1) transfer the Customer's telephone call to the Service Provider's faults telephone number, where communication systems are technically capable of identifying the area from which the telephone call was made by the Customer upon transfer of the call; or
  - (2) otherwise, refer the Customer to the Service Provider's faults telephone number.
- (b) The User must not handle, deal with or advise on a Customer's enquiry regarding a Fault other than to the extent that it is permitted to provide information to the Customer in the circumstances described in clause 9.1(c).
- (c) If the User:
  - (1) is informed by the Customer that the Customer has been unable to contact the Service Provider through the Service Provider's faults telephone number; or
  - (2) believes on reasonable grounds that the Service Provider's fault telephone number is not properly functioning; or
  - (3) is informed by the Customer that the Customer declines to contact or (where appropriate) be transferred to the Service Provider,then the User may provide the Customer with the information regarding the Fault that has been provided to the User by the Service Provider in accordance with clause 9.2. The User must not provide any other information regarding the Fault to the Customer.
- (d) The Service Provider will provide to the User a contact telephone number which the User must publish on its Customers' accounts as the "fault number". Until otherwise notified, the Service Provider advises the User that the faults number is: 13 29 73.
- (e) The Service Provider will provide to the User a separate contact telephone number for Emergencies. The User must not call the emergency number or transfer a telephone call to the emergency number unless the User reasonably considers that the subject of the call comprises an Emergency situation. The User acknowledges that the emergency number is confidential information for the purpose of clause 17 (confidentiality).
- (f) If the Fault identified by the Customer relates to an Emergency, the User must transfer the Customer to the telephone number provided by the Service Provider to the User for Emergencies.

- (g) Nothing contained in this clause affects particular arrangements between the Service Provider, the User and any Customer regarding notification of and dealing with Faults and Emergencies.

## **9.2 Provision of information concerning Faults and Emergencies**

- (a) The Service Provider must provide to the User information regarding Faults or Emergencies which the Service Provider is required to provide to a Customer under the Regulatory Instruments within the same time period as the information is required to be provided by the Service Provider to the Customer under Regulatory Instruments.
- (b) Any information described in clause 9.2(a) is not required to distinguish between Faults affecting Customers and Faults affecting customers of other retailers.
- (c) The User indemnifies the Service Provider against any liability to a Customer arising as a result of the User providing fault information to the Customer other than the information described in clause 9.2(a).

## **9.3 Provision of information for planned Interruptions and Disconnections**

- (a) The notification which the Service Provider sends out to Customers notifying them of any planned Interruptions or Disconnections which are not the subject of a Disconnection Request must bear the Service Provider's contact details and should state that any enquiries regarding planned Interruptions or such Disconnections should be directed to the Service Provider.
- (b) The Service Provider must make available to the User information which the Service Provider is required to provide to a Customer under the Regulatory Instruments in respect of planned Interruptions within the same time period as the information is required to be provided by the Service Provider to the Customer under the Regulatory Instruments.
- (c) If a Customer contacts the User about a planned Interruption or a Disconnection requested or proposed by a Service Provider, the User must:
  - (1) subject to paragraph (2), refer the Customer to the Service Provider; or
  - (2) where the Customer informs the User that it declines to contact or (where appropriate) be transferred to the Service Provider, deal with the Customer itself.
- (d) Any information referred to in clause 9.3(b) in respect of planned Interruption must include information regarding specific premises where such information is readily available or otherwise must include at least information regarding the area in which the planned Interruption is to occur.



## 9.4 Customer Details

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

## 9.5 New DSPs

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

- (a) Site address for MIRN;
- (b) the MIRN, if known;
- (c) contact details for the proposed DSP and DSP location at which Gas is to be supplied to Customers;

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

## **9.6 Acceptance by the Service Provider**

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

## **9.7 Enquiries or Complaints relating to the User**

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

documents or written records (including in electronic format) relating to the enquiry or complaint.

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

## **9.8 Enquiries or Complaints relating to the Service Provider**

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

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

## **9.9 IPART complaints**

If one party to this Agreement receives an enquiry, complaint or dispute (“Enquiry”) or notice of an Enquiry from IPART and the Enquiry relates to an act or omission of the other party to this Agreement, the party receiving the Enquiry must notify the other party as soon as reasonably practicable, setting out the details of the Enquiry, including any relevant time frames. Both parties will consult to resolve how to deal with the Enquiry and how to respond to IPART in an efficient manner. Both parties will cooperate and use best endeavours to resolve the Enquiry.

## **9.10 Assignment of and Changes in Reference Tariffs**

- (a) The Service Provider must assign a Reference Tariff to a DSP at which Gas is or may be withdrawn by or in respect of a Customer and notify the User of the Reference Tariff assigned to that relevant DSP in accordance with the Reference Tariff Policy.
- (b) Where the Regulator advises the Service Provider that changes to Reference Tariffs have been verified as compliant by the Regulator, the Service Provider must notify the User of any changes that will occur to Reference Tariffs in accordance with the Reference Tariff Policy.

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

### 9.11 Theft of Gas

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

### 9.12 Information for Customers

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

- (a) If the User receives a request from a Customer for documentation or information required to be provided by the Service Provider under the Regulatory Instruments:
  - (1) where the request is for a copy of a standard document or other standard information approved by the Service Provider, the User may provide such documents and information to the Customer; otherwise
  - (2) where the request is for documentation or information that is not documentation or information of the type described under clause 9.12(a)(1) (**Non Standard Information**), the User must promptly notify the Service Provider of the request.

- (b) If the Service Provider requests the User to do so, the User will respond directly to a Customer's request for Non Standard Information, and the Service Provider shall use its reasonable endeavours to assist the User to respond to the request to the Customer's reasonable satisfaction.
- (c) If the Service Provider elects to respond directly to a Customer's request for Non Standard Information, the Service Provider shall use its reasonable endeavours to respond to the request to the Customer's reasonable satisfaction, and the User shall use its reasonable endeavours to assist the Service Provider to respond.
- (d) If the Service Provider receives a request from a Customer for documentation or information required to be provided by the User under the Regulatory Instruments, the Service Provider will advise the Customer of the User's contact details or pass on any written request to the User as soon as reasonably practicable.
- (e) Where requested by the Service Provider, the User must deliver to a Customer any notification, information or documentation provided by the Service Provider for that Customer which is required to be provided by the Service Provider under this Agreement or the Regulatory Instruments.

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## **10 Force Majeure**

### **10.1 Suspension of Obligations**

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

### **10.2 Mitigation of Force Majeure Event**

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

### **10.3 Notice**

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

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## **11 Enforcement of the Service Provider's Rights Against Customers**

### **11.1 Restriction on the Service Provider's enforcement rights**

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

### **11.2 Consultation prior to Disconnection**

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

### **11.3 The Service Provider to indemnify the User**

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

### **11.4 The User to notify Customer and the Service Provider**

The User must notify the Customer if the User becomes aware that a Customer is, or may, breach any of its obligations under the Regulatory Instruments, and if the Customer does not take remedial action, the User must promptly notify the Service Provider of the breach or potential breach.

### **11.5 Limitation of the User's obligations**

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

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## **12 Term and Termination**

### **12.1 Term**

This Agreement commences on the Commencement Date and continues until terminated under this clause 12, or until 31 December 2007 unless otherwise agreed by the parties.

### **12.2 Termination for default or insolvency of the User**

(a) Where:

- (1) the User defaults in due and punctual payment of any money at the time and in the manner prescribed under this Agreement; or
- (2) the User fails to provide credit support in accordance with clause 7.8; or
- (3) the User defaults in the performance of any of its other promises or obligations under this Agreement which would cause material detriment to the Service Provider; or
- (4) there is an Insolvency Event in relation to the User,

then the User is in default and the Service Provider may give written notice of the default to the User stating:

- (A) that the Service Provider considers that the User is in default; and
- (B) the cause of the default.

(b) At the same time as giving any notice to the User under clause 12.2(a), the Service Provider must give a copy of that notice to the Regulator.

(c) If the User does not remedy the default specified in the notice given under clause 12.2(a) within the following times:

- (1) in the case of a default described in clause 12.2(a)(2) or clause 12.2(a)(4), 7 days; and
- (2) in the case of any other default described in clause 12.2(a), 21 days,

then the Service Provider may give notice of its intention to terminate this Agreement under clause 12.3.

### **12.3 Notice of termination**

(a) Where the Service Provider is entitled to give a notice under this clause 12.3, the Service Provider may give written notice to the User stating:

- (1) that the Service Provider intends to terminate this Agreement; and
- (2) the cause or causes for terminating this Agreement.

(b) At the same time as giving any notice to the User under clause 12.3(a), the Service Provider must give a copy of that notice to the Regulator.

- (c) The User must within 7 days of the service of a notice of termination under clause 12.3(a) remedy or remove the cause or causes stated in the notice of termination.
- (d) If within the 7 days referred to in clause 12.3(c) the User does not remedy or remove the cause or causes, the Service Provider may by further notice in writing to the User terminate this Agreement with effect from the date specified in the notice.

#### **12.4 Termination for jeopardising of the safety and integrity of the Distribution System**

- (a) If the User:
  - (1) jeopardises the safety or integrity of the Distribution System; and
  - (2) the User is reasonably able to stop any action which jeopardises the safety or integrity of the Distribution System; thenthe Service Provider may serve a written notice on the User:
  - (3) specifying the action which jeopardises the safety or integrity of the Distribution System; and
  - (4) specifying a reasonable period of time within which the User must take all reasonable actions within its control either to:
    - (A) ensure that the action which jeopardises the safety or integrity of the Distribution System is stopped; or
    - (B) ensure that the action which jeopardises the safety or integrity of the Distribution System is not repeated,whichever is applicable.
- (b) If the User has not complied with the notice sent by the Service Provider under clause 12.4(a) within the time specified in that notice, the Service Provider may send a written notice to the User stating that:
  - (1) The Service Provider intends to terminate this Agreement if the breach is not rectified within 7 days; and
  - (2) specifying the reasons for terminating this Agreement.
- (c) If the breach is not rectified by the User within 7 days of receiving the notice specified in clause 12.4(b), the Service Provider may terminate this Agreement by further notice in writing to the User with effect from the date specified in the notice. .

#### **12.5 Termination where no Customers**

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



## **12.6 Termination by the Service Provider**

The Service Provider may terminate this Agreement on the giving to the User of 90 Business Days' notice, where, under the Regulatory Instruments, the Service Provider ceases to be obliged to provide Distribution Services to the User.

## **12.7 Consequences of Termination**

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

## **12.8 Remedies for Default**

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

- (a) set off, apply or draw on (as the case may be) any Credit Support and any accrued interest for the amount then due and payable by the defaulting party to the non-defaulting party; or
- (b) sue the defaulting party for compensation for that default and exercise all available legal and equitable remedies including without limitation, suing for specific performance, injunctive relief or such other orders as it deems appropriate.

## **12.9 Preservation of rights**

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

## **12.10 Distribution Services after termination**

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

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## 13 Liabilities and indemnities

### 13.1 No Warranties

Subject to the *Trade Practices Act 1974* (Cth) and the express provisions of this Agreement, all warranties, terms and conditions in relation to the provision of the Distribution Services, or other product or service which may be otherwise implied by use, statute or otherwise are, to the extent that they may lawfully be, hereby excluded.

### 13.2 Insurance

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

### 13.3 Indemnity by the User

The User indemnifies the Service Provider against any:

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

### 13.4 Exemption of liability

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

### 13.5 Preservation of statutory provisions

Despite any other provision of this Agreement, this Agreement does not vary or exclude any statutory provisions.

### 13.6 Third Party Claims and Demands

- (a) A party (the **Indemnified Party**) must:
  - (1) notify the other party (the **Responsible Party**) of any third party Claim, for which it may be indemnified under this clause 13;
  - (2) permit the Responsible Party (entirely at the Responsible Party's expense) to defend or settle that third party Claim as the Responsible Party sees fit, or where the Responsible Party does not elect to defend or settle that third party Claim, to have a watching brief and be kept fully informed by the Indemnified Party of the progress of that third party Claim; and

- (3) provide the Responsible Party (at the Responsible Party's expense) with such assistance in respect of the third party Claim as the Responsible Party may reasonably request.
- (b) If the Responsible Party elects to take over conduct of a third party Claim as contemplated in clause 13.6(a) the Responsible Party must:
  - (1) consult with and where reasonably possible, take account of the views of the Indemnified Party in relation to the progress of the third party Claim; and
  - (2) if it becomes aware that the Indemnified Party may have some liability in respect of that third party Claim for which the Indemnified Party will not be indemnified under this clause 13, notify the Indemnified Party of that fact, consult with and keep the Indemnified Party informed in respect of the progress of that third party Claim and comply with the provisions of clause 13.6 as if references in that clause to the Indemnified Party were to the Responsible Party, and vice versa.
- (c) If the Responsible Party elects not to take over the conduct of a third party Claim as contemplated in clause 13.6(a), the Responsible Party must indemnify the Indemnified Party against all costs (including reasonable legal costs) incurred by the Indemnified Party in defending the third party Claim, to the extent that those costs are not recovered from any other person.

### **13.7 No Admissions**

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

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

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## **14 Dispute resolution**

### **14.1 Disputes**

- (a) To the extent that a dispute resolution scheme under a Regulatory Instrument applies to a dispute under this Agreement, the parties agree to apply the dispute resolution procedures approved under that Regulatory Instrument to that dispute.
- (b) To the extent that the Access Code applies to a dispute under this Agreement, the parties agree to apply the dispute resolution procedures under the Access Code to that dispute.
- (c) Subject to clause 7.7 (disputed invoices) and clauses 14.1(a) and 14.1(b), any dispute or difference arising between the parties out of or in

connection with this Agreement must be resolved in accordance with this clause 14.

#### **14.2 Notice of Dispute**

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

#### **14.3 Referral to Chief Executive Officers or nominees**

If the parties fail to resolve a dispute or difference within 10 Business Days of a notice of dispute being given under clause 14.2, the dispute or difference must be referred for resolution to the respective chief executive officers (or the chief executive officer's nominee) of the parties whose decision shall be binding. Subject to clause 14.6, the parties waive their rights to commence court proceedings for resolution of the dispute prior to referral of the issue to the chief executive officers (or their nominees) under this clause. If the matter is not resolved within 5 Business Days of such referral either party may then take further action in accordance with clause 14.4 or clause 14.5.

#### **14.4 Mediation**

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

#### **14.5 Arbitration**

- (a) The parties must comply with clauses 14.2 and 14.3 as a pre-condition to submitting a dispute to arbitration in accordance with this clause 14.5.
- (b) Subject to clause 2.5 (regulatory relief), if a dispute is not resolved by the chief executive officers (or their nominees, as applicable) of the parties as contemplated in clause 14.3, or if a dispute is not resolved in mediation

pursuant to clause 14.4, either party may submit the dispute to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations (Victorian Chapter) (the **Rules**) by giving notice in writing to the other party, in accordance with the Rules, that the dispute remains unresolved and will be submitted to arbitration.

- (c) The Service Provider and the User will bear their own costs in respect of the arbitration.
- (d) Subject to clause 14.5(e), without limiting the generality of clause 17 (confidentiality):
  - (1) any proceedings conducted under clause 14.5(b) will be private and confidential as between the parties;
  - (2) no party may cause or permit any part of proceedings or correspondence under clause 14.5(b) to be published in the press or other media; and
  - (3) all such proceedings and correspondence, the documentation and information relevant to such proceedings and correspondence, and the reasons for any award or other determination made under clause 14.5(b), must be kept confidential by the parties and may not be disclosed other than to the extent permitted under clause 17 (confidentiality).
- (e) Nothing in clause 14.5(d) applies to or in relation to or restricts in any way:
  - (1) disclosure of information to an arbitrator or umpire in accordance with clause 14.5(b); or
  - (2) disclosure of the proceedings or correspondence or the reasons for the award or other determination in the course of legal proceedings relating to the arbitration, award or other determination made under clause 14.5(b), or in the course of any other judicial, arbitral or administrative proceedings between the parties.
- (f) Once a party submits a dispute to arbitration, the other party must participate in the arbitration.

#### **14.6 Summary or urgent relief**

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

#### **14.7 Customer Disputes**

- (a) If any Customer brings any legal proceedings in any court against any party to this Agreement (the **Defendant Party**) and the Defendant Party wishes to make a third party claim (as defined in clause 14.7(b)) against the other party to this Agreement, then the parties agree that the third party claim can be dealt with in the legal proceedings brought by the Customer rather than being dealt with under this clause 14.

- (b) For the purposes of clause 14.7(a), **third party claim** shall mean:
- (1) any claim by a Defendant Party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
  - (2) any claim by a Defendant Party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Customer; or
  - (3) any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Customer and the Defendant Party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

#### **14.8 Obligations Continuing**

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

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

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## **15 Representations and Warranties**

### **15.1 The User's representations and warranties**

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

### **15.2 The Service Provider's representations and warranties**

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

### **15.3 Other representations and warranties**

Each party to this Agreement represents and warrants that:

- (a) it is incorporated or established and validly existing;
- (b) it has full power, authority and legal right to execute, deliver and perform its obligations under this Agreement;

- (c) execution of and performance of that party's obligations under this Agreement will not amount to a breach of any contractual or other obligation owed by that party to a third party; and
- (d) as at the date of this Agreement an Insolvency Event has not occurred in respect of that party.

#### 15.4 No reliance

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

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## 16 Notices

### 16.1 Method of Giving Notices

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

- (a) delivered;
- (b) sent by pre-paid mail;
- (c) transmitted by facsimile; or
- (d) transmitted electronically,

to that person's address, as specified below:

- (1) if to the Service Provider

Address:

Attention:

Facsimile:

Telephone:

E-mail:

- (2) if to the User:

Address:

Attention:

Facsimile:

Telephone:

E-mail:

## 16.2 Time of receipt of notice

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

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

## 16.3 Time of receipt of Invoices

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

## 16.4 Confirmation of electronic delivery

Without prejudice to the effectiveness of service of a notice transmitted electronically, if a notice is given electronically under any of clauses 7.7(a) (disputed invoices), 7.8 (credit support), 0, **Error! Reference source not found.**, **Error! Reference source not found.** (IPART complaints), 9.10 (changes in Reference Tariffs or Reference Services), 12.2 (termination for default or insolvency of User), 12.3 (notice of termination) and 14 (dispute resolution) the notice must also be sent simultaneously by any one of the means listed in clauses 16.1(a) to 16.1(c) (inclusive).

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# 17 Confidentiality

## 17.1 General obligation

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

- (a) by a party, to:



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

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

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

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

### **17.3 Conditions on disclosure**

- (a) In the case of a disclosure under clause 17.1(d)(1) or 17.1(e), the party proposing to make the disclosure shall inform the proposed recipient of the confidentiality of the information and the party proposing to disclose shall take all reasonable precautions to ensure that the proposed recipient keeps the information confidential.
- (b) If a party is permitted to disclose any confidential information in accordance with this clause 17, the party proposing to disclose shall use reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

### **17.4 Notice to other Party**

Each party, shall:

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

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## **18 Law and jurisdiction**

### **18.1 Governing Law**

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

### **18.2 Submission to Jurisdiction**

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

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## **19 General**

### **19.1 Waiver**

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

## **19.2 Amendment**

This Agreement may only be amended or supplemented in writing, executed by the parties in the same manner as the parties executed this Agreement.

## **19.3 Attorneys**

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

## **19.4 Severability**

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

## **19.5 Counterparts**

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

## **19.6 Further Assurance**

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

## **19.7 Entire Agreement**

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

## **19.8 Assignment**

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

## **19.9 Remedies Cumulative**

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

### **19.10 Review of Agreement**

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

### **19.11 No Agency or partnership**

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

### **19.12 Restriction on authority**

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

### **19.13 Costs**

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

### **19.14 Schedules**

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

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## Schedule 1 – Approved Form of Unconditional Undertaking

(Clause 7.8)

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At the request of ..... ACN ..... ("the User") and in consideration of ..... ACN ..... ("the Service Provider") accepting this undertaking in respect of the contract for the provision of use of system services and other related services [("the Use of System Agreement")] ..... ACN ..... ("the Financial Institution") unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Service Provider to a maximum aggregate sum of \$..... (.....).

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

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

Provided always that the Financial Institution may at any time without being required so to do pay to the Service Provider the sum of \$ ..... (.....) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Service Provider and thereupon the liability of the Financial Institution hereunder shall immediately cease.

**DATED at ..... this ..... day of .....20.....**

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## Schedule 2 – Transfer Points

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## Schedule 3 – Services other than Reference Services

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

**Non-Reference Service Charge** means the amount payable by the User for the provision of Services other than Reference Services, being the amount as set out in Schedule 3 of the Terms and Conditions or as agreed between the parties to an Agreement or determined pursuant to the Access Code;

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

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

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

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

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

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

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

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

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

**Reference Tariff Class** refers to DSPs assigned the same Reference Tariff;

**Reference Tariff Component** refers to an individual price element comprising part of a Reference Tariff

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

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

**Regulatory Instrument** means the Access Act, Access Law, Access Code, the MSO Rules, and any legislation, licence, code, rules, sub-code, guideline, safety case, order or regulation regulating the gas industry in New South Wales, or elsewhere if applicable, including any other applicable legislation having jurisdiction over the relevant party;

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

**Relevant Tax** means any royalty, duty, excise, tax, impost, levy, fee or charge (including, but without limitation, any GST) imposed by any Authority in respect of the repair, maintenance, administration or management of the Distribution System (or any part of it) or in respect of the provision of Reference Services;

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

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

**Retailer** means a party authorised by the relevant Authority to retail Gas;

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



**Retail Licence** means a licence to sell Gas granted to a Retailer by the relevant regulatory authority;

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

- (a) notification of Reference Tariffs under clause 9.10(c) of the Terms and Conditions;
- (b) provision of information and documentation to Customers under clause 9.12(b) of the Terms and Conditions; and
- (c) delivering to a Customer any notification, information or documentation as requested by Envestra under clause 9.12(e) of the Terms and Conditions;

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

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

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

**Significant Extension** has the meaning given to it in clause 5.6.1(c).

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

**Supply** means the delivery of Gas;

**System Wide Benefits Test** means the test applied to determine whether a New Facility has system wide benefits that justify the approval of a higher Reference Tariff for all Users as set out in section 8.16 of the Access Code;

**Tariff Control Formula** means the formula described in clause 3 of the Reference Tariff Policy that applies to Haulage Reference Tariffs;

**Tariff D** (or **Haulage Reference Tariff D**) means the tariff that applies to the Tariff D Haulage Reference Service from time to time and comprises Distribution Demand Tariff Components.

**Tariff D Customer or Tariff V Customer** means a Customer in respect of whom the User is charged Tariff D or V respectively;

**Tariff D DSP** means a DSP assigned to Tariff D as set out in clause 1.2 of Part B;

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

**Tariff V** (or **Haulage Reference Tariff V**) means the tariff which applies to the Tariff V Haulage Reference Service from time to time and comprises a Distribution Fixed Tariff Component and Distribution Volume Tariff Components;

**Tariff V Customer** means a Customer in respect of whom the User is charged Tariff D or V respectively;

**Tariff V DSP** means a DSP assigned to Tariff V as set out in clause 1.2 of Part B;

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

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

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

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

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

(b) a Distribution Pipeline to a Distribution Pipeline;

the Transfer Points existing upon execution of an Agreement being as set out in Schedule 2 of that Agreement;

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

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

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

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

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

**VENCorp Connection Deed** means the deed of that name between Envestra and VENCorp;

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

**Victorian Network** means the distribution system in Victoria (previously known as the Stratus Network) that is the subject of Envestra's separate access arrangement lodged with the Essential Services Commission; and

**X** has the meaning given to it in clause 3.1 of Part B of the Access Arrangement.