



## **SA Access Arrangement**

### **Annexure G**

Terms & Conditions applicable to the provision of Reference Services

SA Distribution Network

**13 July 2006**

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## **TERMS AND CONDITIONS**

These are the terms and conditions on which the Service Provider (currently Envestra Limited (“**Envestra**”)) will provide Reference Services pursuant to the Access Arrangement applicable to the Network.

### **PART I: INTRODUCTION**

#### **1. THE AGREEMENT**

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

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

##### **1.2. Inconsistency**

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

##### **1.3. Interpretation**

Definitions given to terms in the Access Arrangement (to which these terms and conditions are annexed) apply to those terms in the Agreement except where the contrary intention appears.



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## **PART II: HAULAGE REFERENCE SERVICES**

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

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

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

- (a) receive Gas from or for the account of the Network User at each User Receipt Point; and
- (b) deliver Gas to or for the account of the Network User through each User DP that is located on the same Sub-Network as the User Receipt Point through which that Gas was received from or for the account of the Network User,

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

#### **2.2. Delivery Quantities**

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

#### **2.3. Odourisation**

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

#### **2.4. Service Standards**

Envestra will ensure that the Network is operated and managed during the Term in accordance with the Access Arrangement (to which these terms and conditions are annexed) and in accordance with all applicable laws from time to time (including, but without limitation, the Gas Act 1997 (SA), the Distribution Licence, the Gas Distribution Code, the Energy Customer Transfer and Consent Code, the Gas Metering Code and the Retail Market Rules).

The Network User will ensure that it holds whatever licences or other authorisations it requires to sell or consume Gas delivered through the Network and will comply with all applicable laws from time to time (including, but without limitation, the Gas Act 1997 (SA), any licence issued to the Network User under the Gas Act 1997 (SA), the Energy Prepayment Meter System Code, the Energy Retail Code, the Energy Customer Transfer and Consent Code, the Energy Price Disclosure Code, the Energy Marketing Code, the Gas Distribution Code, Gas Metering Code and the Retail Market Rules).

### **2A GAS BALANCING**

#### **2A.1 No Inconsistency**

Envestra and the Network User agree that nothing in the Agreement is, or is intended to be, inconsistent with Chapter 5 of the Retail Market Rules.

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Envestra and the Network User agree that if, despite clause 2A.1, there is any inconsistency between the Agreement and Chapter 5 of the Retail Market Rules, Chapter 5 of the Retail Market Rules is to prevail over the Agreement to the extent of the inconsistency.

**2A.2 Chapter 5, Retail Market Rules**

Envestra and the Network User acknowledge that Chapter 5 of the Retail Market Rules governs:

- (a) how the gas injected into a sub-network on a gas day is allocated between users; and
- (b) how a user must reconcile any difference between the quantity of gas that the user injects or procures for injection into a sub-network on a gas day and the quantity of gas withdrawn by the user from the sub-network.

**2A.3 Part 5.2, Retail Market Rules**

To avoid doubt in relation to Part 5.2 of the Retail Market Rules, Envestra and the Network User recognise that at any point in time the quantity of gas that the user has injected or procured for injection into a sub-network is unlikely to precisely equal the quantity of gas withdrawn by the user from the sub-network. However, the user must ensure that the quantity of gas that the user has injected or procured for injection into a sub-network equals the quantity of gas withdrawn by the user from the sub-network in accordance with Chapter 5 of the Retail Market Rules.

**2A.4 Interpretation**

Terms used in this clause 2A have the same meaning as they have for the purposes of rule 307 of the Retail Market Rules.

**3. CHARGES**

**3.1. Payment of Charges**

In each calendar month (commencing with the second calendar month during the Term), the Network User will pay Envestra the Charges payable for each User DP in respect of the previous calendar month.

**3.2. Calculation of Charges**

The Charges payable for a DP in respect of a calendar month will be calculated in accordance with the Tariff Schedule.

**4. [NOT USED]**

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## 5. CAPACITY MANAGEMENT

### 5.1. Maximum Daily Quantity

Subject to clause 5.3, the Maximum Daily Quantity for a DP is the maximum Quantity of Gas that Envestra is obliged to deliver through that DP to or for the account of the Network User during any Network Day.

### 5.2. Maximum Hourly Quantity

Subject to clause 5.3, the Maximum Hourly Quantity for a DP is the maximum Quantity of Gas which Envestra is obliged to deliver through that DP to or for the account of the Network User during any period of 60 minutes.

### 5.3. Network Limitations

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

### 5.4. Gas Balancing within Gas Delivery Zones

- (a) At all times during the Term, unless otherwise agreed by Envestra or otherwise required by the Retail Market Rules, the Network User must endeavour to ensure that the aggregate Quantity of Gas delivered by or for the account of the Network User, through each User Receipt Point within a Gas Delivery Zone, is equal to the aggregate Quantity of Gas delivered to or for the account of the Network User through each User DP within that Gas Delivery Zone .
- (b) Envestra will have no obligation to deliver a Quantity of Gas to or for the account of the Network User through any User DP within any Gas Delivery Zone, or through all User DPs within that Gas Delivery Zone, which exceeds the Quantity of Gas delivered by or for the account of the Network User through the User Receipt Point within that Gas Delivery Zone (or, if there is more than one User Receipt Point within that Gas Delivery Zone, the aggregate Quantity of Gas delivered by or for the account of the Network User through those User Receipt Points). For the purposes of this clause 5.4, the Taperoo Gate Station is located in Gas Delivery Zone 1, the Gepps Cross Gate Station and the outlet of the Cavan Interconnection Pipeline are located in Gas Delivery Zone 2 and the Elizabeth Gate Station is located in Gas Delivery Zone 3.
- (c) For the purposes of this clause 5.4, “**Gas Delivery Zone**” means an area which Envestra from time to time defines as a Gas Delivery Zone having regard to whether it is physically possible to deliver Gas from a given User Receipt Point to a given User DP (and, for this purpose, the Gas Delivery Zones as at the Start Date are the areas defined as Gas Delivery Zones on the map set out as Annexure C to the Specific Terms and Conditions comprised within the Agreement).
- (d) Envestra will ensure that, if it defines an area as a Gas Delivery Zone pursuant to paragraph (c), then that area will also be defined as a Gas Delivery Zone for the purposes of each other agreement (for the provision of Network Services) that incorporates provisions the same as, or to the same effect as, paragraphs (a), (b), and (c) so that the Gas Delivery Zones for the purposes of the Agreement and each such other agreement are the same at any given point in time.
- (e) Envestra will provide the Network User with not less than 20 days notice before it defines (or re-defines) any Gas Delivery Zone.

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### 5.5. Quantities Received

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

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

### 5.6. Overselling Capacity

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

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

## 6. DAILY OVERRUNS

### 6.1. Demand Delivery Points

Whenever the Quantity of Gas delivered through any Demand DP on any Network Day exceeds the MDQ for that DP, the Network User will pay Envestra a daily overrun charge in accordance with this section.

### 6.2. Calculation of Daily Overrun Charge

The daily overrun charge payable for a given Demand DP, in respect of a given Network Day, will be calculated in accordance with the formula:

$$(PDQ - MDQ) \times OR$$

where:

**PDQ** (peak day quantity) is the Quantity of Gas delivered through that Demand DP on that Network Day;

**MDQ** is the Maximum Daily Quantity for that DP on that Network Day; and

**OR** is the Overrun Rate.

### 6.3. Invoicing

Each invoice given by Envestra to the Network User pursuant to the Agreement will (where practical) include, or be accompanied by, details of the daily overrun charges payable by the Network User for each Demand DP in respect of each Network Day during the most recent Cycle for that DP.

### 6.4. MDQ Increase (Four OVERRUNS in a Month)

Whenever the Quantity of Gas delivered through any Demand DP exceeds the MDQ for that DP on four Network Days during any period of 30 days, the MDQ for that Demand DP will be increased, with effect from the end of that fourth Network Day, so that it is equal to the highest Quantity of Gas delivered through that DP on any of those four Network Days.

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**6.5. MDQ Increase (Eight Overruns in a Year)**

Whenever the Quantity of Gas delivered through any Demand DP exceeds the MDQ for that DP on eight Network Days during any period of one Year, the MDQ for that DP will be increased, with effect from the end of the eighth Network Day, so that it is equal to the highest Quantity of Gas delivered through that DP on any one of those eight Network Days.

**6A. TEMPORARY INCREASE OF MDQ**

**6A.1 Demand Delivery Points**

The Network User may request Envestra to deliver through a DP a Quantity of Gas that exceeds the MDQ for that DP, for each Network Day in a particular Cycle. If Envestra agrees to that request then the MDQ for that DP will be increased for that Cycle as requested (or as agreed). Increases pursuant to clauses 6.4 or 6.5 only apply if the increased MDQ is itself exceeded.

**6A.2 Requests for Temporary Increase in MDQ**

Requests for a temporary increase in MDQ must be submitted to Envestra at least 28 days before the increase is required. An administration fee of \$150 will apply for each request. In addition, if engineering analysis is required, such costs shall be borne by the Network User, but will be agreed in advance with the Network User, based on an hourly rate of \$85 per person per hour.

**6B. REDUCTION IN MDQ**

**6B.1 Application of Clause**

This clause applies only to a Demand DP.

**6B.2 Request for Reduction in MDQ**

Subject to clause 6B.7 and 6B.8, if:

- (a) the Customer to whom Gas is supplied at a Demand DP experiences a permanent, material change in its requirements for Gas at that Demand DP such that its daily Gas requirements are significantly less than the current MDQ for that Demand DP; and
- (b) for a period of not less than 12 months the Customer has not, on any Network Day, taken delivery of a quantity of Gas at the Demand DP equal to or in excess of 90% of the MDQ; and
- (c) a reduction to the MDQ for that Demand DP will not unreasonably jeopardize Envestra's ability to recover capital expended by Envestra in installing infrastructure to serve that Demand DP; and
- (d) there is no contractual arrangement in place in respect of the Demand DP requiring the Network User to make payments, based on the current MDQ, for a minimum term to enable Envestra to recover, from Network User, capital expended by Envestra in installing infrastructure to serve that Demand DP,

then the Network User may, if it wishes to request the MDQ for that Demand DP be reduced in accordance with the procedures in this clause 6B:

- (e) provide a written request to Envestra that the MDQ for that Demand DP be varied from a particular Network Day ("**Specified Date**") to reflect the Customer's changed Gas

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requirements, which written request must state that it is made pursuant to this clause 6B and must set out the new MDQ proposed by the Network User ("**Requested MDQ**"). The Specified Date must be the first calendar day of a subsequent month but no less than 4 weeks after the date of receipt of the request by Envestra; and

- (f) provide evidence reasonably satisfactory to Envestra to justify the Requested MDQ nominated by the Network User, including the nature of the change in the Customer's gas requirements, the reason for that change and evidence that the Customer's gas requirements for each Network Day will not exceed the Requested MDQ. The evidence supplied to Envestra must be accompanied by a statement, from an authorised officer of the Customer, attesting to the accuracy of the evidence.

### **6B.3 Consideration of Request**

Envestra will consider a request lodged in accordance with clause 6B.2 accordingly and will advise the Network User within 4 weeks whether the request is accepted. Envestra will not unreasonably withhold its acceptance of a request lodged in accordance with clause 6B.2.

### **6B.4 Matters to be Considered**

In considering a request under this clause 6B, Envestra will have regard to the following factors:

- (a) the permanency of any change in the relevant Customer's requirements for Gas;
- (b) the long-term trend of the Customer's demand for Gas at the relevant Demand DP, as derived from historical data about the Quantities of Gas delivered through that DP and any reasoned forecasts of the Customer's expected future demand for Gas at that DP;
- (c) whether, and if so, the extent to which, the proposed reduction will compromise Envestra's ability to recover the capital expenditure Envestra incurred in relation to the relevant Demand DP, including whether Envestra has any contractual right to recover such expenditure from the Network User or someone else; and
- (d) any other factors that Envestra considers relevant.

### **6B.5 Acceptance of Request**

Where Envestra agrees to a request lodged in accordance with clause 6B.2, then the MDQ for the relevant Demand DP will be reduced to the Requested MDQ from the commencement of the Specified Date.

### **6B.6 Request for Explanation**

If requested by the Network User, Envestra will provide the Network User with an explanation of Envestra's decision to reject an application under this clause 6B.

### **6B.7 Subsequent Adjustment of MDQ**

Nothing in this clause 6B prevents or limits any subsequent adjustment to the MDQ for a Demand DP in accordance with any other clause of the Agreement.

### **6B.8 Subsequent Requests**

Where the MDQ for a Demand DP has been reduced under this clause 6B, then the Network User will not be entitled to make a further request of Envestra to reduce the MDQ at that Demand DP until at least 1 year has elapsed since the date that the MDQ was last reduced in accordance with this clause 6B.

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### **6B.9 Non-Acceptance of Previous Request**

Where a request lodged under clause 6B.2 is not accepted by Envestra, then the Network User will not be entitled to make a further request of Envestra to reduce the MDQ at that Demand DP until at least 6 months has elapsed since the date of lodgement of the most recent request under clause 6B.2.

## **7. [NOT USED]**

### **7A LIMITATION PERIOD – MDQ INCREASE**

#### **7A.1 Interpretation.**

For the purposes of this section 7A, the following terms will have the following meanings:

- (a) **"the previous MDQ"**, in relation to the revised MDQ for a DP, means the MDQ applicable to that DP immediately before it was increased, pursuant to section 6, to produce that revised MDQ.
- (b) **"the relevant two-year period"**, in relation to the revised MDQ for a Demand DP, means the period of two years that begins on the day on which the MDQ for that DP was increased, pursuant to section 6, to produce that revised MDQ.
- (c) **"the revised MDQ"**, in relation to a DP, means the MDQ for that DP as increased from time to time pursuant to section 6.

#### **7A.2 Application of Revised MDQ**

Whenever the MDQ for a DP is increased pursuant to section 6, the revised MDQ will apply (subject to section 6A) until it is again increased pursuant to those sections or it is decreased pursuant to clause 7A.3.

#### **7A.3 Cessation of Revised MDQ (Demand Delivery Points)**

The revised MDQ for a Demand DP will be decreased to the previous MDQ for that DP, with effect from the end of the relevant two-year period, unless the Quantity of Gas delivered through that DP, on any Network Day during that relevant two-year period, exceeded the previous MDQ for that DP.

## **8. METERING EQUIPMENT**

### **8.1. Delivery Point Metering Equipment**

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

### **8.2. Standard**

Envestra will ensure that any Metering Equipment it installs at any DP meets the requirements prescribed by law to the extent that those requirements are applicable to that Metering Equipment at that DP.

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### **8.3. Maintenance**

Envestra will ensure that all Metering Equipment is maintained in reasonable condition throughout the Term.

### **8.4. Receipt Point Metering Equipment**

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

### **8.5. Standard of Metering Equipment**

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

### **8.6. Readings of Receipt Point Metering Equipment**

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

### **8.7. Maintenance and Protection of Receipt Point Metering Equipment**

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

### **8.8. Party Responsible**

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

## **9. METER ACCURACY**

### **9.1. Scheduled Meter Testing**

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

### **9.2. Unscheduled Meter Testing**

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

### **9.3. Form of Request**

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

### **9.4. Notice of Tests**

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



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### 9.5. Notice of Results

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

### 9.6. Inaccurate Meters

Subject to the Agreement, if any test of Metering Equipment pursuant to the Agreement shows that the measurements taken by that Metering Equipment are outside a margin of accuracy of plus or minus 2% (in the case of Metering Equipment at a User DP) or plus or minus 1% (in the case of Metering Equipment at a User Receipt Point) of the net Volume of Gas delivered through that Metering Equipment (“**the allowable margin of accuracy**”):

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

### 9.7. Basis for Corrections

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

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

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

### 9.8. Maximum Correction

Envestra will not have to correct the readings taken from any Metering Equipment more than one year prior to the date of the relevant test unless Envestra is required to do so by law.

### 9.9. Test Fees

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

### 9.10. Refund of Fees

If the Requesting Party has paid the Responsible Party a test fee for testing any Metering Equipment and the test shows that the measurements taken by that Metering Equipment are

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outside the allowable margin of accuracy, the Responsible Party will refund that test fee to the Requesting Party (or, if the Responsible Party is Envestra, either refund that test fee to the Network User or credit the Network User with that test fee in the next invoice issued pursuant to the Agreement).

**9.11. Adjust Accounts**

If Envestra is required by the Agreement to correct readings taken from any Metering Equipment, it will recalculate the Charges for the relevant DP and debit the Network User with any underpayment, or credit the Network User with any overpayment, in the next invoice issued pursuant to the Agreement.

**10. SCHEDULED METER READING**

**10.1. Volume Delivery Points**

Subject to the Agreement, Envestra will ensure that the Metering Equipment at a Volume DP (to which Gas is delivered to or for the account of the Network User) is read during the Term at intervals of 90 days or approximately 90 days.

**10.2. Demand Delivery Points**

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

**10.3. First Reading - Volume Delivery Points**

Envestra will undertake the first reading of the Metering Equipment at a Volume DP at whatever time is convenient to Envestra so long as that reading is taken no more than 90 days, or approximately 90 days, after Envestra first delivers Gas through that DP to or for the account of the Network User pursuant to the Agreement.

**10.4. First Reading - Demand Delivery Points**

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

**10.5. Final Reading - Volume Delivery Points**

After the Term ends, Envestra will undertake a final reading of the Metering Equipment at a Volume DP at whatever time is required by law and, to the extent permitted by law, at whatever time is convenient to Envestra so long as that reading is taken no more than 90 days, or approximately 90 days, after the previous reading.

**10.6. Final Reading - Demand Delivery Points**

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

**10.7. No Measurements**

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

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

## **11. GAS SPECIFICATIONS**

### **11.1. Specifications**

The Network User will ensure that Gas delivered into the Network by or for the account of the Network User meets the specifications imposed by law and, to the extent consistent with the law, the specifications reasonably specified from time to time by Envestra by notice given to the Network User. Envestra may specify different specifications for distinct parts of the Network. The specification specified at the start of the Agreement is that contained in AS 4564 – 2003, Specification for General Purpose Natural Gas.

### **11.2. Temperature**

For the purposes of clause 11.1, Envestra notifies the Network User that (until otherwise required pursuant to clause 11.1) Gas delivered into the Network must have a temperature of at least 2 degrees Celsius

### **11.3. Failure to Comply**

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

### **11.4. Notice to Envestra**

The Network User must notify Envestra as soon as is practicable if there is a possibility that Gas, which does not meet the specifications set pursuant to clauses 11.1 and 11.2, may be delivered into the Network by or for the account of the Network User.

## **12. RECEIPT PRESSURES**

### **12.1. Receipt Pressure**

The Network User will ensure that Gas delivered at any Receipt Point by or for the account of the Network User is delivered at a pressure which is within the limits specified for that Receipt Point from time to time by Envestra by notice given to the User.

### **12.2. No Unfair Discrimination**

Envestra may not specify pressures for any Receipt Point pursuant to clause 12.1 that unfairly discriminate between that Receipt Point and other Receipt Points unless the discrimination is justifiable:

- (a) on grounds that relate to the technical, physical or practical limitations of that Receipt Point or any other Receipt Point or the Network (or any part of it); or

- 
- (b) on grounds that relate to the operational integrity of the Network (or any part of it) or the safe and efficient operation of the Network (or any part of it).

**12.3. Failure to Comply**

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

**13. DELIVERY PRESSURES**

**13.1. Delivery Pressure**

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

**13.2. Exclusion of Liability**

Envestra will not breach its obligations under clause 13.1 where its failure to comply with that clause is due to:

- (a) the technical, practical and physical limitations of the Network;
- (b) the fact that insufficient Gas is delivered into the Network; or
- (c) the fact that Gas is delivered into the Network at pressures outside the limits specified from time to time by Envestra,

whether or not Envestra knew, or ought to have known, of those facts or matters at any time before, on or after the Start Date.

**13.3. No Implied Obligation**

Nothing in clauses 13.1 or 13.2 imposes any obligation on Envestra to take any steps to modify the technical, practical or physical limitations of the Network or to cause or procure the delivery of Gas into the Network or to ensure that Gas is delivered into the Network at pressures within the limits specified from time to time by Envestra.

**13.4. Other Legal Obligations**

Nothing in clauses 13.2 or 13.3 relieves Envestra of any obligations it might have under any applicable law.

**14. POSSESSION OF GAS AND RESPONSIBILITY**

**14.1. Control and Possession**

As between Envestra and the Network User:

- (a) the Network User will be in control and possession of Gas prior to its delivery into the Network by or for the account of the Network User;

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

**14.2. No Responsibility before Receipt**

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

**14.3. Limited Responsibility after Delivery**

To the extent permitted by law, Envestra will have no responsibility or liability whatsoever with respect to any Gas, after it is delivered out of the Network, on account of anything which may be done, happen or arise with respect to that Gas prior to receipt at any Receipt Point or after delivery at any DP, provided that Envestra has complied with its obligations pursuant to section 13. This clause will survive the termination of the Agreement.

**15. WARRANTIES AND TITLE TO GAS**

**15.1. Warranty of Title to Gas**

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

**15.2. Repetition of Warranties**

The warranties made by the Network User under clause 15.1 will be deemed to be repeated on each day on which Gas is delivered to or for the account of the Network User at any Receipt Point or any DP, by reference to the circumstances applicable on that day.

**15.3. Indemnity**

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

**15.4. Title**

Title to the Gas received by Envestra at any Receipt Point will not pass to Envestra.

**15.5. Commingling of Gas**

The Gas delivered to Envestra at any Receipt Point may be commingled with other Gas in the Network. Envestra will be entitled to deliver Gas in a commingled state to each User DP.

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## 16. SUPPLY CURTAILMENT

### 16.1. Right to Curtail

Subject to clauses 16.2 and 16.3, Envestra may interrupt or curtail deliveries of Gas through the Network (whether to or for the account of the Network User or to or for the account of any other person):

- (a) where necessary to permit maintenance, repairs, improvements or alterations to the Network or any part of it;
- (b) where necessary to protect the operational integrity of the Network or any part of it or to ensure the safe and efficient operation of the Network or any part of it;
- (c) where the Quantity of Gas delivered into the Network or any part of it is insufficient to meet demand; or
- (d) in the event of an emergency or where necessary to avert danger to persons or property or to comply with any law.

### 16.2. Planned Maintenance

Envestra will give the Network User or the Network User's Customers such period of notice as is required by law whenever Envestra proposes to interrupt or curtail deliveries of Gas to or for the account of the Network User in order that Envestra may undertake Planned Maintenance or augment the Network.

### 16.3. Order of Priority

If Envestra proposes to interrupt or curtail deliveries of Gas pursuant to clause 16.1 and it has a choice about which deliveries it will interrupt or curtail, or the order in which it will interrupt or curtail deliveries, then, to the extent that it is practicable to do so, Envestra will endeavour to interrupt or curtail deliveries in the following descending order of priority:

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

Where two or more DPs fall within a particular category specified in this clause, Envestra may interrupt or curtail deliveries to those DPs in such order as Envestra determines having regard to the relevant circumstances.

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#### **16.4. Categorisation of Delivery Points**

For the purposes of clause 16.3, Envestra will determine, in good faith, into which category any particular DP falls, based on its actual knowledge of the DP. Envestra's determination will bind the Network User. If reasonably requested by the Network User, Envestra will provide the Network User with an explanation for Envestra's determination under this clause.

#### **16.5. Network User Information**

The Network User must give Envestra whatever information Envestra reasonably requests from time to time to enable Envestra to interrupt or curtail deliveries of Gas pursuant to the Agreement. That information may include (but is not limited to) emergency contact details for the Network User and for the Network User's Customers.

#### **16.6. Updates**

The Network User must give Envestra whatever additional information is necessary from time to time to ensure that all information given to Envestra pursuant to clause 16.5 remains true, correct and up to date throughout the Term.

#### **16.7. Assistance**

The Network User must give Envestra (and must cause or procure each Network User's Customer to give Envestra) whatever assistance Envestra reasonably requests from time to time to interrupt or curtail deliveries of Gas to or for the account of the Network User.

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## **PART III: ANCILLARY REFERENCE SERVICES**

### **17. DISCONNECTION AND RECONNECTION SERVICES**

#### **17.1. Disconnection and Reconnection Service**

Envestra will Disconnect and Reconnect DPs in accordance with the Retail Market Rules and all other applicable laws.

#### **17.2. Charges**

For the purposes of rule 362 of the Retail Market Rules, Envestra is entitled to charge the Network User for the Disconnection and Reconnection of a DP. The charge will be calculated in accordance with the Agreement and the applicable Reference Tariff.

### **18. SPECIAL METER READING SERVICE**

#### **18.1. Special Meter Reading Service**

Envestra will undertake Special Meter Readings in accordance with the Retail Market Rules and all other applicable laws.

#### **18.2. Charges**

For the purposes of rule 362 of the Retail Market Rules, Envestra is entitled to charge the Network User for a Special Meter Reading. The charge will be calculated in accordance with the Agreement and the applicable Reference Tariff.



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## PART IV: GENERAL TERMS AND CONDITIONS

### 19. INVOICING AND PAYMENT OF CHARGES FOR REFERENCE SERVICES

#### 19.1. Obligation to Pay Charges

In consideration for the services provided or to be provided under the Agreement, the Network User must pay Envestra the Charges calculated from time to time in accordance with the Agreement and the Tariff Schedule.

#### 19.2. First Payment

On execution of the Agreement, the Network User will pay Envestra, based on the terms and conditions, an amount equal to the Charges which Envestra reasonably estimates are likely to become payable by the Network User (including any GST payable in respect of any taxable supply to which those Charges relate) in respect of the period commencing on the Start Date and ending on the last day of the second calendar month to end after the Start Date. (For example, if the Start Date is in June, the Charges will be for the period up until the end of July.)

#### 19.3. Second and Subsequent Payments

At or after the end of each calendar month that ends during the Term (and at or after the end of the Term) Envestra will send the Network User an invoice for an amount calculated as follows:

$$I = (AC_{m-1} - EC_{m-1}) + EC_m + EC_{m+1}$$

where:

**I** is the invoice amount;

**AC<sub>m-1</sub>** is the actual Charges for the calendar month prior to that in which the invoice is issued (or, if the invoice is issued after the end of the Term, for the month in which the Term ended)(including any GST payable in respect of any taxable supply to which those Charges relate), determined in accordance with the Agreement on the assumption (where relevant) that any Quantity of Gas estimated to have been delivered through any User DP was the Quantity of Gas actually delivered;

**EC<sub>m-1</sub>** is the amount already paid to Envestra on account of Charges expected to become payable for the month prior to that in which the invoice is issued (including any GST payable in respect of any taxable supply to which those Charges relate);

**EC<sub>m</sub>** is the difference between the amount Envestra estimates (estimates being based on the profile of previous consumption, where applicable) is likely to become payable on account of Charges for the month in which the invoice is issued (including any GST payable in respect of any taxable supply to which those Charges relate), and the amount that Envestra previously estimated (in invoices) was likely to become payable on account of Charges for the month in which the invoice is issued (including any GST payable in respect of any taxable supply to which those Charges relate); and

**EC<sub>m+1</sub>** is the amount Envestra estimates is likely to become payable on account of Charges for the month after that in which the invoice is issued (including any GST payable in respect of any taxable supply to which those Charges relate).

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#### **19.4. Other Information**

Envestra will also ensure that each invoice sets out, or is accompanied by, the following information where applicable:

- (a) the aggregate Quantity of Gas delivered, or estimated to have been delivered, at the User DPs to or for the account of the Network User during the relevant month, determined in accordance with the Agreement;
- (b) any other information which Envestra is required under the Agreement or by law to include in the invoice.

Envestra may give any or all of the information mentioned in this clause to the Network User in electronic form.

#### **19.5. Payment of Invoices**

The Network User must pay the amount shown in any valid tax invoice (issued pursuant to clause 19) to Envestra within 14 days after the Network User has received that invoice.

#### **19.6. Prepayments**

Any amount paid by the Network User, on account of Charges or GST expected to become payable in any month, may be applied by Envestra in payment of Charges or GST for that month, or if the amount paid exceeds the amount due for that month, the excess payment will be applied to the next month.

### **20. CORRECTION OF BILLING ERRORS**

If the Network User notifies Envestra of an error in an invoice issued by Envestra pursuant to the Agreement, Envestra will determine within 28 days whether an error has occurred. If Envestra agrees that an error has occurred, then the error will be corrected in the next invoice issued after determination of the error. No claim for an adjustment will be made by the Network User after the expiration of the period mentioned in clause 25.3 or, in any event, more than eleven months after the date of the invoice.

### **20A. DISPUTED INVOICES**

- (a) If the Network User notifies Envestra not less than 2 Business Days before the due date of an invoice that it disputes the amount claimed in that invoice, the parties will seek to resolve that dispute and the Network User will be required to pay, by the due date, the amount of the invoice not genuinely disputed.
- (b) If, following the resolution of a dispute, it is determined that the amount that is properly due to Envestra in relation to that invoice is more than the amount already paid by the Network User, then within 3 Business Days the Network User must pay to Envestra the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period from the due date of that invoice to the date on which the difference is paid in full.
- (c) Interest on the difference payable under clause 20A(b) shall be calculated in accordance with clause 23.

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## 21. DELIVERED QUANTITIES

### 21.1. Basis for Determination

Whenever Envestra prepares an invoice for a given month, the Quantity of Gas shown in that invoice to have been delivered (or estimated to have been delivered) will be determined by Envestra in accordance with the Agreement.

### 21.2. Meter Reading

If the Metering Equipment at a DP was read during the month to which an invoice relates, the Quantity of Gas delivered through that DP during that month, to the time of the reading, will be determined in accordance with the formula:

$$\text{VOL} \times \text{GHV}$$

where:

**VOL** is the Volume of Gas which was delivered through the DP to the time of the reading during that month, expressed in Cubic Metres; and

**GHV** is the Gross Heating Value of Gas during that month in the Network (or, where applicable, in the Gas Delivery Zone or Sub-Network in which that DP is located), as determined from time to time in accordance with procedures approved by the Technical Regulator, or if there are no approved procedures at the relevant time, on a reasonable basis determined by Envestra.

For the purposes of this clause 21.2, “Gas Delivery Zone” has the meaning given to it in clause 5.4.

### 21.3. Readings That Cover Multiple Months

For the purposes of clause 21.2, where a reading taken from the Metering Equipment at a DP includes or might include Gas delivered prior to the relevant month, the Volume of Gas delivered during that month will be determined on the basis that an equal Volume of Gas was delivered on each day during the period to which the reading relates.

### 21.4. No Meter Reading

If no reading was taken from the Metering Equipment at a DP during the month to which an invoice relates or if a reading was taken prior to the last day of that month, Envestra may estimate the Quantity of Gas delivered through that DP during that month (or, if the Metering Equipment was read prior to the end of that month, in the period since the last meter reading):

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

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### **21.5. Allocation of Deliveries**

If Envestra agrees to deliver Gas to any DP during any period to or for the account of the Network User and to or for the account of someone other than the Network User, then that Gas will be allocated or apportioned between the Network User and that other person:

- (a) in the manner required by law;
- (b) (to the extent permitted by law) in the manner required by any relevant rules or agreement that bind Envestra, the Network User and that other person (or, if there is more than one such person, each such other person); and
- (c) (to the extent not otherwise required by paragraph (a) or (b)), on whatever basis Envestra considers reasonable in the circumstances.

### **21.6. Reconciliation**

If the Charges payable by the Network User in respect of any month were calculated on the basis of estimated deliveries of Gas during that month and subsequently a reading taken from Metering Equipment enables Envestra to determine the actual Quantity of Gas delivered (assuming, if necessary, that Gas was delivered at a constant rate), Envestra will determine the actual Quantity of Gas delivered (if necessary, based on that assumption) and will determine whether the Network User has overpaid or underpaid the tariffs and other charges. Envestra will credit the Network User with any overpayment, or debit the Network User with any underpayment, in the next invoice issued pursuant to the Agreement.

### **21.7. Determinations Conclusive**

Envestra will determine on a reasonable basis the Quantities of Gas delivered to any DP for the account of the Network User during any period. Such determination will be conclusive and binding on the Network User, unless proven incorrect.

## **22. METHOD OF PAYMENT**

### **22.1. Method of Payment**

Payment by the Network User will be made in immediately available funds on or before the due date by telegraphic transfer to a bank account designated by Envestra by notice in writing to the Network User, or by other agreed method of payment.

### **22.2. No Set-Off**

Subject to the Network User's rights under clause 20A, payment by the Network User will be made in full without set-off, counterclaim or deduction, or withholding on any account whatsoever (other than any deduction or withholding of taxes required by law).

### **22.3. Business Days**

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

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## 23. FAILURE TO PAY

### 23.1. Overdue Interest

If the Network User fails to pay any amount by the date on which that amount is due, then the Network User will pay Envestra interest on the unpaid amount to the extent that it remains unpaid from time to time. Interest will be calculated on a daily basis and will accrue at a rate which is two per cent higher than the Interest Rate. Accrued interest is payable to Envestra on demand. Interest not paid in the month in which it accrues will be capitalised and will itself bear interest in accordance with this clause. This clause will survive the termination of the Agreement.

### 23.2. Right to Set Off Unpaid Amounts

If the Network User does not pay any amount due to Envestra under the Agreement, then Envestra may withhold and set off payment of any amounts due or owing by Envestra to the Network User against any and all amounts due or owing by the Network User to Envestra. This clause will survive the termination of the Agreement.

### 23.3. Right to Suspend Services

If the Network User does not pay any amount due to Envestra under the Agreement, or under any Related Haulage Agreement, then Envestra may cease delivering Gas through any DP to or for the account of the Network User, and may cease performing any of its other obligations under the Agreement, until such time as the Network User has paid in full all unpaid amounts due to Envestra together with any interest accrued on those amounts.

## 24. TERMINATION

### 24.1. Term

The Agreement will commence on the Start Date and will continue until it is terminated in accordance with clause 24.2, clause 24.3 or by agreement between Envestra and the Network User.

### 24.2. Termination by Envestra

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

- (a) the Network User fails to pay any amount due to Envestra on time in the manner required by the Agreement or any Related Haulage Agreement;
- (b) the Network User breaches any other obligation under or in relation to the Agreement or any Related Haulage Agreement and, where that breach can be remedied, fails to remedy that breach to the satisfaction of Envestra within 14 days after it receives notice of that breach;
- (c) the Network User becomes an externally-administered body corporate or insolvent under administration (as defined in the Corporations Act 2001 of the Commonwealth);
- (d) the Network User ceases to meet the requirements of the Credit Policy;
- (e) there is any material adverse change, in the reasonable opinion of Envestra, in the ability of the Network User to comply with the terms of, or its obligations under, the Agreement or any Related Haulage Agreement; or

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- (f) the Network ceases to be a Covered Pipeline under or for the purposes of the Code (including, but without limitation, if the Code is repealed).

**24.3. Termination by the Network User**

The Network User may terminate the Agreement by seven days' notice given to Envestra at any time in the event that Envestra breaches any obligation under or in relation to the Agreement and, where that breach can be remedied, fails to remedy that breach to the satisfaction of the Network User within 14 days after it receives notice of that breach from the Network User.

**24.4. Effect of Termination**

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

**24.5. Refund of Pre-payment**

Within one month after Envestra has rendered an invoice in respect of the month in which the Term ended, Envestra will refund to the Network User any amount that Envestra holds for the Network User on account of Charges not then accrued, subject to any right of set-off or counter claim which Envestra may have against the Network User.

**24.6. No Other Refunds**

Subject to clause 24.5, Envestra will have no obligation to refund or repay any amount paid by the Network User to Envestra on account of Charges to become payable under the Agreement.

**24.7. Imbalance on Termination**

If there is an Imbalance on termination of the Agreement, title to any Gas which has not been delivered out of the Network to or for the account of the Network User will pass to the person to whom, or for whose account, that Gas is delivered, for no consideration other than the terms of this Agreement. Clause 2A will survive the termination of the Agreement.

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

**25. SERVICE PROVIDER'S LIABILITY**

**25.1. Indemnity against Property Damage and Personal Injury**

Subject to the other terms of the Agreement (other than clause 25.6) Envestra will indemnify the Network User against:

- (a) any damage that is caused to property of the Network User or a Customer of the Network User; or
- (b) injury caused to a servant, agent or contractor of the Network User or a Customer of the Network User,

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

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Envestra's obligation to indemnify the Network User under this clause will be reduced in proportion to the extent that any act or omission on the part of the Network User or its officers, servants, agents or contractors (including, but without limitation, any breach by the Network User of its obligations under the Agreement) gave rise to a legal remedy and contributes to the loss or liability.

### **25.2. Notice of Claims**

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

- (a) the provision to the Network User of Network Services pursuant to the Agreement; or
- (b) the operation, maintenance, repair, administration or management of the Network or any part of it,

irrespective of the juridical basis of Claim (including, but without limitation, irrespective of whether that Claim arises under or pursuant to the Agreement (or any other contract) or as a result of any breach of the Agreement (or any other contract) or in tort as a result of any negligence or any breach of any duty or as a result of any breach of any statutory duty or otherwise). The Network User's obligations under this clause will survive the termination of the Agreement.

### **25.3 Limitation Period**

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

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

To the extent permitted by law, Envestra will have no liability to the Network User in relation to any Claim (whether in tort, in contract or otherwise) for any loss of business or business interruption, loss of profit, loss of revenue or loss of opportunity, or for any other purely economic or monetary loss, or for any indirect, special or consequential loss, cost, expense or damage, which the Network User may suffer or incur.

### **25.5 Maximum Liability for Other Loss**

To the extent permitted by law, the maximum amount that Envestra will be legally liable to pay to the Network User (and to any other person or persons) as damages or compensation in respect of the death of any person or any injury to any person or any damage to any property will be limited to \$100 million in aggregate in relation to any one occurrence (aggregating all damages and compensation due to the Network User and each other person in respect of any death, injury or damage). The Network User will have no right to recover any damages or compensation from Envestra in relation to any Claim to the extent that Envestra's liability will then exceed the limit set out in this clause.

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### **25.6 Trade Practices Act**

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

- (a) the application of all or any of the provisions of Division 2 of Part V of the *Trade Practices Act 1974*;
- (b) the exercise of a right conferred by such a provision;
- (c) any liability of a corporation for breach of a condition or warranty implied by such a provision; or
- (d) the application of section 75A of the *Trade Practices Act 1974*.

### **25.7 Interpretation**

For the purposes of clause 25.6, a clause of the Agreement will not be taken to exclude, restrict or modify the application of a provision or section unless the term does so expressly or is inconsistent with that provision or section.

### **25.8 Statutory Immunity**

No clause of the Agreement is intended to vary or exclude any immunity conferred on Envestra by any law.

## **26. CONSUMER CONTRACT LIMITATION**

### **26.1. Application of Clause**

Clause 26.2 only applies if the Agreement is a contract for the supply by a corporation of goods or services to a consumer (other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption).

### **26.2. Limitation of Liability**

Subject to clause 26.3, if this section applies, the liability of Envestra for breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (other than a condition or warranty implied by section 69) is limited:

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

### **26.3. Section 68A(2) Exclusion**

Clause 26.2 will not apply in the circumstances specified in section 68A(2) of the *Trade Practices Act 1974*.



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#### **26.4. Interpretation**

Terms used in clauses 26.1 and 26.2 have the same meanings for the purposes of those clauses as they have for the purposes of Division 2 of Part V of the *Trade Practices Act 1974*.

### **27. FORCE MAJEURE**

#### **27.1. Definition**

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

- (a) acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- (b) strikes, lockouts, bans, slowdowns or other industrial disturbances;
- (c) acts of enemy, terrorism, wars, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
- (d) fire or explosion;
- (e) epidemic or quarantine;
- (f) order of any court or the order, act, or omission or failure to act of any government consent or approval that the Party requires in order to perform its obligations under the Agreement and which the Party has made a reasonable attempt to obtain; or
- (g) equipment breakdown, accident, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance or where the cause of such breakdown or breakage is a lack of proper maintenance).

#### **27.2. Consequences of Force Majeure**

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

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

#### **27.3. Payment Obligations**

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

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#### **27.4. Key Obligations**

Nothing in this clause will relieve the Network User from non-performance of its obligations under clauses 11.1, 12.1 or 15.1.

#### **27.5. Obligation to Remedy**

**A PARTY MUST USE ALL REASONABLE ENDEAVOURS TO OVERCOME OR REMEDY ANY FORCE MAJEURE WHICH PREVENTS ITS PERFORMANCE OF ANY OBLIGATION UNDER THE AGREEMENT AS SOON AS IS REASONABLY PRACTICABLE.28. NETWORK USER TO ASSIST**

#### **28.1. Information**

The Network User will provide Envestra (and will cause or procure each Network User's Customer and each Transmission Operator to provide Envestra) with whatever information Envestra might reasonably require from time to time in connection with the Agreement or the Services provided under the Agreement.

#### **28.2. Assistance**

The Network User will provide Envestra (and will cause or procure each Network User's Customer and each Transmission Operator to provide Envestra) with whatever assistance or co-operation Envestra might reasonably require from time to time in connection with the Agreement or the Services provided under the Agreement.

#### **28.3. Consultation**

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

#### **28.4. Survival**

This section will survive the termination of the Agreement.

### **29. USER'S INDEMNITIES**

#### **29.1. Network User's Breach**

The Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur as a result of the Network User's breach of the Agreement. This indemnity extends to (but is not limited to) any loss, cost, expense or damage which Envestra suffers or incurs in rectifying or remedying the Network User's breach of the Agreement.

#### **29.2. Network Damage**

The Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur in relation to any Receipt Point, Metering Equipment or the operation, administration, maintenance, repair or management of the Network (other than those associated with any curtailment or interruption of the delivery of Gas referred to in clause 29.5) that is caused by the Network User or any Network User's Customer or any of their respective servants, agents, contractors or invitees arising out of:

- (a) any negligence or wrongful act or omission by the Network User or any Network User's Customer or any of their respective servants, agents, contractors or invitees; or
- (b) any breach of this Agreement by the Network User.

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The Network User's obligation to indemnify Envestra under this clause will be reduced in proportion to the extent that any act or omission of Envestra gives rise to a legal remedy and contributes to the loss or liability.

**29.3. Death and Personal Injury**

The Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur as a result of the death or injury of any servant, agent, contractor or invitee of Envestra that is caused by the Network User or any Network User's Customer or any of their respective servants, agents, contractors or invitees.

**29.4. Service Indemnity**

Subject to clause 29.6, the Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer as a result of any negligent act or omission on the part of a Network User's Customer in connection with, or in relation to, any Service provided by Envestra to the Network User pursuant to the Agreement (including, in particular (but without limitation), in connection with or in relation to the disconnection or reconnection of any User DP pursuant to the Agreement).

**29.5. Curtailment Indemnity**

Subject to clause 29.6, the Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer or incur in connection with, or in relation to any curtailment or interruption of the delivery of Gas as a result of any negligent or wrongful act or omission on the part of a Network User or a Network User's Customer or any of their respective servants, agents, contractors or invitees.

**29.6. Indemnity Qualification**

The Network User's obligation to indemnify Envestra under this clause will be reduced in proportion to the extent that any act or omission of Envestra gives rise to a legal remedy and contributes to the loss or liability.

**30. USER'S INSURANCE**

**30.1. Insurance Required**

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

**30.2. Benefit of Insurance**

If Envestra requires, the Network User must ensure that any insurance the Network User obtains or maintains under the Agreement notes the interest of Envestra.

**30.3. Insurance Information**

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

**30.4. Notice of Claims**

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

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### **30.5. Claims Enforcement**

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

### **30.6. Claims Settlement**

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

### **30.7. Failure to Insure**

The Network User must promptly notify Envestra if the Network User fails to obtain or maintain any insurance required under the Agreement. In this case, Envestra may obtain and maintain that insurance on behalf of the Network User at the cost of the Network User.

## **31. ACCESS TO PREMISES**

### **31.1. Right of Access**

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

### **31.2. Notice of Entry**

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

### **31.3. No Notice**

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

### **31.4. Network User's Obligation**

The Network User must use reasonable endeavours to ensure that Envestra and its servants and agents are given safe, reasonable and unhindered access whenever they require to any premises owned or occupied by the Network User or any Network User's Customer for the purposes of:

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

### **31.5. Failure to Provide Access**

Envestra will have no liability to the Network User for any failure to perform the Agreement to the extent that Envestra is unable to perform the Agreement because it could not obtain safe, reasonable and unhindered access to any premises or place at the time or times it required.

### **31.6. Special Meter Reading**

If the Network User requests Envestra to read any Metering Equipment pursuant to the Agreement and Envestra is unable to obtain safe, reasonable and unhindered access to that

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Metering Equipment at the time or times Envestra requires, the Network User will remain responsible to pay Envestra for reading that Metering Equipment even though no reading is actually taken.

**31.7. Further Assurances**

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

**32. CONFIDENTIALITY**

**32.1. Network User's Obligations**

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

**32.2. No Disclosure**

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

**32.3. Disclosure to Employees**

The Network User may disclose Confidential Information to those of its servants and agents to whom it is necessary to make disclosure. However, the Network User must ensure that any servant or agent to whom Confidential Information is disclosed does not disclose that Confidential Information to any third person to whom the Network User could not make disclosure pursuant to the Agreement.

**32.4. Disclosure By Law**

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

**32.5. Envestra's Obligations**

Envestra must comply with any confidentiality obligations imposed on it pursuant to section 4.1 of the Code.

**33. DISPUTE RESOLUTION**

**33.1. Interpretation**

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

'**Dispute**' means a dispute between Envestra and the Network User in relation to the Agreement (other than an access dispute to which section 6 of the Code applies).

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

**33.2. Referral to Dispute Resolution**

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

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### **33.3. Negotiations**

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

### **33.4. Referral to Expert**

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

### **33.5. Selection of Expert**

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

### **33.6. Appointment of Expert**

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

### **33.7. Expert not Arbitrator**

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

### **33.8. Basis of Decision**

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

### **33.9. Decision Binding**

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

### **33.10. Costs of Expert**

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

### **33.11. Legal Proceedings**

Neither Party may commence legal proceedings in any court in any jurisdiction in respect of any Dispute unless the Independent Expert has made a determination in relation to that Dispute or

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the Independent Expert has failed to make a determination, in relation to that Dispute, within the time required under the Agreement.

**33.12. Interlocutory Relief**

Clause 33.11 does not prevent a Party seeking or obtaining an interlocutory injunction from a court of competent jurisdiction.

**33.13. Mediation**

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

**33.14. Agreement Continues**

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

**33.15. Survival**

This section will survive the termination of the Agreement.

**34. NOTICES**

**34.1. Notices**

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

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

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

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

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#### **34.2. Address for Notices**

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

Envestra Limited  
Level 10, 81 Flinders Street  
ADELAIDE SA 5000

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

### **35. ASSIGNMENT**

#### **35.1. Assignment by the Network User**

The Network User may not transfer, assign or otherwise deal with any of its rights or obligations under the Agreement except in accordance with the Access Arrangement (to which these terms and conditions are annexed).

#### **35.2. Assignment by Envestra**

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

#### **35.3. Release from Obligations**

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

#### **35.4. Deed of Assumption**

For the purposes of clause 35.3, a person will be taken to have assumed Envestra's obligations and liabilities if that person executes a deed poll in favour of the Network User (whether alone or with any other person or persons) under which that person undertakes to perform and discharge those obligations.

#### **35.5. Encumbrances**

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

### **36. AMENDMENT OF AGREEMENT**

#### **36.1. Written Amendments**

Subject to clause 36.2, the Agreement may only be amended in writing executed by or on behalf of the Network User and Envestra.



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### **36.2. Automatic Amendments**

Whenever the terms and conditions set out in Annexure G to the Access Arrangement are amended in accordance with the Code, then (unless otherwise agreed) the Agreement will be amended in the same manner and to the same extent, with effect from the date on which those terms and conditions are amended.

## **37. MISCELLANEOUS PROVISIONS**

### **37.1. Modification, Waivers and Forbearance**

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

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

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

### **37.2. Indemnities**

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

### **37.3. Consents**

Where any consent or approval is required from Envestra under the Agreement, Envestra will have no obligation to give that consent or approval except where an obligation to consent or approve is imposed by law. Envestra may make any consent or approval subject to whatever conditions it considers necessary or desirable.

### **37.4. Governing Law**

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

### **37.5. Severability**

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

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**37.6. No Benefit to Other Persons**

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

**37.7. Delegation**

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

**37.8. Enforceability**

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

**37.9. No Partnership**

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

**37.10. Costs and Stamp Duty**

Each party will bear its own costs in connection with the preparation, settlement, execution and delivery of the Agreement. The Network User will pay all stamp duty payable in any jurisdiction on or in respect of the Agreement or any document prepared or executed pursuant to the Agreement.

**37.11. Further Assurances**

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

**38. INTERPRETATION****38.1. Interpretation**

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in the Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;

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- (e) section headings and clause headings are inserted for convenience only and do not affect the interpretation of the Agreement;
  - (f) references to 'dollars' and '\$' are references to Australian dollars;
  - (g) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it;
  - (h) a reference to any legislation includes any subordinate legislation or statutory instrument issued pursuant to that legislation, as it may be modified, re-enacted or substituted;
  - (i) a reference to sections, paragraphs, sub-clauses, clauses and schedules is a reference to sections, paragraphs, sub-clauses, clauses and schedules of and to the Agreement;
  - (j) a reference to any agreement (including the Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (k) a reference to a party to the Agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns.
  - (l) where two or more parties make a joint covenant, undertaking, representation or warranty, the same will be construed to refer to each and bind each of such parties jointly and each of them severally.

### **38.2. Terminology**

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

## **39. GOODS AND SERVICES TAX**

### **39.1. GST included in price**

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

### **39.2. GST in respect of Taxable Supply**

(a) Where any *supply* by one party ("**the Supplier**") to another party ("**the Recipient**") under or in connection with the Agreement is a *taxable supply*, the Recipient must pay the Supplier any GST which is payable by the Supplier or, if the Supplier is a member of a *GST group*, by the *representative member* of that *GST group* on the *taxable supply*.

(b) The GST on a *taxable supply* is the amount ascertained by multiplying the amount that would otherwise be payable under this Agreement in respect of the *taxable supply* if the GST payable were nil, by the prevailing rate of GST for that taxable supply.

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(c) The Recipient must pay the Supplier the *GST* on a *taxable supply* at the same time and in the same manner as the Recipient is required to pay any other amount to the Supplier in respect of that *taxable supply*. If no other amount is payable by the the Recipient to the Supplier in respect of that *taxable supply*, the Recipient must pay the Supplier the *GST* on that *taxable supply* within 7 days of the receipt by the Recipient of a valid tax invoice from the Supplier or, if the Supplier is a member of a *GST group*, from either the Supplier or the *representative member* of that *GST group*.

(d) The Recipient must pay the *GST* on a *taxable supply* in full.

### **39.3. Adjustments**

(a) If an *adjustment event* has occurred in respect of a *supply* made pursuant to or in connection with the Agreement, the party that becomes aware of the *adjustment event* agrees to notify each other party on becoming aware of the *adjustment event*, and the parties agree to take whatever steps are necessary and to make whatever adjustments are required to ensure that any *GST* or additional *GST* on that *supply* or any refund of any *GST* (or part thereof) is paid as soon as is practicable but no later than 14 days after that notice is given.

(b) If required by law, the Supplier will issue to the Recipient an *adjustment note* in respect of a *supply* that is subject to an *adjustment event* covered by paragraph (a) of this sub-clause. An *adjustment note* required by that paragraph will be issued no later than 14 days after the Supplier becomes aware of the *adjustment event*.

### **39.4. Definitions**

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

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

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

### **39.5. Reimbursements**

If a party reimburses the other party for or in respect of any *creditable acquisition* or *creditable importation* made by that other party, the amount reimbursed shall be net of any *input tax credit* that relates to that *creditable acquisition* or *creditable importation* (as the case may be).

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

### **39.6. Damages**

For the purposes of the Agreement, in determining the amount of any damages payable, it is necessary to take account of and include any *GST* that will become payable in respect of any

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*supply* to be made to the recipient of the damages to replace or repair any loss or damage suffered to the extent to which, in the reasonable opinion of the recipient of the damages, it is likely that such *GST* or some part thereof will not give rise to an *input tax credit* to the recipient of the damages.