

# **ACCESS ARRANGEMENT**

**for Envestra's**

**South Australian Gas Distribution System**

**8 July 2011 – 30 June 2016**

July 2011

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## **1. INTRODUCTION**

### **1.1 Purpose of this Document**

Envestra Limited (ABN 19 078 551 685) (**Envestra**) submitted revisions to its Access Arrangement for its South Australian Gas Distribution System (the **Network**) on 1 October 2010, in accordance with section 10.1 of its Access Arrangement and Rule 52 of the National Gas Rules 2008 (**Rules**). On 17 June 2011, the AER released its Draft Decision on Envestra's revisions.

Envestra is a publicly listed company and owner of the Network. Envestra is not a local agent of a Service Provider nor is it acting on behalf of another Service Provider.

The geographical spread of the Network is shown in Annexure A, with further detail provided in the Access Arrangement Information. A description of the Network can be found at [www.envestra.com.au](http://www.envestra.com.au).

This Access Arrangement as revised describes the terms and conditions on which access will be granted to the Network, and contains the required elements of an Access Arrangement as described in Rule 48 of the Rules. This Access Arrangement is accompanied by a revised Access Arrangement Information.

### **1.2 Revisions Commencement Date**

Revisions to the Access Arrangement will come into effect on the later of 1 July 2011 and the date on which the revisions to the Access Arrangement take effect in accordance with the Rules.

### **1.3 Definitions and Interpretation**

In this Access Arrangement and the Access Arrangement Information, unless the context indicates otherwise:

- (a) where a word or phrase begins with a capital letter:
  - (1) it has the meaning given to it in the glossary that is set out in section 10 of this Access Arrangement;
  - (2) if it is not defined in the glossary, it has the meaning given to it in the Rules; and
  - (3) a reference to a "Rule" is a reference to the relevant section of the Rules.
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (c) headings are for convenience only and do not affect interpretation.

### **1.4 Contact Details**

The contact person for further details in relation to this Access Arrangement is:

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## **2. SERVICES**

### **2.1 General**

The Network Services which Envestra will make available to Network Users and Prospective Network Users in accordance with the Rules comprise:

- (a) three Haulage Reference Services, which are described in section 2.2;
- (b) three Ancillary Reference Services, which are described in section 2.3; and
- (c) Negotiated Services, which are described in section 2.4.

To the extent practicable and reasonable, a Network User or Prospective Network User may obtain a Network Service which includes only those elements that the Network User or Prospective Network User wishes to be included in the Network Service.

To the extent practicable and reasonable, Envestra will provide a separate Tariff for an element of a Network Service if requested to do so by a Network User or Prospective Network User.

Envestra has no associate contracts (as defined in the National Gas Law).

## **2.2 Haulage Reference Services**

### *2.2.1 Domestic Haulage Service*

The Domestic Haulage Service is a Haulage Reference Service that comprises the delivery of Gas through an existing Domestic Delivery Point in accordance with, and subject to, the terms and conditions referred to in section 6.

A Delivery Point (**DP**) is a Domestic DP for a given period if the Gas delivered through that DP during that period was used primarily for domestic purposes. Gas will have been used primarily for domestic purposes if 50 percent or more of that Gas was used for domestic purposes.

Envestra will determine from time to time whether Gas delivered through a DP during any period was used primarily for domestic purposes or primarily for other purposes. Envestra's determination will bind the Network User, unless proven incorrect.

### *2.2.2 Demand Haulage Service*

The Demand Haulage Service is a Haulage Reference Service that comprises the delivery of Gas through an existing Demand DP, in accordance with, and subject to, the terms and conditions referred to in section 6.

A DP is a Demand DP at a given time if:

- (a) that DP is not a Domestic DP at that time; and
- (b) the Quantity of Gas delivered through that DP during the then most recent Metering Year was equal to or greater than 10TJ in total.

In this section, a reference to the Quantity of Gas delivered is a reference to Gas delivered whether to or for the account of the Network User or another person or persons.

The tariff in relation to Demand DPs is based on MDQ.

### *2.2.3 Commercial Haulage Service*

The Commercial Haulage Service is a Haulage Reference Service that comprises the delivery of Gas through a Commercial DP in accordance with, and subject to, the terms and conditions referred to in section 6.

A DP is a Commercial DP at a given time if that DP is not a Demand DP or a Domestic DP at that time.

### *2.2.4 Classification of New DPs*

Envestra will classify a new DP as a Domestic DP, a Demand DP or a Commercial DP. In determining the classification of a DP, Envestra will take into account:

- (a) the Network User or Prospective Network User's stated demand and connection characteristics for the DP; and
- (b) Reference Tariffs assigned to DPs with the same or materially similar demand and connection characteristics.

A new DP classified by Envestra as a Domestic DP, a Demand DP or a Commercial DP will be treated as a Domestic DP, a Demand DP or a Commercial DP (as the case may be) for the purposes of this Access Arrangement (and for the purposes of each Agreement) until such time as it becomes apparent to Envestra that another classification is appropriate. The

Reference Tariff applicable in respect of the DP will be determined from time to time on the basis of the classification of that DP.

#### 2.2.5 *Associated Services*

As a part of each Haulage Reference Service, Envestra will also provide meter reading data on a quarterly basis for Domestic DPs and Commercial DPs and on a monthly basis for Demand DPs in accordance with, and subject to, the terms and conditions referred to in section 6.

For the avoidance of doubt, Unaccounted for Gas is supplied by Envestra. The cost of Unaccounted for Gas has been taken into account in the determination of the Reference Tariffs.

The Haulage Reference Services do not include any of the Network Services described as Ancillary Reference Services (see section 2.3) or Negotiated Services (see section 2.4).

### 2.3 **Ancillary Reference Services**

The Ancillary Reference Services comprise the following Network Services:

- (a) Special Meter Reading – this Reference Service comprises a meter reading for a DP and provision of the associated meter reading data, that is in addition to the scheduled meter readings that form part of the Haulage Reference Services described in section 2.2 above;
- (b) Disconnection – this Reference Service comprises the use of locks or plugs at the Metering Installation of a Domestic or Commercial DP in order to prevent the withdrawal of Gas at the DP;
- (c) Reconnection – this Reference Service comprises action to restore the ability to withdraw Gas at a DP, following an earlier Disconnection (that is, the removal of any locks or plugs used to isolate supply, performance of a safety check and, where necessary, the lighting of appliances).

Each Ancillary Reference Service will be provided in accordance with, and subject to, the terms and conditions referred to in section 6.

### 2.4 **Negotiated Services**

Any Network User or Prospective Network User may request Envestra to provide a Negotiated Service. A Negotiated Service is a Network Service that is different from the Reference Services.

The terms and conditions on which Envestra will provide Negotiated Services will be the same as the terms and conditions referred to in section 6, where Envestra determines that those terms and conditions are appropriate and applicable to the requested Negotiated Service.

### 2.5 **Gas Balancing**

Gas balancing refers to the process of ensuring that the Quantity of Gas delivered through DPs to or for the account of a Network User is equivalent to the Quantity of Gas delivered through Receipt Points by or for the account of the Network User.

In the case of the Adelaide Metropolitan Network, gas balancing is regulated through the short term trading market established pursuant to the National Gas Rules (as amended by the National Gas (Short Term Trading Market) Amendment Rules 2010).

In the case of the remainder of the Network, gas balancing is regulated through the Retail Market Procedures (and, in particular, chapter 5 of the Retail Market Procedures).

Network Users and Prospective network users should familiarise themselves with the National Gas Rules and the Retail Market Procedures and satisfy themselves that their interest in relation to gas balancing is appropriately protected. Envestra is not responsible to ensure that the Quantity of Gas delivered through a Receipt Point, by or for the account of a Network User, will be delivered through DPs to or for the amount of that Network User. Envestra takes no responsibility for gas balancing within the Network or within any Sub-Network.

## **2.6 Network Service Standards**

Envestra will provide each Network Service, including each Reference Service, in accordance with, and subject to, the requirements of any Distribution Licence or applicable law.

## **3. REFERENCE TARIFFS**

### **3.1 Haulage Reference Tariffs**

The Reference Tariffs for the Domestic Haulage Service, Commercial Haulage Service and Demand Haulage Service are known as “Tariff R”, “Tariff C and “Tariff D” respectively. The Tariff Schedule set out as Annexure B to this Access Arrangement shows the initial Reference Tariffs that will apply to Reference Services.

The initial Reference Tariffs will apply from the commencement of the Third Access Arrangement Period (1 July 2011), until those Reference Tariffs are varied in accordance with section 4 of this Access Arrangement.

All Haulage Reference Tariffs have been designed to effectively increase by CPI+12.44% on 1 July 2011 and for subsequent years by CPI+8%, CPI+8%, CPI+7% and CPI+6% respectively.

The Charges payable under Tariff D vary according to the Region of the Network in which the Demand DP is located. The Network comprises seven Regions. They are the Adelaide Region, the Peterborough Region, the Port Pirie Region, the Riverland Region, the South East Region, the Whyalla Region and the Tanunda Region. These are shown on the map set out in Annexure C.

In the case of a Demand DP within the Adelaide Region, the Charges payable under Tariff D also vary according to the Zone within which the DP is located. There are three Zones, which are shown on the map set out in Annexure D.

The Reference Tariffs for Reference Services will be set out in Tariff Schedules that Envestra will publish from time to time on its website at “[www.envestra.com.au](http://www.envestra.com.au)”.

### **3.2 Ancillary Reference Service**

The initial Ancillary Reference Tariffs are set out in Table 5 of the Tariff Schedule in Annexure B. These tariffs will increase by CPI on 1 July 2011 and thereafter by CPI for each remaining year of the Third Access Arrangement Period.

## **4. REFERENCE TARIFF POLICY – GENERAL**

### **4.1 Determination of Reference Tariffs**

Reference Tariffs have been determined based on a revenue requirement that uses a building block or Cost of Service approach. This approach provides for total revenue to be calculated on the basis of a rate of return on the capital base plus depreciation plus non-capital costs associated with operating the Network.

A CPI-X approach to determining Haulage Reference Tariffs has been adopted, using a tariff basket approach to price control. To ensure price stability, Reference Tariffs for the Access Arrangement period have been set on the basis of a smoothed revenue, so that Tariffs move in a uniform and consistent manner as much as possible.

Reference Tariffs are designed to meet the objectives of the Rules. A key objective of the Rules is to recover the efficient costs of providing Services, with emphasis on the safety and integrity of the Network, while providing certainty to Users and signalling appropriate development of the market through extension of the Network.

The Reference Tariffs are designed to be cost reflective to the extent possible, so that Reference Tariffs recover the efficient cost of providing the relevant Reference Service. The revenues associated

with the Reference Tariffs also reflect efficient pricing principles, in that the revenue for each Reference Tariff has been set between incremental and stand-alone prices.

#### **4.2 Assignment of Haulage Reference Tariffs**

Where Envestra is charging a particular Haulage Reference Tariff in respect of a particular DP, then that particular Haulage Reference Tariff is to be regarded as being “assigned” to that DP.

Haulage Reference Tariffs will be assigned to DPs in accordance with the criteria set out in sections 2.2.1-2.2.4 of this Access Arrangement.

#### **4.3 Reference Tariff Variation Mechanism**

Rule 97 allows Reference Tariffs to vary within an Access Arrangement Period through a Reference Tariff Variation mechanism. For the purposes of this Access Arrangement, Reference Tariffs will be varied through two mechanisms, namely:

- (a) Reference Tariff Control Formulae, as described in section 4.4; and
- (b) a Cost Pass Through Event Adjustment, which is described in section 4.5.

Variations to Reference Tariffs are subject to the Regulator’s approval (or deemed approval) in accordance with the Rules and this section 4.

Envestra will publish a revised Tariff Schedule on its website at [www.envestra.com.au](http://www.envestra.com.au) whenever variations to Reference Tariffs have been approved.

#### **4.4 Reference Tariff Control Formulae**

##### *4.4.1 Haulage Reference Tariffs*

Subject to the approval of the Regulator under the Rules, Envestra will have the right to vary the Reference Tariffs for Haulage Reference Services as it thinks fit from time to time provided that the variations comply with the two Reference Tariff Control Formulae set out in Annexure E to this Access Arrangement.

The first Reference Tariff Control Formula is designed to ensure that the average revenue (in \$/GJ) that Envestra receives from a Haulage Reference Service after 30 June 2011 does not increase, as a result of any proposed variation to Reference Tariffs, at a rate that is greater than the change in CPI – X (where X is the factor described in Annexure E).

The second Reference Tariff Control Formula is designed to ensure that the average revenue (in \$/GJ or \$/GJ of MDQ) that Envestra receives from any single type of Haulage Reference Service, after any proposed variation to Reference Tariffs, does not increase by more than CPI plus 2%.

Both Reference Tariff Control Formulae set out in Annexure E compare the revenue from the pre-existing Reference Tariffs with revenue from the Reference Tariffs as varied, based on the Quantities of Gas (or other units of measurement, such as GJ of MDQ) that applied in the year two years prior to the year in which the Reference Tariffs are to be varied. These historical quantities are to be audited.

Subject to compliance with the two Reference Tariff Control Formulae, Envestra will have the ability to vary the Reference Tariffs for Haulage Reference Services within its discretion, subject to the Rules.

Variations to the Reference Tariffs may be effected:

- (a) through changes in the components, elements or variables comprised within any Reference Tariff (such as a change in the base charge or fixed charge within the Reference Tariff or a change in the steps, or the level of the steps, within the Reference Tariff);
- (b) through the introduction of a new Reference Tariff for any Haulage Reference Service



(to apply in place of any pre-existing Reference Tariff, either in all circumstances or in certain circumstances);

- (c) through the withdrawal of any Reference Tariff; or
- (d) through any combination of these changes.

#### 4.4.2 Ancillary Reference Services

Subject to the approval of the Regulator, Envestra will have the right to vary the Reference Tariffs for Ancillary Reference Services, initially on 1 July 2011, and thereafter annually during the Third Access Arrangement Period, on the basis of the following Reference Tariff Control Formula:

$$ART_t = ART_{t-1} \times CPI_t$$

where:

$ART_t$  is the Reference Tariff that will apply to an Ancillary Reference Service in year  $t$ ;

$ART_{t-1}$  is the Reference Tariff that applied to that Ancillary Reference Service in year  $t-1$ ; and

$CPI_t$  is calculated as the CPI for the year ending 31 March immediately preceding the start of year  $t$ , divided by the CPI for the year ending 31 March immediately preceding the start of year  $t-1$ .

Where the Reference Tariff for an Ancillary Reference Service (as varied) is less than \$20, the Reference Tariff (as varied) will be rounded to the nearest 10 cents (with five cents rounded upwards). Where the Reference Tariff for an Ancillary Reference Service (as varied) is \$20 or more, the Reference Tariff (as varied) will be rounded to the nearest dollar (with 50 cents rounded upwards).

#### 4.5 Cost Pass Through Event Adjustment

Subject to the approval of the Regulator under the NGR, Reference Tariffs may be varied after one or more Cost Pass Through Event/s occurs, in which each individual event materially increases or materially decreases the cost of providing the reference services. Any such variation will take effect from the next 1 July.

In making its decision on whether to approve the proposed Cost Pass Through Event variation, the AER must take into account the following:

- the costs to be passed through are for the delivery of pipeline services
- the costs are incremental to costs already allowed for in reference tariffs
- the total costs to be passed through are building block components of total revenue
- the costs to be passed through meet the relevant National Gas Rules criteria for determining the building block for total revenue in determining reference services
- any other factors the AER considers relevant and consistent with the NGR and NGL.

Cost Pass Through Events are:

- a Regulatory Change Event;
- a Service Standard Event;
- a Tax Change Event;
- a Terrorism Event;
- a Network User Failure Event;

- an Insurer Credit Risk Event;
- an Insurance Cap Event;
- a Natural Disaster Event;

where

**'Regulatory Change Event'** means:

A change in a regulatory obligation or requirement that:

- (a) falls within no other category of Cost Pass Through Event; and
- (b) occurs during the course of an access arrangement period; and
- (c) affects the manner in which Envestra provides reference services (as the case requires); and
- (d) materially increases or materially decreases the costs of providing those services.

**'Service Standard Event'** means:

A legislative or administrative act or decision that:

- (a) has the effect of:
  - (i) varying, during the course of an access arrangement period, the manner in which Envestra is required to provide a reference service; or
  - (ii) imposing, removing or varying, during the course of an access arrangement period, minimum service standards applicable to prescribed reference services; or
  - (iii) altering, during the course of an access arrangement period, the nature or scope of the prescribed reference services, provided by Envestra; and
- (b) materially increases or materially decreases the costs to Envestra of providing prescribed reference services.

**'Tax Change Event'** means:

A tax change event occurs if any of the following occurs during the course of an access arrangement period for Envestra:

- (a) a change in a Relevant Tax, in the application or official interpretation of a Relevant Tax, in the rate of a Relevant Tax, or in the way a Relevant Tax is calculated;
- (b) the removal of a Relevant Tax;
- (c) the imposition of a Relevant Tax; and

in consequence, the costs to Envestra of providing prescribed reference services are materially increased or decreased.

**'Terrorism Event'** means:

An act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of in connection with any organisation or government), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to

influence or intimidate any government and/or put the public, or any section of the public, in fear) and which materially increases the costs to Envestra of providing a reference service.

**'Network User Failure Event'** means:

A network user failure event means the occurrence of an event whereby an existing network user becomes insolvent or is unable to continue to supply gas to its customers, and those customers are transferred to another network user, and which materially increases the costs of Envestra providing reference services.

**'Insurer Credit Risk Event'** means:

An event where the insolvency of the nominated insurers of Envestra occurs, as a result of which Envestra:

- (a) incurs materially higher or lower costs for insurance premiums than those allowed for in the access arrangement; or
- (b) in respect of a claim for a risk that would have been insured by Envestra's insurers, is subject to a materially higher or lower claim limit or a materially higher or lower deductible than would have applied under that policy; or
- (c) incurs additional costs associated with self funding an insurance claim, which would have otherwise been covered by the insolvent insurer.

**'Insurance Cap Event'** means:

An event that would be covered by an insurance policy but for the amount that materially exceeds the policy limit, and as a result Envestra must bear the amount of that excess loss. For the purposes of this Cost Pass-through Event, the relevant policy limit is the greater of the actual limit from time to time and the limit under Envestra's insurance cover at the time of making this access arrangement. This event excludes all costs incurred beyond an insurance cap that are due to Envestra's negligence, fault, or lack of care. This also excludes all liability arising from the Envestra's unlawful conduct, and excludes all liability and damages arising from actions or conduct expected or intended by Envestra.

**'Natural Disaster Event'** means:

Any major fire, flood, earthquake, or other natural disaster beyond the control of Envestra (but excluding those events for which external insurance or self insurance has been included within Envestra's forecast operating expenditure) that occurs during the forthcoming access arrangement period and materially increases the costs to Envestra of providing reference services.

**Materiality threshold** is defined as:

For the purpose of any defined event, an event is considered to materially increase or decrease costs where that event has an impact of one per cent of the smoothed forecast revenue specified in the Access Arrangement Information, in the years of the access arrangement period that the costs are incurred.

## **4.6 Procedure for Variation in Reference Tariffs**

### *4.6.1 Routine Variations*

Envestra will notify the Regulator in respect of any Reference Tariff variations, such that variations occur on the first of July of any year. The notification will be made at least 50 business days before the date of implementation and include:

- (a) the proposed variations to the Reference Tariffs; and
- (b) an explanation and details of how the proposed variations have been calculated.

If Envestra proposes variations to the Reference Tariffs (otherwise than as a result of a Cost Pass Through Event) and those variations have not been approved by the next 1 July then the Reference Tariffs will be varied with effect from that next 1 July by the same percentage increment or decrement as occurred on the previous 1 July, until such time as variations to Reference Tariffs are approved by the Regulator.

If it appears that any past tariff variation contains a material error or deficiency because of a clerical mistake, accidental slip or omission, miscalculation or misdescription, the AER may change subsequent tariffs to account for these past issues.

Within 30 Business Days of receiving the Service Provider's Variation Notice, the AER will inform the Service Provider in writing of whether or not it has verified the proposed Haulage Reference Tariff and/or Haulage Reference Tariff Components in the Service Provider's Variation Notice as compliant with the Annual Tariff Variation Mechanism.

The 30 Business Day periods may be extended for the time taken by the AER to obtain information from the Service Provider, obtain expert advice or consult about the notification. However, the AER must assess a cost pass through application within 90 Business Days, including any extension of the decision making time.

#### *4.6.2 Cost Pass Through Event Variations*

Envestra will notify the AER of Cost Pass Through Events within 90 business days of the Cost Pass Through Event occurring, whether the Cost Pass Through Event would lead to an increase or decrease in Reference Tariffs.

When the costs of the Cost Pass Through Event incurred are known (or able to be estimated to a reasonable extent), then those costs shall be notified to the AER. When making such notification to the AER, Envestra will provide the AER with a statement, signed by an authorised officer of Envestra, verifying that the costs of any Cost Pass Through Events are net of any payments made by an insurer or third party which partially or wholly offsets the financial impact of that event (including self insurance).

The AER must notify Envestra of its decision to approve or reject the proposed variations within 90 Business Days of receiving the notification. This period will be extended for the time taken by the Regulator to obtain information from Envestra, obtain expert advice or consult about the notification.

The AER will endeavour to make its decision on whether Envestra should vary Reference Tariffs due to the occurrence of a Cost Pass Through Event within 90 business days of receiving a notification from Envestra.

However, if the AER determines the difficulty of assessing or quantifying the effect of the relevant Cost Pass Through Event requires further consideration, the AER may require an extension of a specified duration. The AER will notify Envestra of the extension, and its duration, within 90 business days of receiving a notification from Envestra.

## **4.7 Notice to Network Users**

Envestra will notify Users in writing as soon as practicable if it proposes any variations to any Reference Tariffs (whether as a result of a Cost Pass Through Event or otherwise).

#### 4.8 New Tariff Schedule

Whenever any Reference Tariff is varied in accordance with this section 4, Envestra will publish a Tariff Schedule on its website at [www.envestra.com.au](http://www.envestra.com.au), showing the Reference Tariffs (as varied) for the Reference Services.

#### 4.9 Regulator's Decision is Conclusive

The Regulator's decision to allow a proposed variation in Reference Tariffs will be binding and conclusive on Network Users as to the Reference Tariffs that apply to Reference Services. Network Users will not have the right to challenge or otherwise dispute the Reference Tariffs as allowed from time to time by the Regulator or the basis on which those Reference Tariffs were calculated or determined.

#### 4.10 Default Tariffs for the Fourth Access Arrangement Period

If revisions pertaining to the Fourth Access Arrangement Period have not come into effect by 1 July 2016, then:

- (a) the Reference Tariffs for the Haulage Reference Services for the period between 1 July 2016 and the date the revisions come into effect will be adjusted on 1 July each year by Envestra, commencing on 1 July 2016, in a manner that is designed to change the average price per GJ (or per GJ of MDQ) for each Reference Tariff by the percentage change in the CPI; and
- (b) the Reference Tariffs for the Ancillary Reference Services for the period between 1 July 2016 and the date the revisions come into effect will be adjusted on 1 July each year by Envestra, commencing on 1 July 2016, by the percentage change in the CPI.

#### 4.11 Treatment of Capital Expenditure for 2010/11

In rolling forward the Capital Base, the capital expenditure for 2010/11 is as set out in section 3.4 of the Access Arrangement Information. Prior to commencement of the Fourth Access Arrangement Period, the actual capital expenditure for 2010/2011 will be known.

Any difference between this estimated capital expenditure and actual capital expenditure for 2010/2011 is to be taken into account when the roll-forward occurs at the next review, prior to the commencement of the Fourth Access Arrangement Period, in accordance with Rule 77(2)(a).

### 5. REFERENCE TARIFF POLICY – INCENTIVE MECHANISM

#### 5.1 Principles of Incentive Mechanism

The principles of the incentive mechanism are:

- Only an operating expenditure incentive mechanism should apply;
- For the first year of access arrangement period commencing on 1 July 2011, the operating expenditure annual efficiency gain (or loss) will be calculated as:

$$E_1 = F_1 - A_1$$

where:

*F<sub>1</sub>* = the forecast Opex in year one of the access arrangement period

*A<sub>1</sub>* = the actual Opex in year one of the access arrangement period

- The operating expenditure annual efficiency gain (or loss) in the second, third and fourth year of the access arrangement period will be calculated as:

$$E_i = (F_i - A_i) - (F_{i-1} - A_{i-1})$$

where:

*E<sub>i</sub>* is the efficiency gain in year *i* of the access arrangement period

*F<sub>i</sub>* is the forecast opex in year *i* of the access arrangement period

*A<sub>i</sub>* is the actual opex in year *i* of the access arrangement period

- The estimate for Opex in the final year of the access arrangement period is to be estimated using the following equation:

$$A_5^* = F_5 - (F_4 - A_4)$$

where:

*A<sub>5</sub><sup>\*</sup>* is the estimate of Opex for the final year of the access arrangement period

*F<sub>5</sub>* is the forecast Opex for the final year of the access arrangement period

*F<sub>4</sub>* is the forecast Opex for the penultimate year of the access arrangement period

*A<sub>4</sub>* is the actual Opex for the penultimate year of the access arrangement period

Carryover amounts for the final year of the access arrangement period are to be estimated using the following equation:

$$E_5 = (F_5 - A_5^*) - (F_4 - A_4)$$

where:

*E<sub>5</sub>* is the efficiency gain for the final year of the access arrangement period

*F<sub>5</sub>* is the forecast Opex for the final year of the access arrangement period

*A<sub>5</sub><sup>\*</sup>* is the estimate of Opex for the final year of the access arrangement period

*F<sub>4</sub>* is the forecast Opex for the penultimate year of the access arrangement period

*A<sub>4</sub>* is the actual Opex for the penultimate year of the access arrangement period

- Carryover amounts for the first year of the access arrangement period commencing 1 July 2016 are to be estimated using the following equation:

$$E_6 = (F_6 - A_6) - (F_5 - A_5) + (F_4 - A_4)$$

where:

*E<sub>6</sub> is the efficiency gain in the first year of the next access arrangement period*

*F<sub>6</sub> is the forecast Opex for the first year of the next access arrangement period*

*A<sub>6</sub> is the actual Opex for the first year of the next access arrangement period*

*F<sub>5</sub> is the forecast Opex for the final year of the access arrangement period*

*A<sub>5</sub> is the actual Opex for the final year of the access arrangement period*

*F<sub>4</sub> is the forecast Opex for the fourth year of the access arrangement period*

*A<sub>4</sub> is the actual Opex for the fourth year of the access arrangement period*

- The positive carryover that would result in Envestra retaining the reward associated with an efficiency-improving initiative for five years after the year in which the gain was achieved, ie. a reward earned in one year of an Access Arrangement Period would be added to the Total Revenue and carried forward into the Fourth Access Arrangement Period if necessary, until it has been retained by Envestra for a period of five years. Similarly, the negative carryover that would result in Envestra retaining the penalty associated with inefficiencies for five years after the year in which the penalty was incurred, ie. a penalty incurred in one year of an Access Arrangement Period would be subtracted from the Total Revenue and carried forward into the Fourth Access Arrangement Period if necessary, until it has been retained by Envestra for a period of five years.
- Operating expenditure efficiencies achieved or inefficiencies incurred in accordance with the approved incentive mechanism in the Access Arrangement Period will give rise to an additional 'building block' in the calculation of the Total Revenue amounts.
- The costs associated with an Impost or complying with any retailer of last resort requirements will be excluded from the operation of the efficiency carryover mechanism. Further, the following costs will also be excluded from the operation of the efficiency carryover mechanism:
  - amounts for approved cost pass through events
  - debt raising costs
  - insurance costs
  - superannuation costs for defined benefits and retirement schemes
  - other specific uncontrollable costs incurred and reported by Envestra during the access arrangement period, which the AER considers should be excluded in accordance with the NGL and NGR.
- Any other activity that Envestra and the Regulator agree to exclude from the operation of the efficiency carryover mechanism will be so excluded.
- For the avoidance of doubt, the forecast expenditure amounts that are used as the basis for measuring efficiencies relate to the expenditure benchmarks approved by the Regulator, with the following exception:
  - the carryover of cost-related efficiency gains will be calculated in a manner that takes account of any change in the scope of the activities which form the basis of the determination of the original benchmarks, but only where the scope changes arise from exogenous factors and where they impose material additional costs to Envestra. Any adjustment will be made following the provision of relevant information to the

Regulator and the assessment of that information by the Regulator and will, without limitation, quantify and substantiate the impact of the scope changes on the original benchmarks.

- Where Envestra changes its approach to classifying costs as either Capex or Opex during the access arrangement period, Envestra will adjust the forecast Opex used to calculate the carryover amounts so that the forecast expenditures are consistent with the capitalisation changes.
- If there is a change in Envestra's approach to classifying costs as either Capex or Opex, Envestra must provide to the AER a detailed description of the change and a calculation of its impact on forecast and actual Opex.

## 6. TERMS AND CONDITIONS

### 6.1 Reference Services

Reference Services will be provided to Network Users under this Access Arrangement on and subject to the terms of an Agreement that will comprise:

- (a) the Specific Terms and Conditions, in the form set out in Annexure F; and
- (b) the terms and conditions set out in Annexure G (**the General Terms and Conditions**).

The Specific Terms and Conditions is a standard form document that contains details which will vary from Network User to Network User and from Agreement to Agreement. The blank spaces in the standard form are to be completed and the document signed by Envestra and the Network User to evidence the Agreement between them.

As is apparent from the form of the Specific Terms and Conditions set out in Annexure F, the details to be completed are as follows:

- (a) details of each User Receipt Point at which Gas is to be delivered to Envestra by or for the account of that Network User pursuant to the Agreement;
- (b) details of each User DP at which Gas is to be delivered by Envestra to or for the account of that Network User pursuant to the Agreement;
- (c) the period for which the Agreement is to remain in force (assuming it is not terminated earlier in accordance with the General Terms and Conditions);
- (d) the date on which Envestra is to commence providing Reference Services pursuant to the Agreement;
- (e) where required, details of the maximum Quantity of Gas Envestra is obliged to deliver through each User Demand DP to or for the account of the Network User during any Network Day and during any period of 60 minutes; and
- (f) an address and facsimile number for the purposes of the service of notices on the Network User pursuant to the Agreement.

As regards paragraphs (a) and (b), it is possible that a Network User will wish to deliver Gas to Envestra through multiple/different Receipt Points that vary over the term of the Agreement or requires Envestra to deliver Gas through multiple/different DPs that will vary over the term of the Agreement. In this case, the Specific Terms and Conditions will describe how those Receipt Points and DPs will be determined and identified from time to time over the term of that Agreement. In the case of Network Users who wish to be able to deliver Gas through multiple/different DPs that vary over the time, Envestra expects that the User DPs will be defined as those DPs in respect of which the Network User is the current user under the Retail Market Procedures.

As regards paragraph (e), the MDQ for a User DP will be determined by negotiation between Envestra and the Network User. If no MDQ has been or is agreed for a User DP, then the MDQ will be



determined by Envestra acting reasonably, having regard to historical data about the Quantities of Gas delivered through the relevant User DP and any other factors Envestra considers relevant.

## **6.2 Negotiated Services**

A Negotiated Service is a Network Service that is different from the Reference Services. If a Network User or a Prospective Network User requires a Network Service on terms and conditions that differ in any way to the General Terms and Conditions, then the Network User or Prospective Network User requires a Negotiated Service.

The terms and conditions on which Envestra will provide a Negotiated Service (including the Tariff for that Negotiated Service) will be determined through negotiation between Envestra and the Network User who requires that Negotiated Service, or in default of agreement, through dispute resolution in accordance with Chapter 6 of the National Gas Law.

The terms and conditions on which Envestra will provide a Negotiated Service will be the same as the General Terms and Conditions to the extent that the General Terms and Conditions are appropriate and applicable to the Negotiated Service requested by the Network User or Prospective Network User.

Once the terms and conditions of a Negotiated Service have been agreed or determined through dispute resolution in accordance with Chapter 6 of the National Gas Law, Envestra and the Network User will sign a document to evidence those terms and conditions.

The document will comprise the Specific Terms and Conditions, the General Terms and Conditions (to the extent that they apply to the Negotiated Service) and a schedule setting out the terms and conditions applicable to that Negotiated Service (as agreed or determined through dispute resolution). The schedule is known as the Special Terms and Conditions and will show how the terms and conditions applicable to the Negotiated Service differ from the General Terms and Conditions.

## **6.3 Pre-Conditions to Network Services**

A Prospective Network User that requires a Network Service must satisfy a number of pre-conditions before Envestra is required to provide that Network Service. These pre-conditions are as follows:

- (a) the Network User must satisfy Envestra that the Network User meets the requirements of Envestra's Credit Policy;
- (b) the Network User must satisfy Envestra that the Network User is registered under the Rules as a registered participant in the relevant registrable capacities;
- (c) the Network User must satisfy Envestra that the Network User has adequate arrangements in place to ensure that the Network User will comply with its obligations to Envestra in relation to the Network Service; and
- (d) the Network User must execute a written agreement setting out or incorporating the terms and conditions on which Envestra is to provide the Network User with the Network Service.

## **6.4 Credit Policy**

Envestra will not be required to provide Network Services to a Network User, or Prospective Network User, who does not meet the requirements of Envestra's Credit Policy. The Credit Policy requires that:

- (a) a Network User must be resident in Australia or have a permanent establishment in Australia;
- (b) (if the Network User is incorporated or constituted under any law other than the Corporations Act 2001) the Network User must have provided Envestra with a legal opinion in form and substance satisfactory to Envestra that confirms:
  - (i) the due incorporation and good standing of the Network User;

- (ii) the legal capacity of the Network User to enter into and perform the Agreement between the Network User and Envestra; and
- (iii) the due execution of that Agreement and the enforceability of that Agreement against the Network User;
- (c) the Network User must be capable of being sued in its own name in courts established under the laws of South Australia and other States;
- (d) the Network User must not enjoy any immunity from legal proceedings or legal process (including, but without limitation, any immunity from execution);
- (e) the Network User must have an acceptable credit rating, or provide Envestra with security acceptable to Envestra, on terms and conditions acceptable to Envestra;
- (f) the Network User must have the necessary financial capability to discharge its present and future obligations in relation to Network Services; and
- (g) the Network User must not be an externally-administered body corporate or insolvent under administration (as defined in the Corporations Act 2001) or under a similar form of administration under any laws applicable to the Network User in any jurisdiction.

For the purposes of paragraph (e), Envestra will from time to time determine what constitutes an acceptable credit rating. Until otherwise determined by Envestra, an acceptable credit rating is a rating of BBB or higher for long-term unsecured counterparty obligations of the entity, as rated by Standard & Poors (Australia) Pty Ltd.

Whenever Envestra decides to alter the acceptable credit rating, it will notify all Network Users and Prospective Network Users of the acceptable credit rating or ratings as altered. This information will also be included in the Information Package that Envestra is required to maintain under the Rules.

For the purposes of paragraph (e), acceptable security will be

- (a) a bank guarantee, given by an Australian bank acceptable to Envestra, for an amount of not less than Envestra's reasonable estimate of three months average Charges (calculated by reference to a 12 month period); or
- (b) a guarantee of the Network User's obligations given by an entity, acceptable to Envestra, that has an acceptable credit rating (as defined above).

## **7. CAPACITY TRADING**

### **7.1 Transactions subject to Retail Market Procedures**

Transfers of Contracted Capacity will be undertaken:

- (a) where the relevant parties are registered as participants under the Retail Market Procedures - in accordance with the Retail Market Procedures; or
- (b) if the relevant parties are not so registered - in accordance with rules 105 and 106 of the NGR, and this part 7.

### **7.2 Bare Transfers**

A Network User is permitted to transfer or assign all or part of its Contracted Capacity without the consent of Envestra if:

- the Network User's obligations under the Agreement related to that Contracted Capacity remain in full force and effect after the transfer or assignment; and
- the terms of that Agreement are not altered as a result of the transfer or assignment (a Bare Transfer).

Prior to using any Contracted Capacity that is the subject of a Bare Transfer, the transferor must notify Envestra of the nature of the Contracted Capacity that is subject to the Bare Transfer. The transferor must notify Envestra of:

- the subcontract and its likely duration;
- the identity of the transferee; and
- the amount of contracted capacity transferred.

### **7.3 Other Transfers**

A Network User is permitted to transfer or assign all or part of its Contracted Capacity (other than by way of a Bare Transfer) with the prior written consent of Envestra, where the transfer or assignment is commercially and technically reasonable. Following such a transfer, the transferor's rights against, and obligations to Envestra are terminated or modified in accordance with these capacity trading requirements. A contract then arises between the transferee and Envestra on terms and conditions in accordance with the capacity trading requirements.

Envestra may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds.

Examples of the reasonable commercial or technical grounds upon which Envestra will withhold its consent or make its consent subject to conditions include:

- where there is insufficient Capacity at any point in the Network (either before or as a result of the transfer) to enable the proposed Contracted Capacity to be transferred or assigned to the proposed User Delivery Point;
- where Envestra would receive less revenue as a result of the proposed transfer or assignment of Contracted Capacity; and
- where the proposed transferee is unable to satisfy Envestra that it is able to meet the requirements set out in section 6 of this Access Arrangement.

### **7.4 Delivery and Receipt Points**

A Network User is permitted to change a Delivery Point and/or Receipt Point from that specified in an Agreement with the prior written consent of Envestra where the change is commercially and technically reasonable.

Envestra may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds. An example might be, if Envestra would not receive at least the same amount of revenue it would have received before the change.

### **7.5 Procedure**

The following procedure is to be followed in relation to transfers or assignments of Contracted Capacity (other than Bare Transfers) and changes to Delivery and/or Receipt Points:

- the party requesting the transfer/assignment or a change to a Delivery Point/Receipt Point shall submit a written request to Envestra, setting out the applicable details. A fee of \$100, payable at the time of the request, will apply to each request.
- Envestra will complete an analysis to determine whether the request is technically and commercially feasible and reasonable. The cost of completing this analysis will be borne by the party that makes the request. Charges for the analysis may be made in relation to Demand Delivery Points only, and may vary depending on the complexity of analysing the request, but will

be agreed in advance with the party making the request. Costs will be based on an hourly rate of \$100 per person per hour for each hour after the first hour.

Envestra will reply to requests for a transfer (other than a bare transfer) or for a change in Receipt Point or Delivery Point, within 14 Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable Envestra to consider the request.

If, at the time the request is made, the Network User informs Envestra that, due to hardship, the Network User requires an urgent reply to its request, Envestra will use reasonable endeavours to respond to the request within two Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable Envestra to consider the request.

## **8. NETWORK EXTENSIONS AND EXPANSIONS**

### **8.1 High pressure extensions**

If Envestra proposes a high pressure pipeline extension of the covered pipeline, it must apply to the AER in writing to decide whether the proposed extension will be taken to form part of the covered pipeline and will be covered by this access arrangement.

For the purposes of this section 8, a high pressure pipeline extension means a pipeline that exceeds one kilometre in length and is proposed to be built to a postcode area previously not serviced by reticulated gas.

A notification given by Envestra under this clause 8.1 must:

- (a) be in writing;
- (b) state whether Envestra intends for the proposed high pressure pipeline extension to be covered by this Access Arrangement;
- (c) describe the proposed high pressure pipeline extension and describe why the proposed Extension is being undertaken; and
- (d) be given to the AER before the proposed high pressure pipeline extension comes into service.

Envestra is not required to notify the AER under this clause 8.1 to the extent that the cost of the proposed high pressure pipeline extension has already been included and approved by the AER in the calculation of Reference Tariffs.

After considering Envestra's application, and undertaking such consultation as the AER considers appropriate, the AER will inform Envestra of its decision on Envestra's proposed coverage approach for the high pressure pipeline extension.

The AER's decision referred to above may be made on such reasonable conditions as determined by the AER and will have the effect stated in the decision.

### **8.2 Treatment of covered pipelines**

If an extension or expansion is to be treated as a covered network under the access arrangement, Envestra will offer reference services for that extension or expansion at reference tariffs (ie no change to the reference tariffs). Envestra may levy a surcharge on users to recover non-conforming capital expenditure in accordance with rule 83 of the NGR.

Envestra will notify the AER to seek approval of any proposed surcharge to be levied on users of incremental services, and designed to recover non-conforming capital expenditure or a specified

portion of non-confirming capital expenditure (non-confirming capital expenditure which is recovered by means of a surcharge will not be rolled into the capital base). Surcharges will only be approved subject to rule 84(4) of the NGR.

### **8.3 Other extensions and expansions**

Any extensions to and expansions of the capacity of the Network which are not high pressure pipeline extensions within the meaning of clause 8.1 will be treated as part of the Network and covered by this Access Arrangement.

All extensions of low or medium pipelines and expansions of the capacity of the Network carried out by Envestra will be treated as covered under this Access Arrangement.

## **9. REVIEW OF THE ACCESS ARRANGEMENT**

### **9.1 Revisions Submission Date**

Envestra will submit revisions to this Access Arrangement to the Regulator on or before 1 July 2015.

### **9.2 Revisions Commencement Date**

The revisions to this Access Arrangement referred to in section 9.1 will commence on the later of 1 July 2016 and the date on which their approval takes effect under the Rules.

## 10. GLOSSARY

In this Access Arrangement and the Access Arrangement Information, unless the contrary intention appears:

- (1) **'Adelaide Region'** means the area shown in Annexure C as the Adelaide Region.
- (2) **'Agreement'** means the contract between Envestra and a Network User for the provision of Network Services.
- (3) **'Ancillary Reference Service'** means a Network Service described in section 2.3 of this Access Arrangement.
- (4) **'Business Day'** means a day other than a Saturday, Sunday or public holiday in South Australia.
- (5) **'Central Zone'** means the area within the Adelaide Region that is shown in Annexure D as the Central Zone.
- (6) **'Charges'** means the charges payable by the Network User under the Agreement and, in relation to a User DP, means the charges payable by the Network User in relation to that DP as determined in accordance with the Agreement
- (7) **'Commercial DP'** has the meaning given to it in section 2.2.3 of this Access Arrangement.
- (8) **'Commercial Haulage Service'** means the Network Service that is described in section 2.2.3 of this Access Arrangement.
- (9) **'CPI'** means the Consumer Price Index (All Groups Weighted Average for the Eight Capital Cities) as published by the Australian Bureau of Statistics or its successor or, if that Consumer Price Index is not published for any reason, whatever alternative index Envestra determines (with the Regulator's approval) from time to time is reasonably equivalent to that Consumer Price Index.
- (10) **'Credit Policy'** means the policy described in section 6.4 of this Access Arrangement.
- (11) **'Cubic Metre'**, in relation to Gas, means the amount of that Gas which, at Standard Conditions, would occupy a volume of one cubic metre.
- (12) **'Customer'** means any person to whom Gas is, or is to be, supplied through the Network.
- (13) **'Cycle'**, in relation to a Demand DP, means the period between any two meter readings for that DP which are 30 days, or approximately 30 days, apart and, in relation to a Volume DP, means the period between any two meter readings for that DP which are 90 days, or approximately 90 days, apart.
- (14) **'Delivery Point'** or **'DP'** means a point on the Network at which Gas is, or is to be, delivered out of the Network.
- (15) **'Demand DP'** has the meaning given to it in section 2.2.2 of this Access Arrangement.
- (16) **'Demand Haulage Service'** means the Network Service that is described in section 2.2.2 of this Access Arrangement.
- (17) **'Disconnection'** has the meaning given to it in section 2.3 of this Access Arrangement
- (18) **'Distribution Licence'** means a licence granted to Envestra under the *Gas Act 1997 (SA)*, which authorises the operation of the Network or any part of it.
- (19) **'Domestic DP'** has the meaning given to it in section 2.2.1 of this Access Arrangement.
- (20) **'Domestic Haulage Service'** means the Network Service that is described in section 2.2.1 of this Access Arrangement.
- (21) **'Fourth Access Arrangement Period'** means the period from 1 July 2016 to 30 June 2021.
- (22) **'Gas'** has the meaning given to 'natural gas' in the National Gas Law.
- (23) **'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 date of this Access

Arrangement are the areas defined as Gas Delivery Zones on the map set out as Annexure H to this Access Arrangement).

- (24) **'General Terms and Conditions'** has the meaning given to it in section 6.1.
- (25) **'GJ'** means a gigajoule, which is 1000 megajoules.
- (26) **'Gross Heating Value'** means the energy produced by the complete combustion of one Cubic Metre of Gas with air, at Standard Conditions, the product of combustion cooled to a temperature of 15 degrees Celsius and the water vapour formed by the combustion condensed to a liquid state.
- (27) **'Haulage Reference Service'** means the Commercial Haulage Service, the Demand Haulage Service or the Domestic Haulage Service.
- (28) **Heating Value Zone** means any discrete part of the Network (as defined by Envestra) for which a Gross Heating Value has been determined for the purposes of clause 23.2 different from that which applies (for the purposes of that clause) to adjacent parts of the network or other parts of the Network.
- (29) **'Insolvency Event'** means the happening of any of the following events in relation to a party to an Agreement:
- (a) an order is made that it be wound up or that a 'controller' (as defined in the Corporations Act 2001) be appointed to it or any of its assets;
  - (b) a resolution that it be wound up is passed;
  - (c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
  - (d) an administrator is appointed to it or a resolution that an administrator be appointed to it is passed;
  - (e) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors, in relation to a potential Insolvency Event in subparagraphs (a) to (d), or (f) to (g) occurring;
  - (f) any action is taken by the Australian Securities and Investment Commission to cancel its registration or to dissolve it;
  - (g) it is insolvent within the meaning of Section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law; or
  - (h) it stops or suspends:
    - the payment of all or a class of its debts; or
    - the conduct of all or a substantial part of its business; or
  - (i) any other event happens under any law (including the laws of another jurisdiction) that has the same effect, or a substantially similar effect, as any of the events specified in the preceding paragraphs.
- (30) **'Interest Rate'** means the Commonwealth Bank of Australia corporate overdraft reference rate, as varied from time to time.
- (31) **'Maximum Daily Quantity'** or **'MDQ'**, in relation to a DP, means the maximum Quantity of Gas which Envestra agrees to deliver through that DP to or for the account of a Network User during any Network Day, as specified in, or determined in accordance with, the Specific Terms and Conditions and the General Terms and Conditions, or any other agreement.
- (32) **'Maximum Hourly Quantity'** or **'MHQ'**, in relation to a DP, means the maximum Quantity of gas (in GJ) which Envestra is obliged to transport and deliver to a particular Delivery Point on behalf of the User in any Hour (excluding Overruns).
- (33) **'Metering Installation'**, in relation to a User DP, means the meter and associated equipment and installations (which may include correctors, regulators, filters, data loggers and telemetry relating to a DP) owned or operated by Envestra at that User DP and, in relation to a User Receipt Point, means the

metering installation owned or operated by Envestra at that User Receipt Point or, if Envestra does not own or operate metering installation at that User Receipt Point, the metering installation provided by or on behalf of the Network User at that Receipt Point.

- (34) **'Metering Year'**, in relation to a DP, means the period between any two meter readings at that DP which are 12 months, or approximately 12 months, apart.
- (35) **'Negotiated Service'** means a Network Service of the type described in section 2.4 of this Access Arrangement.
- (36) **'Network'** means the distribution mains that are the subject of this Access Arrangement from time to time, together with inlets, regulators, Metering Installations, pipes and all ancillary equipment.
- (37) **'Network Day'** means a period of 24 consecutive hours that commences at 6:00am Central Standard Time.
- (38) **'Network Service'** means a Service provided by means of the Network.
- (39) **'Network User'** means a person who has a current contract for a Network Service or where there has been an arbitration, has an entitlement to a Network Service.
- (40) **'Network User's Customer'** means any Customer to whom Gas is supplied, or is to be supplied, through a User DP.
- (41) **'Northern Zone'** means the area within the Adelaide Region that is shown in Annexure D as the Northern Zone.
- (42) **'Overrun Rate'** in relation to a given Network Day, means the amount specified as the Overrun Rate in the Tariff Schedule applicable on that Network Day.
- (43) **'Peterborough Region'** means the area shown in Annexure C as the Peterborough Region.
- (44) **'Port Pirie Region'** means the area shown in Annexure C as the Port Pirie Region.
- (45) **'Prospective Network User'** means a person who seeks or who is reasonably likely to seek to enter into a contract for a Network Service and includes a Network User who seeks or may seek to enter into a contract for an additional Network Service.
- (46) **'Quantity of Gas'** means the quantity of Gas determined in accordance with the Agreement.
- (47) **'Receipt Point'** means a point on the Network at which Gas is, or is to be, received into the Network.
- (48) **'Reconnection'**, has the meaning given to it in section 2.3 of this Access Arrangement.
- (49) **'Reference Service'** means a Haulage Reference Service or an Ancillary Reference Service.
- (50) **'Reference Tariff'** means the tariff that corresponds to a Haulage Reference Service or an Ancillary Reference Service.
- (51) **'Region'** means the Adelaide Region, the Peterborough Region, the Port Pirie Region, the Riverland Region, the South East Region, the Whyalla Region or the Tanunda Region.
- (52) **'Regulator'** means the Australian Energy Regulator.
- (53) **'Related Haulage Agreement'** (in an Agreement between Envestra and a Network User) means any other agreement between Envestra and that Network User under which Envestra delivers, or is to deliver, Gas to or for the account of that Network User.
- (54) **'Relevant Tax'** means any royalty, duty, excise, tax, impost, levy, fee or charge (including, but without limitation, any goods and services tax) imposed by the Commonwealth of Australia, any State or Territory of Australia, any local government or statutory authority or any other body (authorised by law to impose such an impost, tax or charge) on or in respect of the Network (or any part of it) or on or in respect of the operation, repair, maintenance, administration or management of the Network (or any part of it) or on or in respect of the provision of any Network Service (other than a levy, fee or charge that arises as a result of Envestra's breach of a law or failure to pay a tax or charge by the due date for payment).

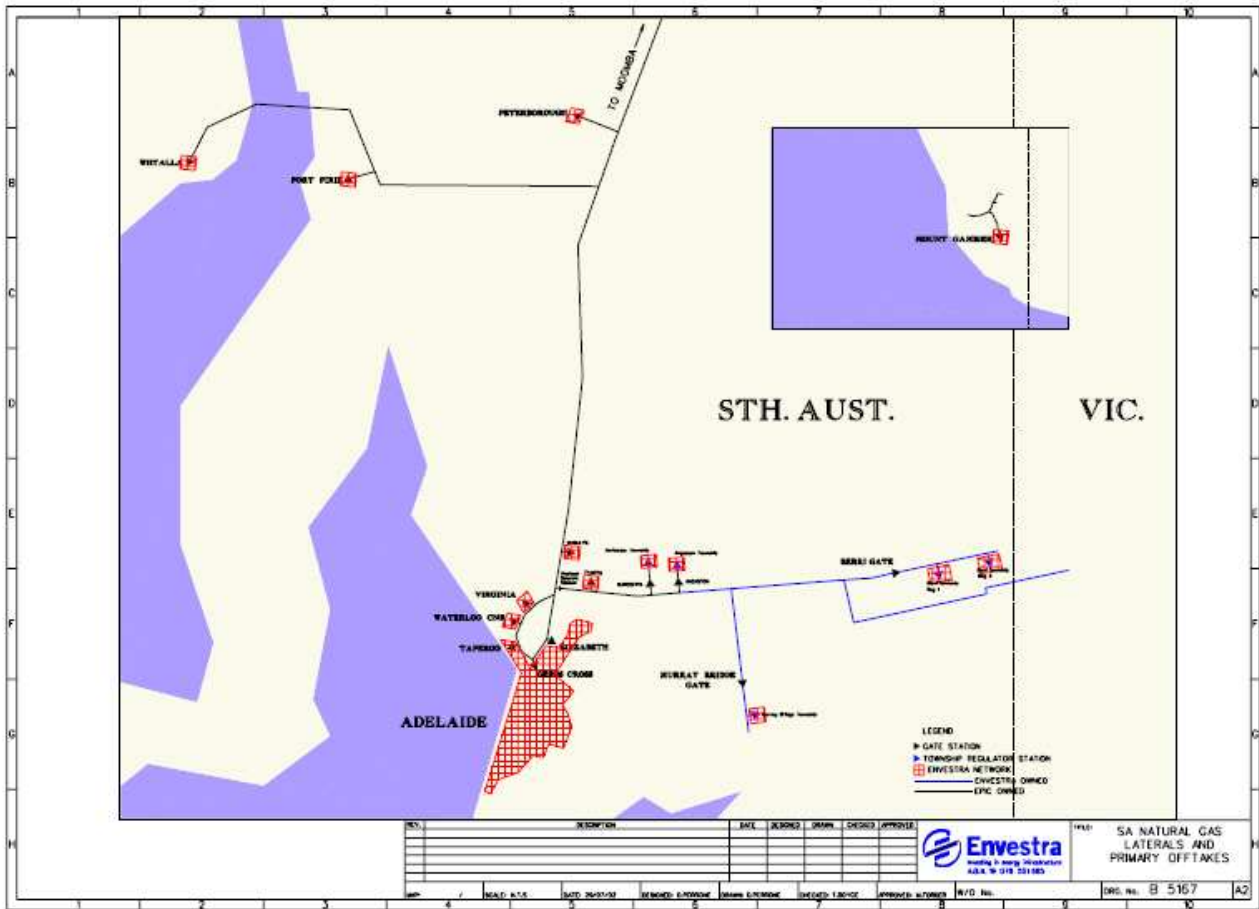


- (55) **'Retail Market Procedures'** means the retail market procedures made by the Australian Energy Market Operator from time to time under section 91M of the National Gas Law.
- (56) **'Riverland Region'** means the area shown in Annexure C as the Riverland Region.
- (57) **'Rules'** means the National Gas Rules under the National Gas Law.
- (58) **'Second Access Arrangement Period'** means the period from 1 July 2006 to 30 June 2011.
- (59) **'South East Region'** means the area shown in Annexure C as the South East Region.
- (60) **'Southern Zone'** means the area within the Adelaide Region that is shown in Annexure D as the Southern Zone.
- (61) **'Specific Terms and Conditions'** means the specific terms and conditions as described in section 6.1 (and, in relation to an Agreement between Envestra and a Network User, means the Specific Terms and Conditions which form part of that Agreement).
- (62) **'Standard Conditions'** means a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kilopascals.
- (63) **'Start Date'**, in relation to an Agreement, means the date on which Envestra commences, or is to commence, providing Network Services to a Network User pursuant to that Agreement as specified in, or determined in accordance with, the Specific Terms and Conditions.
- (64) **'Sub-Network'** means any part of the Network that is physically discrete from the remainder of the Network (in the sense that, having regard to the physical configuration of the Network and the flow of Gas within the Network, it is physically impossible to transport Gas delivered at a User Receipt Point on that part of the Network to DPs on the remainder of the Network).
- (65) **'Tanunda Region'** means the area within the boundary of postcode 5352.
- (66) **'Tariff C'** means the tariff for the Commercial Haulage Service.
- (67) **'Tariff D'** means the tariff for the Demand Haulage Service.
- (68) **'Tariff R'** means the tariff for the Domestic Haulage Service.
- (69) **'Tariff Schedule'** means the tariff schedule contained in Annexure B to this Access Arrangement or, if Envestra has published a revised tariff schedule, the tariff schedule in effect from time to time.
- (70) **'Technical Regulator'** has the meaning given to it in the *Gas Act 1997 (SA)*.
- (71) **'Term'**, in relation to an Agreement, means the period on and from the Start Date of that Agreement up to, and including, the date on which the Agreement terminates in accordance with its terms.
- (72) **'Third Access Arrangement Period'** means the period from 1 July 2011 to 30 June 2016.
- (73) **'TJ'** means a terajoule, which is 1000 gigajoules.
- (74) **'Upstream Operator'** means the operator of a transmission pipeline, a distribution network or another facility through which Gas is delivered to any Receipt Point.
- (75) **'Unaccounted for Gas' or 'UAFG'** means the difference between the Quantity of Gas received into the Network and delivered out of the Network, over a specified period of time.
- (76) **'User DP'**, in relation to a Network User, means a DP through which Gas is delivered, or is to be delivered, to or for the account of the Network User, as specified in, or determined in accordance with, the Specific Terms and Conditions.
- (77) **'User Receipt Point'**, in relation to a Network User, means a Receipt Point through which Gas is delivered, or is to be delivered, to or for the account of that Network User, as specified in, or determined in accordance with, the Specific Terms and Conditions.
- (78) **'Volume DP'** means a Commercial DP or a Domestic DP.
- (79) **'Volume of Gas'** means volume in Cubic Metres.
- (80) **'Whyalla Region'** means the area shown in Annexure C as the Whyalla Region.

- (81) **'Year'** means any period of 12 consecutive months.
- (82) **'Zone'** means the Central Zone, the Northern Zone or the Southern Zone.

# ANNEXURE A

## Envestra SA Gas Distribution System





## ANNEXURE B

### Tariff Schedule - 2011/12

**Table 1: Tariff R (Domestic Haulage Reference Service) – all areas excluding Tanunda - GST exclusive dollars**

<b>Daily Charges</b>	
Base Charge (\$/day)	0.35
Charge for the first 0.0274 GJ of Gas delivered (\$/GJ)	16.14
Charge for the next 0.0219 GJ of Gas delivered (\$/GJ)	9.91
Charge for additional Gas delivered (\$/GJ)	4.35

**Table 2: Tariff R (Domestic Haulage Reference Service) – Tanunda - GST exclusive dollars**

<b>Daily Charges</b>	
Base Charge (\$/day)	0.35
Charge for the first 0.0274 GJ of Gas delivered (\$/GJ)	20.99
Charge for the next 0.0219 GJ of Gas delivered (\$/GJ)	12.89
Charge for additional Gas delivered (\$/GJ)	5.65

*Notes:*

- 1. The total daily Charge will comprise the Base Charge plus a Charge for the Quantity of Gas delivered (or estimated to have been delivered) through the Domestic Delivery Point.*
- 2. The Charge for the Quantity of Gas delivered (or estimated to have been delivered) through the Domestic Delivery Point will be calculated at the rates shown in the table.*
- 3. A reference in the table to the Gas delivered through the Domestic Delivery Point is a reference to Gas delivered through the Domestic Delivery Point whether for the account of the Network User or for the account of any other person or persons.*
- 4. Charges will be calculated to the nearest cent, with one-half of a cent rounded upwards.*

**Table 3: Tariff C (Commercial Haulage Reference Service) – all areas excluding Tanunda - GST exclusive dollars**

<b>Daily Charges</b>	
Base Charge (\$/day)	0.71
Charge for the first 0.9863 GJ of Gas delivered (\$/GJ)	10.15
Charge for the next 4.2740 GJ of Gas delivered (\$/GJ)	5.44
Charge for the next 11.1780 GJ of Gas delivered (\$/GJ)	2.38
Charge for additional Gas delivered (\$/GJ)	0.99

**Table 4: Tariff C (Commercial Haulage Reference Service) – Tanunda - GST exclusive dollars**

<b>Daily Charges</b>	
Base Charge (\$/day)	0.71
Charge for the first 0.9863 GJ of Gas delivered (\$/GJ)	13.19
Charge for the next 4.2740 GJ of Gas delivered (\$/GJ)	7.08
Charge for the next 11.1780 GJ of Gas delivered (\$/GJ)	3.09
Charge for additional Gas delivered (\$/GJ)	1.29

*Notes:*

1. *The total daily Charge will comprise the Base Charge plus a Charge for the Quantity of Gas delivered (or estimated to have been delivered) through the Commercial Delivery Point..*
2. *The Charge for the Quantity of Gas delivered (or estimated to have been delivered) through the Commercial Delivery Point will be calculated at the rates shown in the table.*
3. *A reference to the Gas delivered through the Commercial Delivery Point is a reference to Gas delivered through the Commercial Delivery Point whether for the account of the Network User or for the account of any other person or persons.*
4. *Charges will be calculated to the nearest cent, with one-half of a cent rounded upwards.*

**Table 5 - Tariff D (Demand Haulage Reference Service - Adelaide Region)**

MDQ at Delivery Point	Monthly Charge (exc GST)		
	Northern Zone	Central Zone	Southern Zone
50GJ or less	\$3,092.56	\$3,092.56	\$3,092.56
Next 50GJ \$/GJ of MDQ for MDQ over 50GJ	\$39.27	\$46.80	\$55.19
Next 900GJ \$/GJ of MDQ for MDQ over 100GJ	\$24.60	\$29.75	\$34.56
Additional GJ \$/GJ of MDQ for MDQ over 1000GJ	\$7.38	\$8.53	\$10.42

**Table 6 – Tariff D (Demand Haulage Reference Service - Other Regions)**

MDQ at Delivery Point	Monthly Charges (exc GST)					
	Port Pirie Region	Riverland Region	South East Region	Peterborough Region	Whyalla Region	Tanunda Region
50GJ or less (\$/GJ)	3,092.56	4,375.94	3,092.56	4,375.94	3,092.56	3,092.56
Next 50GJ \$/GJ of MDQ for MDQ over 50GJ	39.26	57.42	39.26	57.56	39.41	39.27
Next 400GJ \$/GJ of MDQ for MDQ over 100GJ	20.06	35.35	20.06	35.35	20.06	24.60
Next 500GJ \$/GJ of MDQ for MDQ over 500GJ	8.46	36.23	20.55	36.23	20.55	7.38
Greater than 1000GJ \$/GJ of MDQ for MDQ over 1000GJ	6.88	7.44	7.46	7.44	7.46	7.38

*Notes:*

1. *The Charges shown in Tables 3 and 4 are charges for a complete calendar month.*
2. *The Charge for a calendar month will accrue from day to day in equal portions.*
3. *Charges will be calculated to the nearest cent, with one-half of a cent being rounded upwards.*
4. *For the purpose of calculating daily overrun charges pursuant to clause 6 of the General Terms and Conditions, the overrun rate is \$15 per GJ (excl GST).*

**Table 7 – Ancillary Reference Tariffs  
(exc GST)**

<b>Ancillary Reference Service</b>	<b>Tariff</b>
Special Meter Read	\$9.20
Disconnection	\$63
Reconnection	\$63

*Note:*

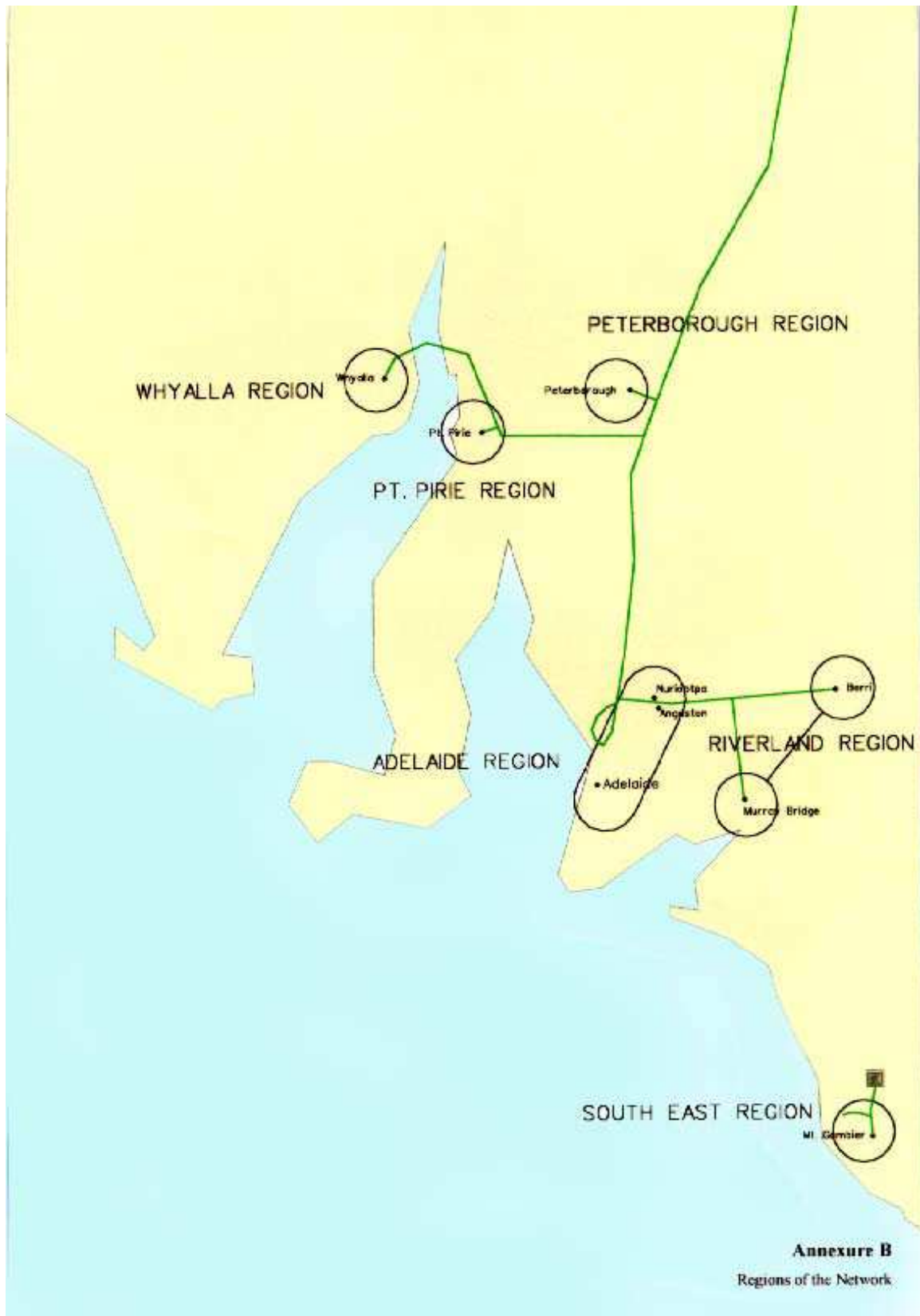
*Where the Reference Tariff for an Ancillary Reference Service (as varied) is less than \$20, the Reference Tariff (as varied) will be rounded to the nearest 10 cents (with five cents rounded upwards). Where the Reference Tariff for an Ancillary Reference Service (as varied) is \$20 or more, the Reference Tariff (as varied) will be rounded to the nearest dollar (with 50 cents rounded upwards).*



# ANNEXURE C

## Map showing Regions\* of the Network

(\*excluding Tanunda Region)





## ANNEXURE D

### Map showing Tariff Zones within the Adelaide Region



## ANNEXURE E

### Reference Tariff Control Formulae

Any proposed variations to the Haulage Reference Tariffs pursuant to section 4.1 of this Access Arrangement must comply with the formulae set out in this Annexure.

#### BOX 1: TARIFF CONTROL FORMULA

The following formula applies separately to each of Tariff R, C and D:

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

where:

$CPI_t$  is calculated as the CPI for the year ending 31 March immediately preceding the start of year t, divided by the CPI for the year ending 31 March immediately preceding the start of year t-1;

$X_t$  is -0.08 for 20012/13;

$X_t$  is -0.08 for 20013/14;

$X_t$  is -0.07 for 20014/15;

$X_t$  is -0.0175 for 20015/16;

$n$  is the number of different Reference Tariffs;

$m$  is the different components, elements or variables ("components") comprised within a Reference Tariff;

$p_t^{ij}$  is the proposed component  $j$  of Reference Tariff  $i$  in year  $t$ ;

$p_{t-1}^{ij}$  is the prevailing component  $j$  of Reference Tariff  $i$  in year  $t-1$ ; and

$q_{t-2}^{ij}$  is the audited quantity of component  $j$  of Reference Tariff  $i$  that was sold in year  $t-2$  (expressed in the units in which that component is expressed (eg, GJ)).

## BOX 2: REBALANCING CONTROL FORMULA

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

where:

$CPI_t$  is calculated as the CPI for the year ending 31 March immediately preceding the start of year  $t$ , divided by the CPI for the year ending 31 March immediately preceding the start of year  $t-1$ ;

$X_t$  is -0.08 for 20012/13;

$X_t$  is -0.08 for 20013/14;

$X_t$  is -0.07 for 20014/15;

$X_t$  is -0.0175 for 20015/16;

$Y_t$  is 0.02;

$m$  is the components comprised within Reference Tariff ;

$p_t^j$  is the proposed component  $j$  of Reference Tariff in year  $t$ ;

$p_{t-1}^j$  is the prevailing component  $j$  of Reference Tariff in year  $t - 1$ ;

$q_{t-2}^j$  is the audited quantity of component  $j$  of Reference Tariff that was sold in year  $t - 2$  (expressed in the units in which that component is expressed (eg, GJ)); and

$n$  is the number of different Reference Tariffs.

## ANNEXURE F

### Specific Terms and Conditions

<b>Network User</b> <sup>1</sup>
<b>User Receipt Points</b> The Receipt Points identified in, or identified in accordance with, Schedule 1 to these Specific Terms and Conditions (as that Schedule may be amended from time to time by agreement in writing between the Network User and Envestra).
<b>User Delivery Points</b> [Each Delivery Point in respect of which the Network User is the current user (as defined in the Retail Market Procedures) from time to time.] <sup>2</sup>
<b>Start Date</b>
<b>Term</b> [Commencing on the Start Date and ending on a date to be agreed between the Network User and Envestra (or, if the Agreement is terminated earlier, the period from the Start Date until the date on which the Agreement is terminated).] <sup>3</sup>

<b>MDQ</b> For a User Delivery Point which is a Demand Delivery Point, the MDQ is: <ul style="list-style-type: none"><li>(a) the MDQ shown in relation to that User Delivery Point in Attachment 1 to these Specific Terms and Conditions; or</li><li>(b) if the MDQ is not shown in that Attachment, the MDQ as agreed between Envestra and the Network User or, in default of agreement, as determined by Envestra, in accordance with, or determined in the manner set out in, the Access Arrangement (as defined below)<sup>2</sup></li></ul> (in either case, as increased or decreased from time to time in accordance with the General Terms and Conditions (as defined below)).
<b>Notice Details (for the Network User)</b> Address: Telephone: Facsimile: E-mail:

<sup>1</sup> Insert the name and ABN of the Network User.

<sup>2</sup> Amend as appropriate to define the Delivery Points to which Gas is to be delivered.

<sup>3</sup> Amend as appropriate to describe the Term.

#### Provisions of Agreement

This document evidences that Envestra Limited and the Network User have entered into a haulage agreement (**the Agreement**) for the provision of Network Services on and subject to the terms of the Agreement, which comprises:

- (a) the Specific Terms and Conditions set out in this document; and
- (b) the terms and conditions applicable to Haulage Reference Services under the Access Arrangement (including, but without limitation, the pre-conditions set out in sections 6.3 and 6.4 of the Access Arrangement) (**the General Terms and Conditions**).

Unless the context otherwise requires, terms used in the Agreement will have the same meanings as they have for the purpose of the Access Arrangement.

In these Specific Terms and Conditions, "**Access Arrangement**" means the access arrangement as in force from time to time under the National Gas Law (as defined in the *National Gas (South Australia) Act 2008 (the Act)*) in relation to Envestra's South Australian gas distribution system.

**EXECUTED** as an Agreement on \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Executed by

\_\_\_\_\_  
 (ABN \_\_\_\_\_)

in accordance with Section 127 of the Corporations Act

.....  
 Director

.....  
 Director/Secretary

.....  
 Name  
 (BLOCK LETTERS)

.....  
 Name  
 (BLOCK LETTERS)

Executed by

**ENVESTRA LIMITED**  
 (ABN 19 078 551 685)

in accordance with Section 127 of the Corporations Act

.....  
 Director

.....  
 Director/Secretary

.....  
 Name  
 (BLOCK LETTERS)

.....  
 Name  
 (BLOCK LETTERS)

## ANNEXURE F cont'd

### SCHEDULE 1

#### USER RECEIPT POINTS

1. The outlet of the Elizabeth Gate Station;
2. The outlet of the Gepps Cross Gate Station;
3. The outlet of the Taperoo Gate Station;
4. The outlet of the Nuriootpa Gate Station;
5. The outlet of the Angaston Gate Station;
6. The outlet of the Berri Gate Station;
7. The outlet of the Murray Bridge Gate Station;
8. The outlet of the Whyalla Gate Station;
9. The outlet of the Port Pirie Gate Station;
10. The outlet of the Peterborough Gate Station;
11. The outlet of the Mount Gambier Gate Station;
12. The downstream flange of the Epic Energy-owned Freeling Gate Station;
13. The outlet of the SEAGas Cavan Interconnection Pipeline; and
14. Any other point that Envestra and the Network User may from time to time agree in writing is a User Receipt Point for the purposes of the Agreement.<sup>4</sup>

<sup>4</sup> Amend as appropriate to describe the Receipt Points through which Gas will be delivered by or for the account of the Network User.



## ANNEXURE F cont'd

### ATTACHMENT 1

#### MDQs for DEMAND DELIVERY POINTS

This Annexure lists the User Delivery Points at the Start Date that are Demand Delivery Points at the Start Date and shows the MDQ for those User Delivery Points as at the Start Date. The User Delivery Points are the Delivery Points located at the addresses shown in the table below, which have been assigned the MIRNS shown in the table below (where MIRN has the meaning given to it in the Retail Market Procedures).

<b>No.</b>	<b>Customer</b>	<b>MIRN</b>	<b>Address</b>	<b>MDQ ( in GJ)</b>



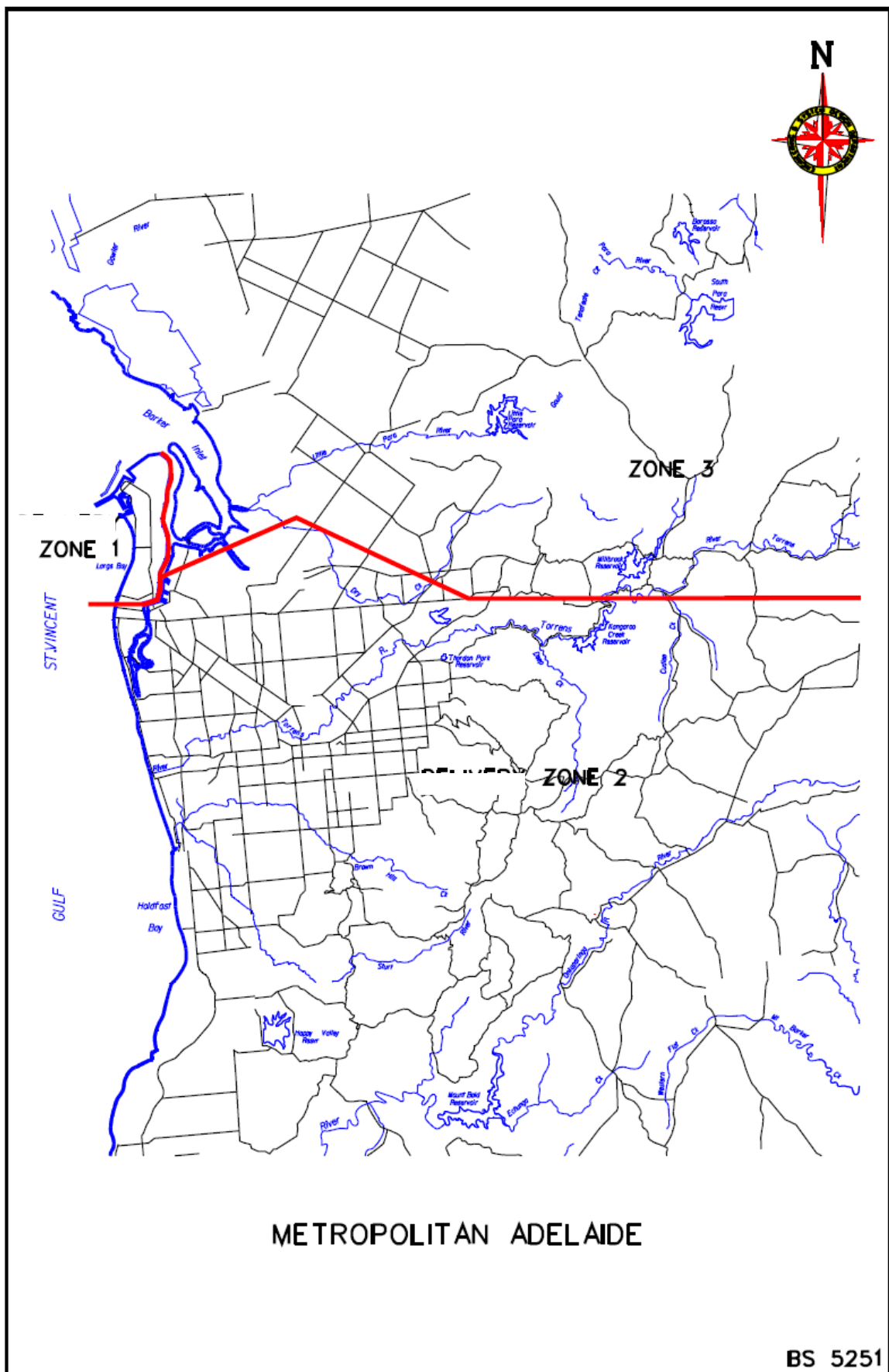
## **ANNEXURE G**

### **General Terms and Conditions**

**(see separate document)**

# ANNEXURE H

## Heating Value Zones in Metropolitan Adelaide



**SA Access Arrangement  
Annexure G**

**General Terms and Conditions**

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

July 2011

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# TERMS AND CONDITIONS

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

## PART I: INTRODUCTION

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### 1. THE AGREEMENT

#### 1.1 Contents of Agreement

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

#### 1.2 Inconsistency

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

#### 1.3 Interpretation

Unless expressly defined in these terms and conditions, definitions given to terms in the Access Arrangement (to which these terms and conditions are annexed) apply to those terms in the Agreement.

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

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

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

During the Term, in consideration of the 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 a Sub-Network into which the Network User is entitled to deliver Gas (through a User Receipt Point),

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

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

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

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

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

#### **2.4 Delivery Quantities**

Subject to the terms of the Agreement, Envestra will deliver through each DP whatever Quantity of Gas is taken through that DP (whether that Gas is taken by the Network User, 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).

[NOT USED]

#### **2.5 Odourisation**

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

#### **2.6 Service Standards**

Envestra will ensure that the Network is operated and managed during the Term in accordance with the Access Arrangement (to which these terms and conditions are annexed) and in accordance with all applicable laws from time to time.

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

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.

### **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. CAPACITY MANAGEMENT**

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

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

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

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

#### **4.3 Network Limitations**

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

#### **4.4 Quantities Received**

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

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

#### **4.5 Overselling Capacity**

Envestra must not connect a new DP to the Network or expand the capacity of an existing DP if Envestra 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.

## 5. DAILY OVERRUNS

### 5.1 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.

### 5.2 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.

### 5.3 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.

### 5.4 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.

### 5.5 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.

## 6. LIMITATION PERIOD – MDQ INCREASE

### 6.1 Application of Revised MDQ

Whenever the MDQ for a DP is increased pursuant to clause 5, the new MDQ will apply (subject to clause 8) until it is again increased pursuant to clause 5 or it is decreased pursuant to 7.

## 6.2 Interpretation.

For the purposes of this clause 6, the following terms will have the following meanings:

- (a) "**the old MDQ**", in relation to the revised MDQ for a DP, means the MDQ applicable to that DP immediately before it was increased, pursuant to clause 5, 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 clause 5, to produce that revised MDQ.
- (c) "**the new MDQ**", in relation to a DP, means the MDQ for that DP as increased from time to time pursuant to clause 5.

## 6.3 Cessation of Revised MDQ (Demand Delivery Points)

The new MDQ for a Demand DP will be decreased to the old MDQ, 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 old MDQ.

## 7. REDUCTION IN MDQ

### 7.1 Request for Reduction in MDQ

Subject to clauses 7.6 and 7.7, if:

- (a) the Customer to whom Gas is supplied at a Demand DP experiences a permanent, material reduction in its requirements for Gas at that Demand DP such that its daily Gas requirements are at least 10% less than the MDQ then applicable to that Demand DP; or
- (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 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 contract in respect of the Demand DP requiring the Network User to make payments, based on 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, if the Network User wishes to request a reduction in the MDQ for that Demand DP the Network User may:

- (i) 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 requirements, which written request must state that it is made pursuant to this clause 7 and must set out the MDQ proposed by the Network User (**Requested MDQ**). The Specified Date must be the first calendar day of a subsequent month, not less than 4 weeks after the date of receipt of the request by Envestra; and
- (ii) 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 Quantity of Gas which will be taken through the relevant Demand DP on any subsequent 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.



## **7.2 Consideration of Request**

Envestra will consider a request lodged in accordance with clause 7.1 and will advise the Network User within 4 weeks whether the request is accepted. Envestra will not unreasonably withhold its acceptance of a request made in accordance with clause 7.1 where the evidence demonstrates to Envestra's reasonable satisfaction that the Quantity of Gas which will be taken through the relevant Demand DP on any subsequent Network Day will not exceed the Requested MDQ.

## **7.3 Matters to be Considered**

In considering a request under clause 7.1, Envestra will have regard to the following factors:

- (a) the permanency of any reduction 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.

## **7.4 Acceptance of Request**

Where Envestra agrees to a request made under clause 7.1, then the MDQ for the relevant Demand DP will be reduced to the Requested MDQ from the commencement of the Specified Date.

## **7.5 Request for Explanation**

If requested by the Network User, Envestra will provide the Network User with an explanation of Envestra's decision to reject a request made under clause 7.1, as soon as is reasonably practicable.

## **7.6 Subsequent Adjustment of MDQ**

Nothing in this clause 7 prevents or limits any subsequent adjustment to the MDQ for a Demand DP in accordance with any other clause of the Agreement. Nothing in this clause prevents a new MDQ being agreed for a Demand DP when there is a change in the identity of the Network Users Customer at that Demand DP.

## **7.7 Subsequent Requests**

Where the MDQ for a Demand DP has been reduced under this clause 7, then the Network User will not be entitled to make a further request of Envestra to reduce the MDQ for the same Customer 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 7.

## **7.8 Non-Acceptance of Previous Request**

Where a request under clause 7.1 is not accepted by Envestra, then the Network User will not be entitled to make a further request of Envestra to reduce the MDQ for the same Customer at that Demand DP until at least 6 months has elapsed since the date of lodgement of the previous request.

## **8. TEMPORARY INCREASE OF MDQ**

### **8.1 Demand Delivery Points**

The Network User may request Envestra to deliver a Quantity of Gas through a Demand DP that exceeds the MDQ then applicable to 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) and, at the end of that Cycle, will revert to the former MDQ.

### **8.2 Requests for Temporary Increase in MDQ**

Requests for an increase in MDQ pursuant to the previous sub-clause must be submitted to Envestra at least 28 days before the increase is required. An administration fee of \$200 will apply for each request. In addition, if engineering analysis is required, the costs of that analysis shall be borne by the Network User, but will be agreed in advance with the Network User, based on an hourly rate of \$100 per person per hour.

## **9. METERING EQUIPMENT**

### **9.1 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.

### **9.2 Standard of Metering Equipment at Delivery Points**

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. The type of Metering Equipment installed at a DP will generally be the same as that installed at DPs that have similar characteristics.

### **9.3 Maintenance and Removal**

Envestra will ensure that all Metering Equipment is maintained in reasonable condition throughout the Term. Where the Metering Equipment at a DP includes equipment for telemetry or interval metering and that equipment is no longer required by law to be used at that DP, then the Network User will bear the costs of removal of that equipment.

### **9.4 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.

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

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.

## **9.6 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.

## **9.7 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.

## **9.8 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.

# **10. METER ACCURACY**

## **10.1 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.

## **10.2 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.

## **10.3 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.

## **10.4 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.

## **10.5 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.

## 10.6 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 that is permitted by law (or, if no margin is prescribed by law, outside a margin of accuracy of plus or minus 2 per cent) (in the case of Metering Equipment at a User DP) or plus or minus 1% (in the case of Metering Equipment at a User Receipt Point) of the 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.

## 10.7 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.

## 10.8 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.

## 10.9 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.

## 10.10 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 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).

#### **10.11 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.

### **11. SCHEDULED METER READING**

#### **11.1 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.

#### **11.2 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.

#### **11.3 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.

#### **11.4 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.

#### **11.5 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.

#### **11.6 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.

### **11.7 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:

- (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.

## **12. GAS SPECIFICATIONS**

### **12.1 Specifications**

The Network User will ensure that Gas delivered into the Network by or for the account of the Network User meets 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.

### **12.2 Temperature**

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

### **12.3 Failure to Comply**

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

### **12.4 Notice**

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

## **12.5 Other Users**

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

## **12.6 Prevention**

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

# **13. RECEIPT PRESSURES**

## **13.1 Receipt Pressure**

The Network User will ensure that Gas delivered at any User Receipt Point by or for the account of the Network User is delivered at a pressure which is within the limits specified for that Receipt Point in Appendix 1, or as advised from time to time by Envestra by notice given to the Network User.

## **13.2 Common Pressures**

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

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

## **13.3 Pressure Management**

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

## **13.4 Other Users**

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

## **13.5 Prevention**

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

## **14. DELIVERY PRESSURES**

### **14.1 Delivery Pressure**

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

### **14.2 Exclusion of Liability**

Envestra will not breach its obligations under clause 14.1 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 (whether by or for the account of the Network User or by or for the account of any other person) at pressures outside the limits required by the Agreement.

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

### **14.3 No Implied Obligation**

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

### **14.4 Other Legal Obligations**

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

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

### **15.1 Control and Possession**

As between Envestra and the Network User:

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

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

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



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

To the extent permitted by law, Envestra will have no responsibility or liability whatsoever with respect to any Gas, after it is delivered out of the Network, on account of anything which may be done, happen or arise with respect to that Gas prior to receipt at any Receipt Point or after delivery at any DP, provided that Envestra has complied with its obligations pursuant to clause 15. This clause will survive the termination of the Agreement.

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

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

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

### **16.2 Repetition of Warranties**

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

### **16.3 Indemnity**

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

### **16.4 Title**

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

### **16.5 Commingling of Gas**

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

### **16.6 [NOT USED]**

### **16.7 No Obligation to Account**

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

## **16.8 Survival**

This clause will survive the termination of the Agreement.

## **17. SUPPLY CURTAILMENT**

### **17.1 Right to Curtail**

Subject to clauses 17.2 and 17.3, 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.

### **17.2 Notice of Curtailment**

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.

### **17.3 Order of Priority**

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

- (a) Interruptible DPs, these being any DPs where Envestra has an arrangement that permits Envestra to interrupt or curtail the delivery of Gas;
- (a) Demand DPs with alternative fuel sources;
- (b) Demand DPs with the ability to shut down their plant or operations with minimal disruption;
- (c) 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;
- (d) other Demand DPs;
- (e) Commercial DPs;
- (f) Domestic DPs;
- (g) 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. Envestra will not select which of those DPs to curtail or interrupt based on the identity of the Network User.

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

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

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

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

#### **17.6 Updates**

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

#### **17.7 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.

## **PART III: OTHER SERVICES**

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### **18. ANCILLARY REFERENCE SERVICES**

#### **18.1 Standards**

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

#### **18.2 Payment of Charges**

Envestra is entitled to charge the Network User for Ancillary Reference Services. The Charge will be calculated in accordance with the Agreement and the then most recent Tariff Schedule.

### **19. [NOT USED]**

## PART IV: GENERAL TERMS AND CONDITIONS

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

#### 20.1 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, where applicable, the Tariff Schedule.

#### 20.2 First Payment

On execution of the Agreement, Envestra will give the Network User a tax invoice for an amount equal to the Charges which Envestra reasonably estimates are likely to become payable by the Network User under the Agreement (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.)

#### 20.3 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 a tax 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;

$AC_{m-1}$  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;

$EC_{m-1}$  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);

$EC_m$  is the difference between:

- (a) the amount Envestra estimates 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
- (b) 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

$EC_{m+1}$  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).

#### **20.4 Estimates**

For the purposes of clauses 20.2 and 20.3, Envestra's estimates of Charges will be based, were applicable, on a profile of the Quantity of Gas delivered through each of the User DPs during previous periods.

#### **20.5 Other Information**

Envestra will 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.

#### **20.6 Payment of Invoices**

The Network User must pay the amount shown in any valid tax invoice (issued pursuant to clause 20) to Envestra within 14 days after the Network User has received that invoice.

#### **20.7 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.

### **21. 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 27.5 or, in any event, more than eleven months after the date of the invoice, except for any claim which the Network User is required by law to pursue on behalf of a Customer of the Network User.

### **22. DISPUTED INVOICES**

#### **22.1 Notice of Dispute**

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 in accordance with the Agreement and the Network User will be required to pay, by the due date, the amount of the invoice not genuinely disputed.

## 22.2 Resolution of Dispute

If, following the resolution of a dispute, it is determined that the amount 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. Interest on the difference will be calculated in accordance with clause 25.

## 23. DELIVERED QUANTITIES

### 23.1 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 or expected to be delivered) will be determined by Envestra in accordance with the Agreement.

### 23.2 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 Heating Value Zone 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.

### 23.3 Readings That Cover Multiple Months

For the purposes of clause 23.2, 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.

### 23.4 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 a reasonable basis.

### **23.5 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 a reasonable basis.

### **23.6 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.

### **23.7 Determinations Conclusive**

Envestra will determine on a reasonable basis the Quantities of Gas delivered (or expected to be 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.

## **24. METHOD OF PAYMENT**

### **24.1 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.

### **24.2 [Not Used]**

### **24.3 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.



## **25. FAILURE TO PAY**

### **25.1 Overdue Interest**

If the Network User fails to pay any amount due to Envestra under the Agreement by the date on which that amount is due (other than where permitted by clause 22.1), 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.

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

If any Party (**Party A**) does not pay any amount due to the other Party (**Party B**) under the Agreement (other than where permitted by clause 22.1), then Party B may withhold and set off payment of any amounts due or owing by Party B to Party A against any and all amounts due or owing by Party A User to Party B. This clause will survive the termination of the Agreement.

### **25.3 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 (other than where permitted by clause 22.1), 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.

## **26. TERMINATION**

### **26.1 Term**

The Agreement will commence on the Start Date and will continue until it is terminated in accordance with clause 26.2, clause 26.3 or by agreement between Envestra and the Network User.

### **26.2 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 (other than where permitted by clause 22.1);
- (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) or an Insolvency Event occurs in relation to the Network User;
- (d) the Network User ceases to be registered under the Rules as a registered participant in any relevant registrable capacity (or the Network User's registration is suspended);

- (e) the Network User ceases to meet the requirements of the Credit Policy;
- (f) 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
- (g) the Network ceases to be a Covered Pipeline under or for the purposes of the National Gas Law (including, but without limitation, if the National Gas Law is repealed).

### **26.3 Termination by the Network User**

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

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

### **26.4 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.

### **26.5 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.

### **26.6 No Other Refunds**

Subject to clause 26.5, 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.

### **26.7 Imbalance on Termination**

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

For the purposes of this 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.

## 26.8 Holding Over

If Gas continues to be delivered after the end of the Term (except if the Term ends as a result of the termination of the Agreement by Envestra pursuant to clause 26.2 or the Network User pursuant to clause 26.3 of the General Terms and Conditions) through any DP in respect of which the Network User is the current user (as that term is defined in the Retail Market Procedures) except to the extent that the delivery of Gas is due to the negligent act or omission on the part of Envestra (or any officer, servant, agent, contractor or other person for whom Envestra is liable), Envestra and the Network User will be taken to have entered into a new agreement for the delivery of Gas through that DP on the same terms as the Agreement, except that the expiry date of that agreement will be:

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

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

## 27. SERVICE PROVIDER'S LIABILITY

### 27.1 Indemnity against Property Damage and Personal Injury

Subject to the other terms of the Agreement (other than clause 27.6), 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 an officer, 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.

### 27.2 Contribution

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 any Customer of the Network User (or any of their respective officers, servants, agents or contractors) (including, but without limitation, any breach by the Network User of its obligations under the Agreement) contributes to the damage or injury.

### 27.3 Notice of Claims

The Network User will promptly notify Envestra of any claim which the Network User has, or believes it has, against Envestra (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.

#### **27.4 Mitigation**

The Network User must use reasonable endeavours to mitigate every Claim it might have against Envestra.

#### **27.5 Limitation Period**

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

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

To the extent permitted by law, neither party will have any liability to the other party, for or in respect of any claim (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 other party may suffer or incur.

#### **27.7 Maximum Liability for Other Loss**

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

#### **27.8 Australian Consumer Law**

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

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

### **27.9 Interpretation**

For the purposes of clause 27.8, 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.

### **27.10 Statutory Immunity**

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

## **28. CONSUMER CONTRACT LIMITATION**

### **28.1 Application of Clause**

Clause 28.2 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).

### **28.2 Limitation of Liability**

Subject to clause 28.3, if this section applies, the liability of Envestra for failure to comply with a guarantee under the Australian Consumer Law (as defined in the Competition and Consumer Act 2010 (Cwlth))(other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law) is limited:

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

### **28.3 Section 64A(3) Exclusion**

Clause 28.2 will not apply in the circumstances specified in section 64A(3) of the Australian Consumer Law.

### **28.4 Interpretation**

Terms used in clauses 28.1 and 28.2 have the same meanings for the purposes of those clauses as they have for the purposes of the Australian Consumer Law.

## **29. FORCE MAJEURE**

### **29.1 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).

### **29.2 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.

### **29.3 Payment Obligations**

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

### **29.4 [Not Used]**

### **29.5 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.

## **30. NETWORK USER TO ASSIST**

### **30.1 Information**

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

### **30.2 Assistance**

The Network User will cause or procure each Network User's Customer and each Upstream Operator to provide Envestra, at no cost and in a timely manner, with whatever information, assistance or co-operation Envestra might reasonably require from time to time in connection with the Agreement or the Services provided under the Agreement, including any information, assistance or co-operation Envestra requires to comply with its obligations under any law from time to time.

### **30.3 Consultation**

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

### **30.4 Survival**

This section will survive the termination of the Agreement.

## **31. USER'S INDEMNITIES**

### **31.1 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.

### **31.2 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 31.5) that is caused by the Network User or any Network User's Customer or any of their respective officers, 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 officers, servants, agents, contractors or invitees; or
- (b) any breach of this Agreement by the Network User.

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

### **31.3 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 officers, servants, agents, contractors or invitees.

### **31.4 Service Indemnity**

Subject to clause 31.6, the Network User will indemnify Envestra against all loss, cost, expense or damage which Envestra might suffer as a result of any negligent or wrongful act or omission on the part of the Network User or on the part of any 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).

### **31.5 Curtailment Indemnity**

Subject to clause 31.6, 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 officers, servants, agents, contractors or invitees.

### **31.6 Indemnity Qualification**

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

## **32. USER'S INSURANCE**

### **32.1 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).

### **32.2 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.



### **32.3 Insurance Information**

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

### **32.4 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.

### **32.5 Claims Enforcement**

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

### **32.6 Claims Settlement**

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

### **32.7 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.

## **33. ACCESS TO PREMISES**

### **33.1 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.

### **33.2 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.

### **33.3 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.

### **33.4 Network User's Obligation**

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

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

### **33.5 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.

### **33.6 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 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.

### **33.7 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.

### **33.8 Statutory Rights**

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

## **34. CONFIDENTIALITY**

### **34.1 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.

### **34.2 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.

### **34.3 Disclosure to Employees**

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

### **34.4 Disclosure By Law**

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

### **34.5 Envestra's Obligations**

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

### **34.6 Survival**

This clause 34 will survive the termination or expiration of the Agreement.

## **35. DISPUTE RESOLUTION**

### **35.1 Interpretation**

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

'**Dispute**' means a dispute between Envestra and the Network User in relation to the Agreement (other than an access dispute to which the National Gas Law applies).

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

### **35.2 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.

### **35.3 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.

### **35.4 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.

### **35.5 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 Institute of Arbitrators to nominate a person who has appropriate commercial, technical and practical expertise in relevant areas.

### **35.6 Appointment of Expert**

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

### **35.7 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.

### **35.8 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.

### **35.9 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.

### **35.10 Costs of Expert**

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

### **35.11 Legal Proceedings**

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

### **35.12 Interlocutory Relief**

Clause 35.11 does not prevent a Party seeking or obtaining an interlocutory injunction from a court of competent jurisdiction.

### **35.13 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).

### **35.14 Agreement Continues**

Subject to clause 22.1, 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.

### **35.15 Survival**

This section will survive the termination of the Agreement.

## **36. NOTICES**

### **36.1 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;
- (c) by mail with all postage and charges prepaid to either the Network User or Envestra (as the case may be) at the address for notices specified in the Agreement; or
- (d) by e-mail.

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

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

### **36.2 Address for Notices**

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

Envestra Limited  
Level 10, 81 Flinders Street  
ADELAIDE SA 5000

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

## **37. ASSIGNMENT**

### **37.1 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).

### **37.2 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.

### **37.3 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.

### **37.4 Deed of Assumption**

For the purposes of clause 37.3, 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.

### **37.5 Encumbrances**

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

## **38. AMENDMENT OF AGREEMENT**

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

## **39. MISCELLANEOUS PROVISIONS**

### **39.1 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.

### **39.2 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.

### **39.3 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.

### **39.4 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.

### **39.5 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.

### **39.6 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.

### **39.7 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.

### **39.8 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.

### **39.9 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.

### **39.10 Costs**

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

### **39.11 Stamp Duty**

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

- (a) the Agreement;
- (b) any invoice or notice issued pursuant to the Agreement;
- (c) any easement, licence or other document required under clause 33.7 of the Agreement; and
- (d) any other document reasonably necessary pursuant to the Agreement (other than any transfer or assignment executed pursuant to clause 37.2 or any deed poll executed pursuant to clause 37.4).

### **39.12 Further Assurances**

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

## **40. INTERPRETATION**

### **40.1 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;
- (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.

#### 40.2 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'.

#### 40.3 Contra Proferens

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

#### 40.4 Entire Agreement

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

### 41. GOODS AND SERVICES TAX

#### 41.1 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.

#### 41.2 GST in respect of Taxable Supply

- (a) Where any *supply* by one party ("**the Supplier**") to another party ("**the Recipient**") under or in connection with the Agreement is a *taxable supply*, the Recipient must pay the Supplier any *GST* which is payable by the

Supplier or, if the Supplier is a member of a *GST group*, by the *representative member* of that *GST group* on the *taxable supply*.

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

#### **41.3 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*.

#### **41.4 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*.

#### **41.5 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*.

#### **41.6 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 *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.

## Appendix 1

### Receipt Point Pressures

(refer Clause 13)

Receipt Point	Transmission Pipeline / Region	Maximum Allowable Operating Pressure <i>kPa</i>	Minimum Allowable Operating Pressure <i>kPa</i>
Angaston	MAP	350	70
Berri	Riverland	1,400	850
Cavan Interconnect (SEAGas)	SEAGas	1,896	1,650
Elizabeth	MAP	1,896	1,650
Freeling	MAP	350	70
Gepps Cross	MAP	1,896	1,650
Mt Gambier	Katnook	700	300
Murray Bridge	Riverland	1,400	850
Nuriootpa	MAP	350	70
Peterborough	MAP	350	70
Pt Pirie	MAP	900	600
Taperoo	MAP	1,896	1,650
Virginia	MAP	350	70
Whyalla	MAP	250	35