

**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

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

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

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

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:

$$I = (AC_{m-1} - EC_{m-1}) + EC_m + EC_{m+1} \text{ where:}$$

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, where 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 of any person or any injury to any person or any damage to any property will be limited to \$100 million in aggregate in relation to any one 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 (Cwith))(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 of 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

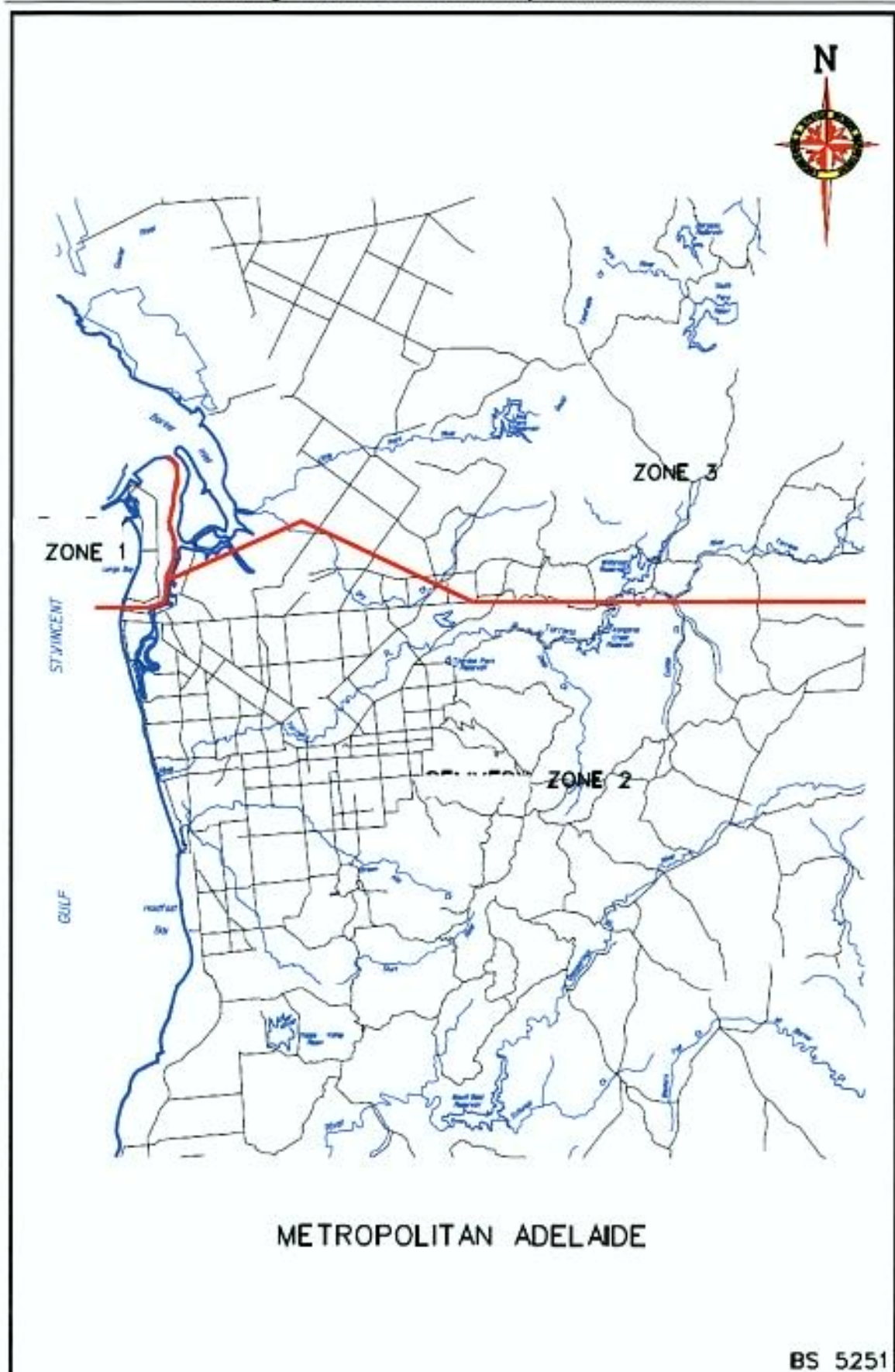
Receipt Point Pressures

(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

ANNEXURE H

Heating Value Zones in Metropolitan Adelaide



Access Arrangement Information

Envestra's South Australian Gas Distribution Network

8 July 2011 – 30 June 2016

July 2011

Amended by order of the Australian Competition
Tribunal, 10 February 2012

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1. INTRODUCTION

1.1 Purpose of this Document

This document is the Access Arrangement Information (AAI) in relation to the Access Arrangement (AA) for the Envestra Limited (ABN 19 078 551 685) South Australian gas distribution network (the Network) for the period 8 July 2011 to 30 June 2016 (AA period).

The purpose of this document is to set out such information as is necessary to enable users and prospective users to understand the derivation of the elements of the AA for the AA period.

1.2 The Network

The main centres served by the Network are Adelaide, Mt Gambier, Whyalla, Pt Pirie, Barossa Valley, Murray Bridge and Berri. Maps outlining the areas covered by the Network are available from Envestra's website: www.envestra.com.au.

Table 1.1 below describes the composition of the Network by location with respect to length of mains. As indicated below, the assets used to service metropolitan Adelaide constitute the major part of the Network.

Table 1.1: Network Composition by Location as at 30 June 2010

Location	Km	%
Adelaide	7,112	93.0%
South East	201	2.6%
Whyalla	102	1.3%
Port Pirie	126	1.6%
Murray Bridge	32	0.4%
Nuriootpa	27	0.4%
Berri	19	0.2%
Other	26	0.3%
Total	7,645	1%

The Network is characterised by four pressure tiers - low, medium, high and transmission. The term 'transmission' in this context refers to distribution mains operating in the pressure range of 1,050 kPa to 1,750 kPa.

1.3 Interpretation

Terms used in this AAI have the same meaning as they have in the AA (see clause 2 of the AA).

In this document:

- Numerical values in tables may not tally due to arithmetic rounding
- A reference to opex is a reference to operating expenditure, and a reference to capex is a reference to capital expenditure
- A reference to the earlier AA period is a reference to the access arrangement period from 1 July 2006 to 30 June 2011.

In the AAI, unless the context otherwise requires, where a word or meaning is capitalised it has:

- the meaning given to that word or phrase in the National Gas Rules (NGR); or
- the meaning given to that word or phrase in the glossary contained in the AA.

2. PIPELINE SERVICES

2.1 Haulage Reference Services

The Haulage Reference Services for the AA period are:

- Demand Haulage Reference Service – this service provides for the forward haulage of Gas to Delivery Points (DPs) with an annual consumption that exceeds 10TJ per year;
- Commercial Haulage Reference Service – this service applies to all DPs that are not Demand DPs or Domestic DPs; and
- Domestic Haulage Reference Service – this service provides for the haulage of Gas to DPs where Gas is used typically for domestic purposes.

The Haulage Reference Services are the haulage Services that are likely to be sought by a significant part of the market during the AA period.

Refer to chapter 2 of the AER's final decision for further information.

2.2 Ancillary Reference Services

The Ancillary Reference Services for the AA period are:

- (a) Special Meter Reading – 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 Service;
- (b) Disconnection – installing locks or plugs at the Metering Installation of a Domestic DP in order to prevent the withdrawal of Gas at the DP;
- (c) Reconnection – restoring the ability to withdraw Gas at a Domestic DP, following previous Disconnection, i.e. the removal of any locks or plugs used to isolate supply, performance of a safety check and the lighting of appliances where necessary.

2.3 Non-Reference Services

Users may require services that are different from the Reference Services. Envestra will negotiate such services on a case-by-case basis. Where the same non-reference service is provided to more than one Network User, Envestra will not discriminate between Network Users.

The tariff for a Reference Service takes into account the corresponding service levels and business risks associated with providing the service in accordance with the agreed terms and conditions. Users are able to negotiate different service levels or different terms and conditions, and the delivery of such a service will be priced accordingly (as a Negotiated Service).

3. OPERATING EXPENDITURE

3.1 Forecast operating expenditure

The table below summarises the forecast operating expenditure (including debt raising costs) for the AA period.

Refer to chapter 8 of the AER's final decision for further information regarding the basis on which the opex forecast has been derived.

Table 3.1: Forecast Opex (\$m, 2010-11)¹

	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Operating & maintenance ^a	34.9	34.5	34.2	33.9	33.5	171.0
Admin & General	8.1	7.9	7.8	7.7	7.6	39.0
UAG	12.9	12.0	10.6	9.0	7.3	51.9
Network Development	7.4	6.9	7.0	7.3	7.0	35.5
Network Management Fee	5.3	6.3	7.2	7.4	7.5	33.7
Total opex	63.2 68.6	61.2 67.5	59.6 66.8	57.9 65.3	55.4 62.9	297.3 330.98
Debt raising costs	0.6	0.6	0.7	0.7	0.7	3.2
Total opex (inc. debt raising costs)	63.8 69.1	61.9 68.1	60.2 67.4	58.6 66.0	56.1 63.6	300.6 334.2

(a) Includes full retail contestability costs.

3.2 Escalators

The following table sets out the escalators to apply to Envestra in the AA period.

Table 3.2 Labour and Materials Escalators

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
EGW Labour	3.2%	1.5%	0.7%	0.2%	-0.4%	-1.3%
General Labour	4.5%	0.3%	-0.4%	-0.5%	-0.8%	-1.5%
N/W Materials	0%	0%	0%	0%	0%	0%
General Materials	0%	0%	0%	0%	0%	0%

¹ The figures in this table differ from those presented in the AER's final decision of 17 June 2011 due to the effect of the errors identified in the AER's further final decision of 7 July 2011.

Construction (capex only)	-	1.2%	1.2%	1.1%	0.2%	-0.7%
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Forecast costs were split into the above categories in accordance with an average of historical breakdown of spend where that data was available. Depending on the available data, the average was taken over a two or three-year period. For example, the historical opex spend on odourisation activities was split into respective labour and materials components for each of the last two years, and the average for each category used in splitting the forecast cost, with the relevant escalator then applied to each category. The same process was used in respect of the capex forecast. Where historical data was not available, component splits were made by reasonable estimation.

3.3 Operating expenditure in the earlier AA period

Information about operating expenditure in the earlier AA period can be found in Table 3.3 in the revised access arrangement information.

4. CAPITAL EXPENDITURE

4.1 Forecast capital expenditure

Table 4.1 summarises the forecast capital expenditure which complies with the NGR.

Table 4.1: Forecast capex for the AA period (\$m, 2010-11)

	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Mains replacement	19.4	48.2	48.5	48.7	48.3	213.1
Meter replacement	2.9	3.1	4.2	5.1	5.3	20.5
Augmentation	14.1	5.4	1.3	5.5	0.1	26.3
Telemetry	0.4	0.4	0.7	0.4	0.4	2.2
Regulators and valves	0.8	0.8	0.8	0.8	0.8	4.0
IT	3.8	2.0	2.7	2.0	0.4	10.8
Growth assets	45.5	30.6	28.6	27.8	30.3	162.8
Other distribution system	10.0	11.1	8.6	8.7	8.6	47.0
Other non-distribution system	2.5	1.3	1.3	0.9	0.9	6.9
Total capex	99.3	102.9	96.9	99.7	95.0	493.8

Refer to chapter 3 of the AER's final decision for further information on the basis and reasoning for the forecast capex.

4.2 Capital expenditure in the earlier AA period

Information about capital expenditure in the earlier AA period can be found in Table 3.5 in the revised access arrangement information.

5. CAPITAL BASE

5.1 Summary

The capital base at 1 July 2011 is \$1,023.9 million (\$ nominal) and is forecast to be ~~\$1,514.4~~ \$1,515.7 million (\$ nominal) at 30 June 2016 as shown below.

Table 5.1: Forecast capital base as at 30 June 2016

	\$m
Closing Value of Capital Base (nominal)	\$1514.4 \$1515.7
Closing Value of Capital Base (real \$2010-11)	\$1335.3 \$1336.4

5.2 Opening Capital Base for the earlier AA period

The 30 June 2006 closing capital base is \$815.9 million (in \$December 2005) and becomes the revised opening capital base for the earlier AA period.

This 1 July 2006 opening capital base of \$815.9 million (in \$December 2005) has been converted to a nominal amount as at 1 July 2006 using an inflation adjustment multiplier of 1.0149. This adjustment multiplier is based on half the change in the CPI from March 2005 to March 2006. The purpose of this conversion is to inflate the values which were expressed as at 31 December 2005 for six months of inflation.

Envestra's opening capital base as at 1 July 2006 is therefore \$828.0 million in nominal terms.

5.3 Opening capital base

The capital base is adjusted in accordance with rule 77(2) of the NGR.

The closing capital base for the earlier AA period is set out in table 5.2.

Table 5.2: Roll-forward of the Capital Base 2006-07 to 2010-11 (\$m, nominal)

	2006-07	2007-08	2008-09	2009-10	2010-11
Opening Capital Base	828.0	859.4	909.9	942.5	975.1
Less Depreciation	19.5	21.9	24.4	26.5	28.4
Plus Conforming Capital Expenditure	30.6	35.9	34.6	31.9	44.7
Plus Indexation	20.2	36.5	22.4	27.2	32.5
Closing capital base	859.4	909.9	942.5	975.1	1023.9

5.4 Projected Capital Base in the AA period

The projected capital base in the AA period has been determined by adjusting the closing value at 30 June 2011 for forecast capex, depreciation and inflation in the AA period. A summary table is presented below.

Table 5.3: Projected capital base for the AA period (\$m, nominal)

	2011-12	2012-13	2013-14	2014-15	2015-16
Opening capital base	1023.9	1128.1 1128.3	1227.4 1227.9	1321.3 1322.1	1419.2 1420.2
plus capital expenditure	105.3 105.6	112.0 112.3	108.1 108.3	114.1 114.3	111.4 111.7
add indexation	26.1	28.8	31.3	33.7	36.2
less depreciation	-27.3	-41.5	-45.5	-49.8	-52.4
less forecast disposals	-	-	-	-	-
less forecast redundant assets	-	-	-	-	-
Closing capital base	1128.1 1128.3	1227.4 1227.9	1321.3 1322.1	1419.2 1420.2	1514.4 1515.7

6. RATE OF RETURN

6.1 Introduction

This section sets out the rate of return to apply for the AA period.

6.2 Rate of Return

The rate of return on capital determined by the AER is based on the cost of equity plus the cost of debt weighted by the respective proportions of equity and debt in the benchmark capital structure. This is commonly referred to as the weighted average cost of capital (WACC).

The details of how the WACC parameters have been established are set out in the rate of return chapter 5 of the AER final decision. The input parameters and the calculated rate of return are summarised below:

Table 6.1: WACC Parameters

WACC Parameters	Estimate
Risk Free Rate	5.56%
Inflation Forecast	2.55%
Equity Beta	0.80
Market Risk Premium	6.00%
Debt Risk Premium	3.81% 4.67%
Cost of Equity	10.36%
Cost of Debt	9.37% 10.23%
Value of Imputation Credits	0.25
Gearing	60.00%
Benchmark Credit Rating	BBB+
Nominal vanilla WACC	9.77% 10.28%

6.3 Other Parameter Values

6.3.1 Gearing

The AER has applied a benchmark gearing of 60% debt for Envestra's regulated assets.

6.3.2 The Value of Imputation Credits

The AER has applied a value of 0.25 for the assumed utilisation of imputation credits, or gamma (γ). Refer to Section 7.5 for further information.

6.3.3 Inflation

The AER has estimated the annual rate of inflation to be 2.55% for the AA period.

6.3.4 Debt Raising Costs

The AER has approved an allowance of 9.5 basis points per annum as the benchmark level of debt raising costs in the operating expenditure forecasts.

6.4 Derivation of the WACC

The nominal vanilla WACC of 9.77% has been derived from the formula below. In this formulation of the WACC corporate taxes are dealt with in the forecast cash flows.

$$WACC = R_e \times \frac{E}{V} + R_d \times \frac{D}{V}$$

The cost of equity is calculated using the CAPM formula set out below:

$$R_e = R_f + \beta_e \times MRP$$

The cost of debt is calculated using the formula set out below:

$$R_d = R_f + DRP$$

where

R_e	10.36%, which is the risk adjusted post-tax cost of equity required by investors derived from the Capital Asset Pricing Model (CAPM)
E	40%, which is the benchmark level of equity expressed as a percentage of V
D	60%, which is the benchmark level of debt expressed as a percentage of V
V	Sum of assumed debt level plus assumed equity level ($V = D + E$)
R_f	5.56%, nominal risk free rate of return
DRP	3.81% 4.67%, debt risk premium
R_d	9.37% 10.23%, cost of debt ($R_f + DRP$)
MRP	6.00%, the market risk premium
β_e	0.80, the equity beta for the benchmark service provider

7. COST OF TAX

7.1 Introduction

A post-tax regulatory framework has been used to derive the revenue requirement for the Access Arrangement.

7.2 Calculating the Cost of Tax

The forecast cost of tax (FCT) for each year of the next AA period is calculated in accordance with the following formula:

$$FCT = (RTI_t \times STR_t)(1 - \gamma)$$

where:

RTI_t is an estimate of the regulatory taxable income for regulatory year t that would be earned by a benchmark efficient distributor as determined by the AER post-tax revenue model;

STR_t is the expected statutory tax rate for regulatory year t ; and

γ is the assumed utilisation of imputation credits.

The determination of RTI is based on the same inputs used to determine the regulatory revenue requirement. Specifically, RTI is calculated as the regulatory revenue requirement less operating expenditure that is deductible for tax purposes, tax depreciation and interest expense. The STR is set at 30 per cent while the value of imputation credits (γ or gamma) is set at 0.25.

The benchmark tax liability for Envestra is calculated as total tax payable (RTI multiplied by STR) adjusted for the value of imputation credits (gamma).

7.3 Setting the Tax Asset Value

The opening Tax Asset Base (TAB) was \$276.0 million (\$ nominal) as at 1 July 2011. The TAB is discussed in the AER's draft and final decisions.

7.4 Tax Losses Carried Forward

There was no tax loss carried forward.

7.5 Value of Imputation Credits (Gamma)

Gamma is the factor used to adjust tax payable for the value attributed to imputation credits. Gamma is the product of two components, known as "the distribution rate" (the proportion of created franking credits that are distributed to shareholders by attaching them to dividends) and "theta" (the value to the relevant shareholder of each franking credit that is distributed to them).

In the regulatory context, the higher (lower) the value of gamma the lower (higher) the revenue and cash flow available to the regulated business. Consequently, the value of gamma affects the revenue and cash flow available to support the business's operations and credit rating, and to provide the required return to its investors.

A gamma value of 0.25 has been adopted, consistent with the decision of the Australian Competition Tribunal.

7.6 Benchmark Cost of Tax

The cost of tax calculation, applying the approach and parameters set out in this section, is shown in table 7.1.

Table 7.1: Benchmark Cost of Tax Calculation, 2011-12 to 2015-16 (\$m, nominal)²

	2011-12	2012-13	2013-14	2014-15	2015-16
Total Revenue	187.7 198.8	201.2 213.8	211.4 225.8	220.5 235.7	-228.8 244.8
less opex	65.4 70.9	65.1 71.6	65.0 72.7	64.8 72.9	63.6 72.1
less interest	57.6 62.8	63.4 69.3	69.0 75.4	74.3 81.1	79.8 87.2
less depreciation	14.9	20.9	26.9	33.0	39.2
less tax losses carried forward	0.0	0.0	0.0	0.0	0.0
Taxable Income	49.8 50.1	51.8 52.1	50.5 50.7	48.4 48.6	46.2 46.3
Tax payable	14.9 15.0	15.5 15.6	15.1 15.2	14.5 14.6	13.9
Value of Imputation Credits	3.8	3.9	3.8	3.6	3.5
Benchmark Cost of Tax	11.20 11.3	11.65 11.7	11.35 11.4	10.90	10.40

² The figures in this table differ from those presented in the AER's final decision of 17 June 2011 due to the effect of the errors identified in the AER's further final decision of 7 July 2011.

8. INCENTIVE MECHANISM

8.1 Summary

This section sets out the incentive mechanism to apply for the access arrangement period as well as the carryover amounts arising from the earlier access arrangement period.

The relevant parts of Envestra's earlier access arrangement are as follows.

Section 5.1.2 sets out the guiding principles for incentive arrangements that are to apply to cost-related efficiencies achieved by Envestra. Specifically, this section states that:

- (1) The incentive arrangements that are to apply to cost-related efficiencies achieved by Envestra, and the adjustment to preserve the incentive to meet efficient growth in demand, are a combination of:
 - a tariff basket form of price control; and
 - the carryover that would result in 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 (being the net amount of the efficiency gains (or losses) relating to capital and operating expenditure) earned in one year of the earlier access arrangement period would be added to the Total Revenue and carried forward into the access arrangement period if necessary, until it has been retained by Envestra for a period of five years.
- (2) There will be no claw-back of gains that have already been made (or losses that have been incurred) during the earlier access arrangement period. However, this principle should not be construed as a constraint on the operation of the efficiency carryover mechanism.
- (3) Subject to clause 5.1.3(2), efficiency gains (or losses) related to capital expenditure in any year will reflect the difference between the actual expenditure and the original forecast (or benchmark) expenditure level, as follows:

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

where:

WACC is the prevailing regulatory WACC, expressed in pre-tax terms.

- (4) Subject to clause 5.1.3(1), for operating expenditure the annual efficiency gain (or loss) in Financial Year t will be calculated as:

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

where:

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

- (5) 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.
- (6) Any other activity that Envestra and the Regulator agree to exclude from the operation of the efficiency carryover mechanism will be so excluded.
- (7) 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.

Section 5.1.3 sets out the mechanism for carrying over efficiency gains. Specifically, this section states that:

- (1) For operating expenditure, it will be assumed that Envestra does not achieve more than the forecast productivity gain between the penultimate and last years of the earlier access arrangement period. As a result, if Envestra makes an efficiency gain in the last year of the earlier access arrangement period, there would be no carryover in respect of that year.
- (2) For capital expenditure, it will be assumed that the actual expenditure in the last year of the earlier access arrangement period was equal to the forecast for that year. As a result, if Envestra makes an efficiency gain in the last year of the earlier access arrangement period, there will be no carryover in respect of that year. However, the regulatory asset base (and thus the return on assets) would be higher than otherwise over the next period. This would imply that the "return on assets" included in the revenue benchmarks would be higher, and provide Envestra with precisely the same reward as the carryover had the expenditure level in the last year been known.
At the following review, the regulatory asset base would be adjusted to take account of the difference between the forecast and actual capital expenditure for the last year of the earlier access arrangement period.
- (3) There will be no adjustment to the original expenditure benchmarks against which the assessment of the efficiency gains in excess of the forecast would be measured, with the following 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.
- (4) To the extent that the application of this clause results in a positive efficiency carryover at the end of the earlier access arrangement period, the reward earned in the earlier access arrangement period is to be added to the Total Revenue and carried forward into the access arrangement period, until it has been retained by Envestra for a period of five years, in accordance with this clause.

To the extent that the application of this clause results in a negative efficiency carryover amount, the treatment of that amount (i.e. whether it will be carried over) will be determined by the Regulator at the time of the next review.

8.2 Incentive Mechanism Outcomes for the earlier access arrangement period

The incentive mechanism carryover amounts from the earlier access arrangement period are set out below. These carryover amounts have been carried forward into the access arrangement period in accordance with section 5.1.2 of the earlier access arrangement and r. 98(2) of the NGR.

Capex

Efficiency gains (losses) and carryover amounts related to capex in the earlier access arrangement period are set out in table 8.1. For further details refer to chapter 7 of the AER's final decision.

Table 8.1: Capex efficiency gains (losses) and carryover amounts for the earlier access arrangement period

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Net Capex Benchmark \$m (Dec 05)	42.0	44.0	37.4	35.5	35.9					
Adjustments to Capex \$m (Dec 05) [Specified Event]	-	-	4.5	3.8	3.8					
Adjusted Capex Benchmark \$m (Dec 05)	42.0	44.0	41.9	39.3	39.7					
Capex Actual \$m (MOD)	30.2	35.4	34.1	31.4						
Capex Actual \$m (Dec 05)	29.3	33.6	31.0	27.9	39.7					
Capex Underspend \$m (Dec 05)	12.6	10.5	10.9	11.4	-					
Capex Incremental Gain \$m (Dec 05)	1.0	0.8	0.9	0.9	-					
Carry-Over - Year 2006-07		1.0	1.0	1.0	1.0	1.0				
Carry-Over - Year 2007-08			0.8	0.8	0.8	0.8	0.8			
Carry-Over - Year 2008-09				0.9	0.9	0.9	0.9	0.9		
Carry-Over - Year 2009-10					0.9	0.9	0.9	0.9	0.9	
Carry-Over - Year 2010-11						-	-	-	-	-
Capex Efficiency Carry-Over \$m (Dec 05)						3.6	2.6	1.8	0.9	-

Opex

Efficiency gains (losses) and carryover amounts related to opex in the earlier access arrangement period are set out in table 8.2. For further details refer to chapter 7 of the AER's final decision.

Table 8.2: Opex efficiency gains (losses) and carryover amounts for the earlier access arrangement period

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Benchmark \$m (Dec 05)	50.4	50.6	50.5	50.9	50.9					
Adjustments to O&M \$m (Dec 05) (Licence Fee)	-	0.6	0.5	0.5	0.4					
Adjusted O&M Benchmark \$m (Dec 05)	50.4	51.3	51.0	51.3	51.3					
O&M Actual including NMF \$m (MOD)	48.8	52.2	54.0	57.0						
NMF \$m (MOD)	3.9	4.1	4.3	4.3						
O&M Actual excluding NMF \$m (MOD)	45.8	48.1	49.7	52.6						
O&M Actual \$m (Dec 05)	44.5	45.6	45.2	46.7	46.7					
O&M Underspend \$m (Dec 05)	5.9	5.6	5.8	4.6	4.6					
O&M Incremental Gain \$m (Dec 05)	5.9	(0.3)	0.2	(1.2)	-					
Carry-Over - Year 2006-07		5.9	5.9	5.9	5.9	5.9				
Carry-Over - Year 2007-08			(0.3)	(0.3)	(0.3)	(0.3)	(0.3)			
Carry-Over - Year 2008-09				0.2	0.2	0.2	0.2	0.2		
Carry-Over - Year 2009-10					(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	
Carry-Over - Year 2010-11						-	-	-	-	-
O&M Efficiency Carry-Over \$m (Dec 05)						4.6	(1.3)	(1.0)	(1.2)	-

8.3 Incentive Mechanism for the access arrangement period

The AER approved a rolling carryover incentive mechanism which will operate during the access arrangement period in accordance with r. 98 of the NGR. Details regarding the operation of this incentive mechanism are set out in section 5 of the access arrangement. For further information regarding the basis on which the incentive mechanism was approved for the AA period refer to chapter 7 of the AER's final decision.

9. TOTAL REVENUE

Envestra's total revenue requirement was determined using a building block approach (in accordance with Rule 76 of the NGR).

The building block components are:

- a return on the projected capital base.
- depreciation of the projected capital base.
- a forecast of opex.
- efficiency carryover amounts.
- a forecast of the Cost of Tax.

Envestra's total required revenues for each year of the AA period are calculated using the Post Tax Revenue Model and summarised in the following table.

Table 9.1: Annual revenue requirement and X factors (\$m, nominal)³

	2011-12	2012-13	2013-14	2014-15	2015-16
Return on capital	100.0 105.3	110.2 116.0	118.9 126.3	129.0 135.9	138.6 146.0
Return of capital	1.2	12.7	14.2	16.2	16.2
plus operating and maintenance	65.4 70.9	65.1 71.6	65.0 72.7	64.8 72.9	63.6 72.1
plus benchmark tax liability	11.2 11.3	11.7	11.4	10.9	10.4
Carryover amounts	10.0 10.2	1.6 1.8	1.0 1.1	-0.4 -0.3	0.0
Revenue requirement	187.7 198.8	201.2 213.9	211.4 225.7	220.5 235.7	228.8 244.8
less: ancillary services	1.8	1.8	1.9	1.9	2.0
Total haulage services revenue	186.0 197.1	199.3 212.0	209.5 223.8	218.6 233.8	226.9 242.8
Smoothed haulage services revenue	172.2 172.1	191.1 204.4	210.7 240.7	231.3 247.0	242.4 254.9
X factors					
Haulage services (%)	-12.44	-8.00 -15.83	-8.00 -15.83	-7.00 0.00	-1.75 0.00
Ancillary Services (%)	0.00	0.00	0.00	0.00	0.00

³ The figures in this table differ from those presented in the AER's final decision of 17 June 2011 due to the effect of the errors identified in the AER's further final decision of 7 July 2011.

10. DEMAND FORECASTS

10.1 Network Usage for the earlier access arrangement period

Distribution network customer numbers by tariff class, minimum, maximum and average demand figures over the earlier access arrangement period are set out in Table 10.1 below. These figures are based on actual demand for financial years 2006-07 to 2008-09, and forecast demand for financial years 2009-10 to 2010-11.

Table 10.1: Network customer numbers, minimum, maximum and average demand over the earlier AA period

	2006-07	2007-08	2008-09	2009-10F	2010-11F
Tariff R customer numbers	364805	371503	378249	385816	393155
Tariff C customer numbers	9434	9603	9772	9812	9930
Tariff D customer numbers	150	151	151	146	146
Total customer numbers	374389	381257	388172	395773	403231
Minimum Demand (TJ/d)	59.0	61.7	64.5	57.4	60.1
Maximum Demand (TJ/d)	162.5	160.0	154.0	150.2	146.0
Average Demand (TJ/d)	106.1	104.4	105.1	102.0	101.5

10.2 Forecast customer numbers and demand

Forecast customer numbers and demand by tariff class for the access arrangement period are set out in Table 10.2 below.

Table 10.2 Forecast customer numbers and demand for the AA period

	2011-12	2012-13	2013-14	2014-15	2015-16
Tariff R customer numbers	400952	407857	415073	422642	430824
Tariff R consumption (TJ)	7675 7668	7565 7528	7442 7363	7348 7272	7282 7231
Tariff V customer numbers	10098	10329	10561	10641	10772
Tariff V consumption (TJ)	3197 3196	3294 3286	3280 3264	3308 3283	3366 3345
Tariff D customer numbers	149 145	151 147	150 146	151 147	153 149
Tariff D MDQ (GJ)	68766 68754	68528 68437	67174 66924	67455 67059	68327 67935

11. REFERENCE TARIFFS

11.1 Introduction

Envestra recovers its regulated revenue by charging tariffs to customers for Haulage Reference Services and Ancillary Reference Services. The Haulage Reference Tariffs apply to three categories of customers:

1. Residential Volume Tariff (Tariff R);
2. Commercial and small industrial Volume Tariff (Tariff C); and
3. Demand Tariffs (Tariff D).

Customers are assigned to each of these tariffs based on the type of connection (ie residential/non-residential) and their usage profile (i.e. Tariff C versus Tariff D). The charging parameters for the Volume Tariffs (Tariffs R and C) are structured as "declining block tariffs" and also comprise a supply charge. The same price applies irrespective of geographic location.

Tariff D is also structured as a "declining block tariff", however, the quantity charged reflects a capacity signal, the Maximum Daily Quantity (MDQ) agreed between Envestra and the customer. Tariff D is also location specific, with different rates applying dependent on the geographical zone in which a Delivery Point is situated.

11.2 Haulage Reference Service Tariff Classes

Table 11.1 details the South Australian Tariff Classes. Tanunda represents a new tariff region for residential, commercial and demand tariffs.

Table 11.1 – South Australian Tariff Classes

Tariff Class	Haulage Reference Service	Geographical Zone
Tariff R – Residential	Domestic	N/A
Tariff C – Commercial	Commercial	N/A
Tariff D – Northern	Demand	Adelaide North
Tariff D – Central	Demand	Adelaide Central
Tariff D – Southern	Demand	Adelaide South
Tariff D – Peterborough	Demand	Peterborough
Tariff D – Port Pirie	Demand	Port Pirie
Tariff D – Riverland	Demand	Riverland
Tariff D – South East	Demand	South East
Tariff D – Whyalla	Demand	Whyalla
Tariff D - Tanunda	Demand	Tanunda

11.2.1 Volume Tariff Classes – Tariff R (Residential) and Tariff C (C&I)

Volume Tariff Classes comprise two categories – Tariff R (Residential) and Tariff C (Commercial). Tariff R relates directly to the Domestic Haulage Reference Service while Tariff C relates directly to the Commercial Haulage Reference Service. Each constitutes its own reference tariff.

Both Tariff R and Tariff C comprise the following charging parameters:

- Supply charge (in dollars per day); and
- Banded actual volume charges (in dollars per GJ per day).

These are discussed in turn below.

Supply Charge

The supply charge is a fixed daily charge that applies to all Delivery Points. Different supply charges apply to Domestic and Commercial Delivery Points, and are designed to:

- provide signals to customers about their connection costs, having regard for the size, location and type of network user; and

- inform a customer's decision to connect to Envestra's network by providing a constant and foreseeable cost.

Banded Actual Volume Charges

Both Tariff R and Tariff C consist of a number of volumetric consumption charging parameters (in dollars per GJ per day). These charging parameters have been designed to recover any residual allocated costs that are relative to the "size" of the customer but not specifically their network demand.

Tariff R will shift to three volumetric consumption bands in the AA Period. Tariff R currently has two volumetric consumption bands.

- a charge for the first 0.0274GJ of Gas Delivered (\$/GJ);
- a charge for the next 0.0219GJ of Gas Delivered (\$/GJ); and
- a charge for Additional Gas Delivered (\$/GJ).

Tariff C will maintain its current four volumetric consumption bands.

- a charge for the first 0.9863GJ of Gas Delivered (\$/GJ);
- a charge for the next 4.274GJ of Gas Delivered (\$/GJ);
- a charge for the next 11.178GJ of Gas Delivered (\$/GJ); and
- a charge for Additional Gas Delivered (\$/GJ).

Tariff R and Tariff C are structured as "declining block tariffs". The volumetric charging parameters apply to the actual gas consumed during the read cycle. The declining block structures reflect the declining unit costs to Envestra of customers increasing their gas consumption.

11.2.2 Demand Tariff Classes – Tariff D

The structure of the Demand Tariff Classes consist of a number of banded Maximum Daily Quantity (MDQ) charging parameters (in dollars per GJ of MDQ per day), with the first band effectively representing a fixed charge as a minimum chargeable MDQ applies. Consistent with the volume tariffs, Tariff D is a "declining block tariff", whereby the charges become smaller as MDQ increases.

The MDQ charges are capacity charges intended to reflect the demands on the network assets. The structure provides economic signals to customers of a preferred usage profile. The locational aspect of Tariff D reflects the cost of service and incentivises customers to connect to these parts of the network that will impose the least costs on Envestra and customers.

For each of the Demand Tariff classes in the Adelaide Region (Northern, Central and Southern), Tariff D contains four MDQ bands as follows:

- MDQ of 50GJ or less;
- next 50GJ of MDQ;
- next 900GJ of MDQ; and
- additional GJ of MDQ

For each of the Demand Tariff classes in the other South Australian Regions, Tariff D contains five MDQ bands as follows:

- MDQ of 50GJ or less;
- next 50GJ of MDQ;
- next 400GJ of MDQ;
- next 500GJ of MDQ; and
- additional GJ of MDQ

11.3 Ancillary Reference Services

Reference Tariffs for Ancillary Reference Services will be maintained in real terms over the AA period. The tariffs reflect a continuation of charges in the earlier AA period, with increases reflecting inflation only.

11.4 Avoidable and Stand-Alone Costs

The tariffs are between stand alone and avoidable costs. Refer to chapter 11 of the AER's final decision for discussion on this matter.

11.5 Long Run Marginal Costs

Envestra's tariffs are consistent with rule 94(4) of the NGR, which requires long run marginal costs to be taken into account when designing tariffs. See chapter 11 of the AER's final decision for an analysis of this issue.

11.6 Grouping of Reference Tariffs on an Economically Efficient Basis

Envestra has developed its tariff classes in recognition of the need to group together network users on an economically efficient basis. See chapter 11 of the AER's final decision for further information on this issue.

11.7 Transaction Costs

Envestra has taken into account transaction costs when determining tariffs, charging parameters and tariff classes.

11.8 Response to Price Signals

Envestra has developed its tariffs and the charging parameters that constitute each tariff in such a manner that customers are able or likely to respond to price signals. The way in which the Tariff D, Tariff R and Tariff C tariffs, and their associated charging parameters, have been developed is set out below.

11.8.1 Demand Tariffs

Tariff D has been structured so that customers can respond to pricing signals whilst providing certainty to customers on the amount of their annual charge. This is because the Tariff D tariffs are structured as "declining block tariffs" based only on an agreed MDQ, not the actual consumption of gas consumed on any given day. Consequently, the Tariff D tariff structure incentivises customers to manage their actual gas consumption within the constraints of their agreed MDQ. This promotes better capacity utilisation of Envestra's network.

11.8.2 Domestic and Commercial Tariffs

The variable nature of the volume charge for Tariff R and Tariff C implies that customers are able to and can respond to price signals. Furthermore, the Tariff R threshold that defines the step between the first, second and third tariff bands has been set with regard to the spread of appliance penetrations across domestic network users in South Australia.

Tariff R and Tariff C are structured as declining block tariffs, which provides a strong incentive for customers to increase consumption, thereby shifting consumption towards the higher tariff bands where the volumetric rates are lower.

Envestra's proposed Reference Tariffs for 2011-12 are set out in Annexure B of the AA.

12. TARIFF VARIATION MECHANISM

The formulae for annual routine adjustment of tariffs are described in section 4.4 of the AA and set out in Annexure E of the AA. Those formulae are unchanged from those that currently apply.

12.1 Haulage Reference Services

12.1.1 Tariff Variation Mechanism

A tariff basket annual tariff variation mechanism in the form of a weighted average price cap (WAPC) formula applies to haulage reference services in the AA period.

The Tariff Control Formula is detailed in Box 1 and is consistent with the formula applied in the earlier AA period, other than updated values of X.

BOX 1 TARIFF CONTROL FORMULA

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

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

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 -15.83 for 20012/13;

X_t is -0.08 -15.83 for 20013/14;

X_t is -0.07 0.00 for 20014/15;

X_t is -0.0175 0.00 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^j is the proposed component j of Reference Tariff i in year t ;

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

q_{t-2}^j 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)).

The Rebalancing Control Formula is detailed in Box 2.

BOX 2 REBALANCING CONTROL FORMULA

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

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~~ -15.83 for 20012/13;

X_t is ~~-0.08~~ -15.83 for 20013/14;

X_t is ~~-0.07~~ 0.00 for 20014/15;

X_t is ~~-0.0475~~ 0.00 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.

12.1.2 Tariff Variation Process

Envestra is required to submit an annual reference tariff proposal to the AER for approval at least 50 business days prior to the relevant financial year in which the proposed tariffs are to apply.

12.2 Ancillary Reference Services

Reference Tariffs for Ancillary Reference Services will increase by inflation (CPI) in each year of the AA period.

12.2.1 Ancillary Reference Tariff Variation Mechanism

Reference Tariffs for Ancillary Reference Services will be varied annually 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 $t-1$.

12.2.2 Ancillary Tariff Variation Process

The tariff variation process will follow Envestra's Haulage Reference Tariff Variation Process.

12.3 Cost Pass Through Events and Process

In accordance with Rule 97(c) of the NGR, Envestra has proposed a number of defined events or Cost-Pass Through Events for the AA period. These events are defined in section 4.5 of the AA. The AER has approved the events, and the process for assessment of Cost Pass Through Events in chapter 12 of its final decision for Envestra.

The process for assessment of Cost Pass Through Events is defined in section 4.6.2 of the AA.

12.3.1 Materiality Threshold

All Cost Pass Through Events are subject to a materiality threshold. The threshold is defined in section 4.5 of the AA. Refer to chapter 12 of the AER's final decision for further discussion of the materiality threshold.

13. NON-TARIFF COMPONENTS

13.1 Capacity Trading

The capacity trading policy is outlined in section 7 of the AA. Refer to chapter 13 of the AER's final decision for further information.

13.2 Network Extensions and Expansions

The extensions and expansions policy is outlined in section 8 of the AA. Refer to chapter 13 of the AER's final decision for further information.

13.3 Terms and Conditions

13.3.1 Overview of Terms and Conditions

The terms and conditions (T&C) applicable to the provision of Reference Services are dealt with in section 6 of the AA. The detailed T&C are contained in Annexure G to the AA.

The following summary of the T&C may assist Prospective Users in understanding aspects of the terms of access:

- (1) Pursuant to section 6 of the AA, it is a condition that a Prospective Network User enter into an Agreement with Envestra for the provision of any Network Service. The term 'Agreement' is defined in the AA and means the entering into of a binding contractual arrangement between Envestra and a Network User. Prior to entering into an Agreement, a Prospective Network User must satisfy Envestra that it:
 - has the necessary financial capacity to meet its obligations to Envestra; and
 - has adequate arrangements in place to ensure it can keep Gas deliveries into and out of the Network in balance.
- (2) Annexure F allows for the details pertaining to the specific circumstances of the parties entering into the agreement.
- (3) Annexure G sets out the terms and conditions that are to apply, as a minimum, to the provision of each Reference Service. It describes terms and conditions which are applicable to both Haulage and Ancillary Reference Services (Part IV of the terms and conditions), as well as those terms and conditions which apply specifically to each type of Reference Service (Part II – Haulage Reference Services, and Part III – Ancillary Reference Services).
- (4) The clauses applying to Haulage Reference Services (Part II) address matters including:
 - procedures for classifying Delivery Points;
 - meter accuracy and reading;
 - minimum Gas quality and delivery pressures;

- possession of Gas and responsibility;
 - warranties and title to Gas; and
 - supply curtailment.
- (5) Part III applies only to the Ancillary Reference Services. This part only consists of one clause because the Retail Market Procedures deal extensively with the obligations surrounding these services.
- (6) (Part IV) applies both to Haulage Reference Services and Ancillary Reference Services. These clauses address matters including:
- invoices and payment arrangements;
 - procedures for determining delivered quantities;
 - termination;
 - liability and indemnities;
 - Force Majeure;
 - assistance;
 - access to premises;
 - confidentiality;
 - notices;
 - assignment by the Network User;
 - amendment of the Agreement; and
 - other miscellaneous provisions.

The obligations, duties and responsibilities of Envestra and any Network User described in the T&C are in addition to those established in law or by any relevant regulatory instrument.