

# Long Form Use of System Agreement

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## Long Form Use of System Agreement - Victoria

Distributor

**Enwave Victorian Networks Pty Ltd**  
(ABN 69 163 231 696)

Network User

**<Insert Name Here>**  
(**<Insert ABN Here>**)

Dated

**<Month Year>**

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THIS AGREEMENT is dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_

BETWEEN

**Enwave Victorian Networks Pty Ltd**  
ABN: 69 163 231 696

AND

<Insert Name Here>  
<Insert ABN Here>

## BACKGROUND

- A. Enwave Victorian Networks Pty Ltd (EVN) will construct and operate the Network providing gas distribution services.
- B. The Network User is a Gas Retailer that wishes EVN to supply gas to Consumers on its behalf. The Network User has agreements or intends to enter into agreement to supply Consumers with gas.
- C. Once the Network has been commissioned and EVN has been granted licences to construct and operate the Network, EVN agrees to accept gas from the Network User and distribute gas on behalf of the Network User to Consumers across the Network on the terms and conditions set out in this Agreement.

## WITNESSES AS FOLLOWS:

### 1. INTERPRETATION

In this deed unless the context indicates otherwise:

#### 1.1 Definitions:

**Acceptable Credit Rating** means a credit rating of:

- a) at least BBB- (Standard & Poor's Rating Group) or equivalent as applying at the Commencement Date; or
- b) such other rating as EVN may, in its sole discretion determine from time to time;

**Agreement** means this Agreement, including the Schedules, as amended from time to time in accordance with the provisions of this Agreement;

**Allocation** means the process of attributing quantities to persons with an interest in any gas at a shared Receipt Point;

**Allocation Agent** means the person responsible for Allocation in respect of particular Receipt Point;

*"Safety by choice – not by chance"*

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**Allocation Agreement** means an agreement between the users of a shared Receipt Point and their appointed Allocation Agent which:

- a) either:
  - (i) sets out the method of Allocation and terms of appointment
  - (ii) requires the parties to be bound by the Victorian Gas Retail Market Procedures or codes and rules as may be applicable; and
  - (iii) is expressed to be also for the benefit of each other user of that Receipt Point who is party to an Allocation Agreement in respect of that Receipt Point (so that the agreement to be bound is enforceable by any such other user); or
- b) in respect of which the Gas Code or Gas Regulation sets out the method of Allocation and terms of appointment;
- c) any appropriate allocation arrangement which may be agreed between EVN and the Network User;

**Billing Period** has the meaning given to that term in clause 1.3 of Schedule 3;

**Charges** means the charges for the services provided by EVN under this Agreement, calculated in accordance with Schedule 4;

**Commencement Date** means the commencement date set out in Schedule 1;

**Commission** means the Essential Services Commission under the Essential Services Commission Act 2001 (Vic);

**Consumer** means a person whose Consumer's Equipment is connected to the Network for the purpose of receiving delivery of gas and who is a party to an agreement for the supply of gas from the Network User;

**Consumer's Equipment** means any Fittings and Metering Equipment of a Consumer that form part of a system for receiving gas from the Network at a Delivery Point and conveying gas from that Delivery Point to where the gas may be consumed (including any Fittings owned or used by the Consumer individually or jointly with any other person, but does not include Fittings belonging to EVN);

**Consumer Information Sheet** means a form containing the information required under clause 1.1 of schedule 5;

**Consumer's Premises** means

- a) the land and buildings owned or occupied by a Consumer;
- b) any land over which a Consumer has an easement or right to pass Fittings; and
- c) any Fittings owned by a Consumer to convey gas from a Delivery Point to the locations at which gas is consumed;

**Credit Support** means credit support provided by the Network User in accordance with the credit support requirements of Schedule 2;

**Customer Transfer and Reconciliation Code** (CTR Code) means the Customer Transfer and Reconciliation Code as approved or amended by the Commission from time to time;

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**Default Interest** means interest on the amount payable at the rate per annum equal to 5% above the Interest Rate from the due date for payment until the date of payment of that amount to the relevant party (both before and after judgment) accruing on a daily basis and capitalised every 30 days;

**Delivery Point** means a point at which gas leaves the Network and is supplied to a Consumer being the downstream side of the isolation valve of the Metering Equipment used for that Consumer (unless specified otherwise on a Consumer Information Sheet);

**Disconnection Event** means any of the following:

- a) an occurrence or circumstance that may endanger persons or property;
- b) an occurrence or circumstance that may adversely affect the supply of gas;
- c) the Consumer fails to grant Rights of Access contained in respect of that Delivery Point;
- d) if the Consumer's Equipment does not comply with the Network Connection Requirements
- e) an Event of Default occurring in relation to the Network User; or
- f) termination of this Agreement;

**Energy Retail Code** means the "Energy Retail Code" promulgated under the Gas Industry Act;

**Event of Default** means any of the following:

- a) where a party fails to pay the other party any amount due under this Agreement and the default is remedied within 10 working days after notice has been given of such non-payment by the non-defaulting party;
- b) where there is a material failure of a party's obligations under this Agreement and the failure is not remedied to the reasonable satisfaction of the other party within 30 working days after notice from the other party of the failure and request requiring it to be remedied;
- c) where a party fails on three or more occasions in any period of 12 months to meet an obligation under this Agreement within the time specified then, whether each individual failure is in itself material or not, where all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this Agreement or, in the case of EVN, any agreement with any other person; or
- d) where a party:
  - (i) has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
  - (ii) is deemed or presumed to be unable to pay its debts as they fall due, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 459 of the Corporations Act 2001; or
  - (iii) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

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**EVN** means Enwave Victorian Networks Pty Ltd and its successors and assigns;

**EVN's Agent** means a person or organisation with whom EVN has entered or proposes to enter into an agreement to provide services for or on behalf of EVN;

**EVN's Equipment** means the Fittings and Metering Equipment belonging to EVN or EVN's Agent which are from time to time installed in, over, or upon a Consumer's Premises (and, for the avoidance of doubt, all equipment within the Consumer's Premises that is integral to the operation of the Network and is on the Network side of the Delivery Point is the property of EVN);

**Fittings** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance, measurement, or use of gas;

**Force Majeure** means an event or circumstance beyond the reasonable control of either party, which results in or causes the failure of that party to perform any of its obligations under this Agreement. Such events may include, but are not limited to:

- a) Acts of God;
- b) strikes, lockouts, or other industrial disturbances;
- c) acts of a public enemy, declared or undeclared war, threats of war, terrorist acts, blockades, revolution, riots, insurrection, civil commotion, public demonstrations, sabotage, acts of vandalism, epidemics or disease;
- d) acts of animals, lightning, fire, storms, floods, earthquakes, landslides, washouts, landslips, accumulation of snow or ice, lack of water arising from weather or environmental restrictions, geomagnetically induced currents;
- e) lack of adequate fuel resources, accidental collisions, explosions, acts of aircraft, motor vehicles or trains, faults or failures of any plant, apparatus or equipment;
- f) the coming into force or expiry of any statute or exercise of a statutory power of decision; and
- g) the partial or entire failure of supply or availability of gas to the Network, or partial or entire failure of the Network,

provided that lack of funds will not be considered a Force Majeure event;

**Gas** means natural gas which meets the Gas Specification;

**Gas Distribution Licence** means the licence issued to EVN Pty Ltd on the 19 December 2016 as amended from time to time;

**Gas Distribution System Code** means the gas code referenced under the Gas Industry Act;

**Gas Industry Act** means the Gas Industry Act 2001 (Victoria);

**Gas Measurement Standard** means NZS 5259: 2004 published by the Standards Association of New Zealand as amended or replaced from time to time;

**Gas Specification** means the Specification for General Purpose Natural Gas AS4564: 2011, as amended or replaced from time to time;



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**Gas Supply Agreement** means an agreement with the owner and operator of the Transmission System supplying Gas to the receiving stations in each town for the supply of gas to the Receipt Points (refer to clause 4.2.2 and 4.2.3);

**GJ** means one gigajoule of Gas;

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in Australia in the same type of undertaking under the same or similar circumstances having regard to common industry practice in Australia at the time;

**Governmental Authority** includes any government or any governmental, semi-governmental or judicial entity, agency or authority (including a local authority), or legislative body, or any person or body charged with the administration of any law;

**GST** means goods and services tax payable pursuant to the GST Act or any other tax, duty or impost imposed on the provision of services of the kind provided under this Agreement from time to time;

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999;

**Interest Rate** means, in respect of any given day, the overnight cash rate applicable in respect of that day as published in the Australian Financial Review, and if at any time the rate ceases to be published then such other rate per annum as the parties may agree is a reasonable substitute, or failing agreement, the rate determined by a nominee of the Chairman of the Victorian Branch of the Institute of Chartered Accountants;

**Interruption Event** means any of the following:

- a) EVN wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network;
- b) an occurrence or circumstance that may endanger persons or property;
- c) an occurrence or circumstance that may adversely affect the supply of gas;
- d) where EVN reasonably anticipates that the supply of gas across the Network is or will be reduced, impaired or interrupted;
- e) where insufficient gas is delivered or will be available for delivery to allow the Network to safely operate;
- f) where Non-Specification Gas, unodorised, insufficiently odorised or excessively odorised gas enters the Network unless EVN has previously agreed to accept Non-Specification Gas, unodorised, insufficiently odorised or excessively odorised gas;
- g) where the Maximum Hourly Quantity applicable to a Delivery Point is exceeded; and
- h) for any other purpose which in EVN's reasonable opinion and in accordance with Good Industry Practice requires the interruption or reduction in the conveyance of gas.

**Manifest Error** means an error in the amount of an invoice arising from:

- a) an obvious arithmetic error in calculating the Charges;
- b) the invoicing of Charges where there is no doubt that those Charges have already been paid by the Network User;

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- c) the Network User being charged in respect of a Delivery Point where EVN's records indicate the Network User has not received gas at that Delivery Point during the period to which the invoice relates; or
- d) charges being allocated to a Delivery Point on the basis of it being a particular type of connection where there is no doubt that the Delivery Point is a different type of connection;

**Maximum Hourly Quantity** means in respect of any nominated gas Delivery Point, the maximum hourly quantity (measured in standard cubic metres per hour [scmh]) set out in a Network connection request accepted by EVN under clause 1 of schedule 5 (or as otherwise agreed from time to time with EVN);

**Metering Equipment** means equipment for the purpose of measuring the quantity of gas conveyed through the Network to a Delivery Point;

**MIRN or Meter Identification Registration Number** means the unique numeric identifier assigned to a Delivery Point by EVN;

**Network** means the pressurised gas distribution system (including pipes and associated plant, equipment and other facilities (including meters)) used in the conveyance of gas by EVN to Consumers;

**Network Connection Requirements** means EVN's written standards for connection to the Network as issued (and as may be amended from time to time) by EVN;

**Network User** means the party specified as the Network User in Schedule 1 and its successors and permitted assigns;

**Non-Specification Gas** means gas which does not meet the Gas Specification or does not comply in any other respect with the requirements of clause 10.3.1;

**Projected Annual Quantity** means the quantity of gas which the Network User, in good faith, expects to off-take from the Network at any nominated Delivery Point in any consecutive 12 month period;

**Prudential Requirements** means the prudential requirements set out in Schedule 2;

**Receipt Points** means the points where gas enters into the Network;

**Retail Market Procedures** means the Retail Market Procedures (Victoria) issued by AEMO in accordance with the National Gas Rules;

**Rights of Access** means rights for EVN, its employees, contractors, agents and invitees:

- a) of safe and unobstructed access to and within a Consumer's Premises; and
- b) of reasonable use of facilities and amenities available to the Consumer and ordinarily used in association with EVN's Equipment at the Consumer's Premises (including, without limitation, the provision of suitable space at the Consumer's Premises for the safe and secure housing of EVN's Equipment which is satisfactory to EVN);

for the purposes of:

- c) installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing any of EVN's Equipment at or from the Consumer's Premises;

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- d) ascertaining the cause of any interference to the quality of services being provided by EVN to any person;
- e) inspecting the Consumer's Equipment or any Metering Equipment to assess compliance with this Agreement;
- f) preventing danger or damage to persons or property;
- g) connecting or disconnecting the supply of gas to any Delivery Point; or
- h) for any purpose related to such activities or to EVN's rights, benefits or obligations under or in relation to this Agreement;

**Statutory Charge** means any recurring charge, tax, impost, rate, levy or payment of a similar nature payable by EVN to any Governmental Authority in connection with EVN's business or any assets used in connection with the services provided under this Agreement (but not including GST or income tax. This includes a change EVN's cost caused by changes in the laws relating to depreciation);

**Supply Agreement** means the agreement between the Network User and a Consumer for the supply of gas to that Consumer;

**Supply System** means the system for the supply of gas into the Network;

**Transmission System** means the system for the supply of gas to the Receipt Points;

**Victorian Gas Retail Market Procedures** means the relevant procedures to assist the development of a competitive gas market by providing a uniform process for Network User transfers between competing retailers, and the allocation and reconciliation of gas quantities between users at Receipt Points or distribution network, as amended from time to time;

**Working Day** means a day other than a Saturday, Sunday or public holiday as listed in Victoria.

- 1.2 Defined Expressions:** Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background.**1.3 Headings:** Section, clause and other headings are for ease of reference only and will not affect this Agreement's interpretation.
- 1.4 Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.5 Parties:** References to parties are references to parties to this Agreement.
- 1.6 Persons:** References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.7 Plural and Singular:** Words importing the singular number include the plural and vice versa.
- 1.8 Schedules:** The schedules to this Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Agreement.
- 1.9 Sections, Clauses and Schedules:** References to sections, clauses and schedules are references to this Agreement's sections, clauses and schedules; and

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- 1.10 Statutes and Regulations:** References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

## 2. CONDITIONS PRECEDENT

- 2.1 Rights and Obligations are Conditional:** The obligations of EVN under this Agreement are conditional upon:

2.1.1 the satisfactory commissioning of the relevant Networks; and

2.1.2 EVN being granted licences for such period and in form and substance and subject to such terms and conditions as are satisfactory to EVN (acting reasonably) under the Gas Industry Act to construct and operate the Network.

EVN will advise the Network User in writing when it considers these conditions have been fulfilled.

- 2.2 Effect if Conditions not satisfied:** If the conditions referred to in clause 2.1 are not satisfied or waived on or before 31 December 2018 then all rights and obligations under this document terminate on that date other than:

2.2.1 clauses 18, 20, 22 and 23 (except 23.10); and

2.2.2 rights that accrue before that date.

## 3. TERM AND RENEWAL

- 3.1 Term:** This Agreement will begin on the Commencement Date and will continue until terminated pursuant to clause 3.2, unless otherwise terminated earlier in accordance with the provisions of this Agreement.

- 3.2 Expiry:** Subject to clause 3.3, at any time after the fifth anniversary of the Commencement Date (specified in Schedule 1) either party may give the other party at least 90 Working Days prior written notice terminating this Agreement.

- 3.3 Requirements for Network User Initiated Termination:** The Network User may not terminate this Agreement pursuant to clause 3.2 unless:

3.3.1 the Network User has arranged for another person to supply the Consumers that are supplied by the Network User before the Agreement is terminated and that person has entered into a Use of System Agreement with EVN; or

3.3.2 EVN is advised by the Network User that the Network User no longer has any Consumers.

- 3.4 New Use of System Agreement:** If:

3.4.1 EVN gives notice to the Network User under clause 3.2 ("Expiry") specifying an Expiry Date;

3.4.2 at the time the Network User receives the Expiry Notice it has contractual obligations to supply gas to any Consumers that extend beyond the Expiry Date; and

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3.4.3 the Network User gives written notice to EVN no later than 30 Working Days prior to the Expiry Date that it wishes to continue to supply those Consumers beyond the Expiry Date,

then the following will apply:

3.4.4 As soon as practicable the parties will meet to discuss in good faith the terms of a new use of system agreement under which the Network User will be able to continue to supply Consumers on the Network after the Expiry Date; and

3.4.5 If agreement on the new terms is not reached before the Expiry Date the terms of EVN's then "standard" Use of System Agreement (as identified by EVN) will be the terms on which the Network User will be entitled to continue to supply Consumers, and EVN and the Network User will enter into such agreement without further delay.

### 4. EVN'S OBLIGATIONS

**4.1 Services:** Subject to the terms and conditions on this Agreement, EVN will:

4.1.1 accept gas from the Network User at the Receipt Point or the Receipt Points (as the case may be) for distribution across the Network to Consumers;

4.1.2 distribute gas to Consumers;

4.1.3 allow Consumer's Equipment to be connected to the Network; and

4.1.4 at all times carry out its obligations under this Agreement in accordance with Good Industry Practice, all applicable Laws and the terms of this Agreement.

**4.2 Suspension of Agreement:** If, at any time during the term of this Agreement, the Network User:

4.2.1 has not (in response to a written request from EVN) provided EVN with written and current evidence that the Network User is the holder of a valid and subsisting licence issued under the Gas Industry Act authorising the Network User to sell gas by Retail to the Consumers;

4.2.2 has not (in response to a written request from EVN) provided EVN with written and current evidence that the Network User is a party to a Transmission Services Agreement (see clause 1.1, Definitions) for the supply of gas to the Network;

4.2.3 has not (in response to a written request from EVN) provided EVN with written and current evidence that it is purchasing the gas at the Receipt Points from another person who is party to a contract for the supply of gas to the Network; and

4.2.4 is not complying with the Prudential Requirements,

then (without prejudice to any other rights and remedies that EVN may have) EVN may, at any time thereafter while the issue remains unresolved, give written notice to the Network User suspending EVN's obligations under this Agreement. If such notice is given, EVN's obligations shall be suspended with immediate effect until such time as the Network User complies with this clause, provided that where EVN's obligations have been suspended continuously for a period of two months then EVN shall have the right to terminate this Agreement immediately by written notice to the Network User.

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## 5. NETWORK USER'S OBLIGATIONS

**5.1 Compliance with Gas Laws and Victorian Gas Retail Market Procedures:** The Network User will comply with the requirements of all applicable legislation including the Gas Industry Act and any regulations and codes made under the Gas Industry Act, as amended or replaced from time to time, or as relevant law, regulation and code may apply. Without limiting the foregoing the Network User shall comply with all relevant obligations applying to the Network User under the Victorian Gas Retail Licence, Energy Retail Code, Retail Market Procedures (if applicable) and/or relevant obligations that may apply.

### 5.1.1 AEMO and the Retail Market Procedures:

- a) In accordance with clause 12 of EVN's Gas Distribution Licence, EVN is exempt from the requirement to register with AEMO and to comply with the Retail Market Procedures. This exemption does not apply if:
  - (i) "any of the pipelines in Victoria used by the Distributor to provide gas distribution services become 'covered' under the National Gas Law; or
  - (ii) any of the pipelines used by the Distributor to provide gas distribution services become part of the Victorian 'declared distribution system' under the National Gas (Victoria) Act 2008 (Vic)."
- b) If EVN is not obliged to comply with the Retail Market Procedures, then EVN will publish on its website, and comply with, a CTR Code as approved by the Commission. The CTR Code may be amended by the Commission at its discretion.

**5.2 Follow Good Industry Practice:** The Network User will ensure that, in all respects of its business operations relating to the distribution of its gas across the Network and the sale of such gas to Consumers, the Network User follows Good Industry Practice (including recognised industry codes of practice).

**5.3 Interference with the Network:** The Network User will not:

- 5.3.1 interfere with the Network or cause or permit any person, material or device to do so;
- 5.3.2 interfere with EVN's Equipment; and
- 5.3.3 convey or receive (or attempt to convey or receive) any signal or other form of communications or any other thing (other than gas pursuant to this Agreement) across the Network,

and will use best endeavours to ensure that its Consumers do not do any of these things.

**5.4 Faults affecting the Network:** The Network User will notify EVN, as soon as practicable after becoming aware, of any faults affecting the Network, signs of damage, gas escape or other abnormalities to the Network. The Network User will also notify EVN, as soon as practicable, if it becomes aware of the occurrence of any event or circumstance that could adversely affect the Network and any information the Network User may have about those matters.

## 6. CONSUMERS, CONNECTION AND DISCONNECTION

**6.1 Connection and Disconnection:** EVN and the Network User will comply with their respective obligations set out in Schedule 5.

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## 7. INTERRUPTION TO CONVEYANCE

- 7.1 No Warranty:** EVN gives no warranty that the conveyance of gas across the Network to Consumers will be continuous or fault-free.
- 7.2 Interruption Event:** EVN may interrupt or reduce the conveyance of gas to any Delivery Point if an Interruption Event occurs in relation to that Delivery Point. Where practicable, EVN will use commercially reasonable endeavours to ensure that any action it takes pursuant to this clause 7.2 conforms with any industry contingency plan or load shedding guidelines which it has agreed to. EVN will use all commercially reasonable endeavours to restore the conveyance of gas to a Delivery Point where the conveyance has been interrupted or reduced pursuant to this clause 7.2 as soon as commercially reasonably practicable once it is satisfied (acting reasonably) that it is appropriate to do so.
- 7.3 Outages:** EVN and the Network User will comply with the provisions regarding outages contained in Schedule 7.

## 8. RECEIPT POINTS AND DELIVERY POINTS

- 8.1 Receipt Points:** The point or points at which gas shall be accepted by EVN for distribution through the Networks shall be the Receipt Point or Receipt Points, as the case may be.
- 8.2 Delivery Points:** The point or points at which gas shall be delivered by EVN shall be the Delivery Points.
- 8.3 New Delivery Points and Withdrawal of Delivery Points:** All Delivery Points shall be owned and operated by EVN.
- 8.4 Multiple User Delivery Points:** Unless otherwise agreed by the parties, the Network User will not share any Delivery Point with any other Network user.

## 9. QUANTITY OF GAS

### 9.1 Maximum Hourly Quantity:

- 9.1.1 EVN will, in relation to each Delivery Point, in any hour (subject to the receipt of sufficient quantities of gas being received into the Network at the relevant Receipt Point) permit the Network User to off-take at the Delivery Point a quantity of gas up to the Maximum Hourly Quantity for that Delivery Point.
- 9.1.2 If the Network User wishes to vary the Maximum Hourly Quantity for any Delivery Point the Network User shall give written notice to EVN specifying the proposed variation and the date on which it is proposed that the variation takes effect. No variation in a Maximum Hourly Quantity will take effect unless EVN (at its complete discretion) notifies the Network User that it accepts the proposed variation. If any increase to a Maximum Hourly Quantity would require EVN to invest in the Network, EVN may (at its discretion) require the Consumer to make a financial contribution to the cost of such investment as a condition of accepting the proposal for increased Maximum Hourly Quantity.

- 9.2 Indemnity if Maximum Hourly Quantity Exceeded:** If the Maximum Hourly Quantity applicable to a Delivery Point is exceeded, the Network User will indemnify EVN against any

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costs, damage, loss or expense suffered or incurred by it as a result (whether directly or indirectly) of the Maximum Hourly Quantity having been exceeded.

**9.3 Flow-Limiting:** If the Maximum Hourly Quantity applicable to a Delivery Point is exceeded or EVN reasonably believes that the Maximum Hourly Quantity applicable to a Delivery Point is likely to be exceeded:

9.3.1 EVN may, at its sole discretion, install (or require the Network User to install) a flow limiting device and the installation costs of the flow limiting device are payable by the Network User; and

9.3.2 if EVN wishes and advises the Network User accordingly, EVN and the Network User will meet to discuss in good faith the Network Users likely maximum expected peak Network usage and the likely change to the Charges to reflect the expenditure EVN estimates it will incur to increase the capacity of the Network to meet the maximum expected peak Network usage.

**9.4 EVN may authorise Network User to exceed Maximum Hourly Quantity:** EVN may, in its absolute discretion, authorise the Network User to temporarily exceed the Maximum Hourly Quantity at a Delivery Point.

**9.5 Projected Annual Quantity:** Where requested by EVN, the Network User will, within 2 months of the request, provide to EVN the Projected Annual Quantity for the following calendar year for each Delivery Point where the Projected Annual Quantity exceeds 1 terajoule. Such a request will not be made more than once in any calendar year.

**9.6 Anticipated Changes in Quantity:** If, at any time during a year, the Network User becomes aware of circumstances as a result of which the Projected Annual Quantity provided pursuant to clause 9.5 will, or will be likely to change, the Network User will, as soon as reasonably practicable, notify EVN accordingly.

## 10. QUALITY OF GAS

### 10.1 Delivery Pressure:

10.1.1 EVN to deliver Gas within pressure range: EVN must use all reasonable endeavours to maintain sufficient distribution system pressures to ensure that the minimum pressure is maintained at the distribution supply point. The typical indicative daily pressure for each category of distribution system is as per the Gas Distribution System Code, Schedule 1, Part A.

10.1.2 Delivery Pressure falls outside Standard Pressure Range: Where the Network User becomes aware that the delivery pressure has fallen outside the standard pressure range for that Delivery Point then the Network User will notify EVN of the occurrence as soon as reasonably practicable. If EVN anticipates or is otherwise aware that gas is or will be delivered to a Delivery Point outside the pressure range for that Delivery Point, EVN will advise the Network User as soon as is reasonably practicable of the steps required, and the timeframe proposed to correct it. In parts of the Network the delivery pressure may, during periods of high demand, fall below the standard pressure range. EVN aims to ensure delivery pressures remain within the standard pressure ranges as specified below by implementing Network maintenance, rehabilitation or reinforcement programmes.



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10.1.3 Standard Pressure Ranges and Codes: The standard pressure range codes and ranges used by EVN are available from EVN on request. EVN reserves the right to update the pressure ranges from time to time in accordance with EVN's asset management plan or operating procedures. In all cases EVN will endeavour to provide the Network User with adequate notice of any planned changes to the standard pressure ranges.

**10.2 Gas Network Rehabilitation:** If EVN seeks to undertake a Network rehabilitation programme, it will, except to the extent otherwise agreed (whether before or after the Commencement Date), seek to negotiate in good faith with the relevant Consumer, reasonable terms for the replacement or upgrade of any of the Consumer's Equipment which may be necessary as a consequence of the Network rehabilitation programme. If agreement is not reached, EVN may, at its discretion, choose to procure and install, at its own cost, suitable equipment to ensure delivery pressure is maintained in accordance with this Agreement and the Network User will ensure that every Supply Agreement provides EVN with such right (and that such right shall be directly enforceable by EVN).

**10.3 Specification:**

10.3.1 The Network User shall ensure that all gas delivered on behalf of the Network User for acceptance at a Receipt Point complies with the Gas Specification.

10.3.2 The Network User shall give EVN written notice as early as possible prior to delivery, giving particulars of the extent to which the Non-Specification Gas will differ from the Gas Specification and (if known by the Network User at the time of the notice) the expected commencement and duration of the supply of Non-Specification Gas, together with confirmation and evidence that all the users of the Network potentially affected by such Non-Specification Gas have consented.

10.3.3 The Network User will indemnify, and keep indemnified, EVN against all reasonable expenses, costs (including legal costs on a solicitor/client basis), losses, liabilities and claims suffered or incurred by EVN arising out of or in connection with any breach by the Network User of its obligations under clauses 10.3.1 and/or 10.3.2.

**10.4 Alteration of Specification**

10.4.1 EVN may alter Specification: EVN may materially alter the specification of the gas received into the Network (as a result of commingling with other gas received into the Network) within the limits of the Gas Specification.

10.4.2 Acceptance of Non-Specification Gas: In the event that EVN agrees, or is deemed to have agreed, to accept Non-Specification Gas for delivery to the Consumer:

- a) EVN may, at its discretion, deliver to the Delivery Point gas having the same or higher specification than the specifications of the Non-Specification Gas accepted by EVN at the Receipt Point; and
- b) the Network User will indemnify EVN against any liabilities to other persons as a consequence of Non-Specification Gas being conveyed in the Network.

10.4.3 Closure of Receipt Points: If EVN reasonably believes that Non-Specification Gas is or is likely to be delivered into the Network, EVN may, unless it has agreed to accept such Non-Specification Gas, close the relevant Receipt Point and keep it closed until it is satisfied that gas complying with the Gas Specification will be delivered to that Receipt Point. Prior to closing the relevant Receipt Point, EVN will use all reasonable endeavours to try to stop the flow of any Non-Specification Gas into the Receipt Point.

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10.4.4 Odourisation: The Network User will ensure that all gas delivered for acceptance at a Receipt Point will be odourised to such standard as is reasonably required by EVN (as advised by EVN from time to time). As at the commencement of this Agreement the required standard is the AEMO document *Gas Quality Guidelines Operating Procedure*, as updated from time to time, and available from the AEMO website. If gas delivered for acceptance at a Receipt Point is unodorised, insufficiently odorised or excessively odorised, the Network User will indemnify EVN for all costs, damage, loss or expense suffered as a result thereof including (without limitation) any costs of testing and supplementary odorisation. EVN will conduct adhoc monitoring of the gas odorisation in its Networks and ensuring that it meets specification in respect of the required level of odorant, in accordance with the Gas Safety (Gas Quality) Regulations 2017.

### 11. RIGHT OF ACCESS

**11.1 Network User to Procure Access to Consumer's Premises:** The Network User will use best endeavours to procure that each Consumer grants and provides to EVN and its employees, agents, subcontractors, invitees and other authorised representatives, Rights of Access at all times during the term of this Agreement and during the period of six months following expiry or termination of this Agreement. The Network User will ensure that every Supply Agreement:

11.1.1 includes an obligation on each consumer to grant and provide such Rights of Access; and

11.1.2 provides that such obligation is enforceable by EVN.

**11.2 Exercise of Rights of Access:** In exercising its Rights of Access EVN agrees that it will:

11.2.1 where practicable, give the Consumer reasonable notice of its intention and the purpose for which it proposes to exercise its Rights of Access provided that EVN will be at liberty to take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to person or property;

11.2.2 procure that its representatives carry appropriate identification to identify themselves as EVN's employees or agents;

11.2.3 show respect for and cause as little inconvenience to the Consumer as is practicable; and

11.2.4 where practicable, observe the Network Users reasonable practices and procedures for entering and occupying the Consumer's Premises.

### 12. EQUIPMENT

**12.1 EVN's Equipment:** All items of EVN's Equipment situated on a Consumer's Premises will remain the sole and absolute property of EVN. If circumstances so require, the Network User will assist EVN to obtain an undertaking from the Consumer to provide and maintain, at no cost to EVN, suitable space for the safe and secure housing of EVN's Equipment related to the Delivery Point and deemed necessary by EVN in accordance with Good Industry Practice to be housed at the Consumer's Premises.

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## 12.2 Interference or damage to EVN's Equipment:

12.2.1 The Network User will, and will use best endeavours to procure that each Consumer will, ensure that it and its respective employees, agents and invitees do not interfere with or damage EVN's Equipment without the prior written consent of EVN, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property, and shall take all reasonable precautions necessary to protect EVN's Equipment from damage, complying with any reasonable requests about such protection made by EVN. If any of EVN's Equipment is damaged by the negligence or wilful act or omission of the Network User or the Network User's employees, agents or invitees, then the Network User shall pay the cost of making good the damage to EVN.

12.2.2 Interference with EVN's Equipment: If the Network User suspects that there is, or has been, interference with EVN's Equipment at a Consumer's Premises, the Network User will immediately notify EVN of the circumstances and assist EVN in its investigations and report its findings to EVN as soon as practicable after becoming aware of them.

## 12.3 Consumer's Equipment:

12.3.1 EVN will not act in a way that materially impedes or obstructs the operation of the Consumer's Equipment except to enforce this Agreement or to the extent that action has to be taken to protect the health and safety of persons or to prevent damage to property or the Network. If EVN or EVN's Agent materially interferes with the Consumer's Equipment, EVN will use all reasonable endeavours to inform the Consumer as soon as practicable.

12.3.2 Interference with Consumer's Equipment: If EVN suspects that there is, or has been, interference with the Consumer's Equipment at a Consumer's Premises, EVN will immediately advise the customer accordingly and if appropriate take necessary safety measures and isolate if necessary.

## 13. OWNERSHIP, POSSESSION AND RESPONSIBILITY FOR GAS

**13.1 The Network:** The Network is and will remain the sole property of EVN. No provision of this Agreement nor the provision of any services by EVN in relation to the Network will confer on the Network User or any other person any right of property or other interest in or to any part of the Network.

### 13.2 Gas

13.2.1 Control, Possession and Responsibility: The control and possession of gas accepted pursuant to this Agreement shall pass from the Network User to EVN at the Receipt Point and shall be held by EVN until gas is delivered to a Delivery Point.

13.2.2 Title to Gas: Title to Gas accepted pursuant to this Agreement shall at all times remain with the Network User and the Network User hereby warrants to EVN that, at the time of delivery to EVN, the Network User has good title to the gas, free and clear of all liens, encumbrances and claims of a nature inconsistent with EVN's operation of the Network, provided that EVN shall have the right to co-mingle the Network User's gas with other gas in the Network during distribution and to subject the gas in the network to compression, cleaning and other processes consistent with EVN's operation of the Networks. For the purposes of this Agreement the Network User shall, where

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applicable, include any principal on whose behalf the Network User may be acting as agent, and the Network User is and will be warranting as to that principal's unencumbered title to the gas.

**13.3 Responsibility for Gas:** Subject to clause 13.5 EVN shall be solely responsible for the gas on the basis set out in this Agreement while distributing it from the Receipt Point to the Delivery Point and the Network User shall be solely responsible for the gas at all other places and times.

**13.4 Capacity:** Nothing in this Agreement confers on the Network User any ownership of capacity in relation to a Network.

**13.5 UAFG:** The Network User:

13.5.1 acknowledges that distribution of its gas across the Network involves the loss of some gas (whether due to use estimation procedures, meter inaccuracies, system losses, system use gas, commissioning, purging or otherwise), known as "Unaccounted for Gas" or "UAFG";

13.5.2 acknowledges that EVN is responsible for the allocation of UAFG between the various users of the Network in accordance with Customer Transfer and Reconciliation Code; and

13.5.3 agrees and accepts that, notwithstanding clauses 13.2.2 or 13.3, EVN shall not be liable in any respect for the loss of any of the Network User's gas which is UAFG.

## 14. PRUDENTIALS

The Network User must comply at all times with EVN's Prudential Requirements set out in Schedule 2, unless otherwise agreed.

## 15. CHARGES

**15.1 Network Charges:** The Network User will pay the Charges (plus GST) in respect of each Delivery Point calculated in accordance with Schedule 4.

**15.2 Changes to the Charges:**

15.2.1 EVN may, at its discretion, vary the Charges or any component of the Charges (including the method of calculating the Charges) at any time and from time to time (subject to clause 15.2.2).

15.2.2 Except where a variation of the Charges is being made to reflect a change in the law;

a) EVN will not increase the Charges set out in paragraphs 1(a), 1(b) or 2 of Schedule 4 more than once in any calendar year; and

b) EVN will not increase the Charges applicable under paragraph 1(c) of Schedule 4 in respect of any individual Delivery Point more than once in any calendar year.

15.2.3 EVN will give the Network User not less than 60 days' prior notice of any variation of the Charges.

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15.2.4 Any variation of the Charges will be final and binding as between the parties and shall not be the subject of any dispute, mediation or arbitration.

**15.3 Invoicing and payment:** EVN will invoice the Network User for the Charges (plus GST) and the Network User will pay the invoice, in accordance with Schedule 3. Neither EVN nor the Network User may initiate a dispute in relation to any invoice after 15 months from the date of the invoice.

**15.4 EVN's rights on Network User's failure to pay:**

15.4.1 Without limiting any other right of EVN under this Agreement or otherwise, if the Network User fails to pay any amount set out in any invoice issued by EVN pursuant to this Agreement on the due date for payment the Network User will be in default under this Agreement and EVN may do any or all of the following:

- a) EVN may require the Network User to pay, on demand, Default Interest on the amount unpaid; and
- b) if the amount remains unpaid after 10 working days' notice by EVN to the Network User, EVN may call for payment under any Credit Support, but only to the extent payment is due.

15.4.2 The charging of Default Interest under clause 15.4.1(a) will in no way imply the granting or an extension of credit by the party to whom the interest is payable.

15.4.3 If the Network User disputes the amount of any invoice, it must pay the whole amount of the invoice other than any amount due to Manifest Error and then initiate a dispute with EVN using the procedure set out in clause 22.

15.4.4 EVN may at any time issue an adjustment to an invoice or a new invoice where the Network User has been under charged, over charged or not charged, by either crediting the Network User for any overcharging or invoicing the Network User for under or non-charging. An invoice issued under this clause 15.4.4 must be paid within the same time and is subject to the same conditions as if it were an invoice issued under clause 15.3.

## 16. GST

**16.1 Definitions and interpretation:**

16.1.1 Unless the context requires otherwise, words defined in the GST Act have the same meaning in this clause 16.

16.1.2 In this clause 16 Supplier means a party that makes a supply.

16.1.3 If a party is notionally liable to pay GST or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the party must pay extend to any notional liability of the party to pay GST and references to an input tax credit extend to any notional input tax credit to which the party is entitled.

16.1.4 If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

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### 16.2 GST Payable in addition to other Consideration

16.2.1 Unless otherwise expressly provided, all amounts referred to in this document have been agreed without regard to GST; that is, on a GST exclusive basis.

16.2.2 A recipient of a taxable supply made under this document must pay to the Supplier, in addition to the consideration payable or to be provided for the taxable supply, any GST for which the Supplier is liable in respect of the taxable supply.

16.2.3 The recipient must pay the GST to the Supplier:

- a) if there is a due date for the consideration for the taxable supply, either on that date or within 14 days of receiving a tax invoice for the taxable supply, whichever is the later; or
- b) if there is no due date, within 14 days of receiving a tax invoice for the taxable supply.

**16.3 Reimbursements:** A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

**16.4 Tax Invoice:** Each party making a taxable supply under this document must issue a tax invoice to the other party for each taxable supply:

16.4.1 if this document provides that an invoice must be issued in respect of the supply on the date the invoice is required to be issued; or

16.4.2 in any other case, within 14 days of making the taxable supply.

**16.5 Adjustment Note:** Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this document.

**16.6 Indemnities:** If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST. If a party has an indemnity for, or an amount of consideration is calculated by reference to, a cost on which that party must pay GST, the indemnity is for, and the consideration includes, the cost plus all GST (except any GST for which that party can obtain an input tax credit).

**16.7 GST free supplies and Valuation of Consideration:** Notwithstanding any provision in this document to the contrary EVN may, in its absolute discretion, determine for GST purposes:

16.7.1 the extent to which supplies made under this document by either EVN or the Network User are taxable, GST free or input taxed supplies; and

16.7.2 the value of the consideration paid or to be provided for each supply made by either EVN or the Network User and the allocation of such consideration among any taxable, GST free and input taxed supplies.

16.7.3 EVN may require the Network User to reissue a tax invoice previously issued, or to issue an adjustment note, where EVN considers that the amount of GST on a taxable supply has been calculated incorrectly by the Network User.

16.7.4 Where the Network User disagrees with a determination by EVN under clause 16.6 in so far as it affects a supply by the Network User it may at its own cost make an

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application in a form agreed by EVN and the Network User to obtain a private binding ruling from the Australian Taxation Office as to the correct GST treatment and both parties will agree to be bound by that Ruling so long as it remains current and binding.

## 17. CHANGES TO THIS AGREEMENT

**17.1 Amendment of Schedules:** EVN will be entitled to amend any provision contained in Schedules 3, 5, 6 and 7 of this Agreement by giving the Network User not less than 30 days' notice providing that the amendment is in accordance with Good Industry Practice or to reflect relevant amendments made to EVN's most recent issue of the Use of System Agreement for the Network (or substitute document).

**17.2 Amendment of Agreement:** EVN will be entitled to amend any provision of this Agreement by giving the Network User not less than 30 days' notice:

17.2.1 if EVN and the Network User agree to the amendment; or

17.2.2 to the extent necessary to reflect the mandatory rules or protocols of any industry association or body to which both EVN and the Network User are members or signatories at the relevant time; or

17.2.3 if the amendment is required to reflect any change in law or any regulatory decision.

**17.3 Minor Changes:** EVN will be entitled to amend any provision of this Agreement where the amendment has no effect on the contractual undertakings of the parties (for example terminology changes to accord with new industry classifications or definitions), by written notice to the Network User.

## 18. LIMITATIONS ON LIABILITY

### 18.1 Scope of Liability:

18.1.1 Subject to the Competition and Consumer Act 2010 and the express provisions of this Agreement, all warranties, terms and conditions which may be otherwise implied by use, statute or otherwise are, to the extent they may be lawfully be, are excluded.

18.1.2 The only liability of EVN to the Network User under this Agreement or otherwise arising from the relationship between them (whether by virtue of contract, tort (including negligence) or otherwise) will be for direct loss or damage to the physical property of any person where the damage has been caused by EVN's breach of this Agreement.

18.1.3 EVN will not be liable for, or for any loss, damage, expense, cost, claim suffered or incurred as a result of, any:

- a) failure to accept gas at any Receipt Point as allowed under this Agreement;
- b) failure to distribute gas accepted from the Network User for a reason outside EVN's control; or
- c) act or omission resulting from the supply of gas to the Network.

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18.1.4 Neither party will be liable for any failure to perform any obligation under this Agreement where such failure is caused by the other party's failure to comply with the same.

18.1.5 For the avoidance of doubt and without limiting any other provision of this Agreement, neither party will be liable, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising in connection with this Agreement, for:

- a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract or loss of goodwill of any person;
- b) any indirect or consequential loss;
- c) any loss resulting from liability to any third party except for direct loss or damage to the physical property of any person as set out in clause 18.1.2; or
- d) any loss resulting from loss or corruption of or damage to any electronically-stored or electronically-transmitted data or software.

18.1.6 Except as provided in clauses 18.1.2, EVN's liability to the Network User whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising in connection with this Agreement and of any nature whatsoever is excluded to the fullest extent permitted by law.

**18.2 Quantum of Liability:** The maximum total liability of EVN to the Network User and the Network User to EVN or otherwise, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising in connection with this Agreement, will be:

18.2.1 subject to clause 18.2.2, in respect of a single event or series of events arising from the same event or circumstance, for each Delivery Point, the lesser of "Single Event Liability Amount" specified in Schedule 1 or the amount of the loss or damage suffered; and

18.2.2 in respect of events or circumstances occurring in any consecutive period of 365 days, the lesser of the "Annual Liability Amount" specified in Schedule 1 or the amount of the loss or damage suffered.

## 19. FORCE MAJEURE

**19.1 Notice and suspension of obligations:** If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

19.1.1 that party must immediately give the other prompt notice of that fact including:

- a) full particulars of the Force Majeure Event;
- b) an estimate of its likely duration;
- c) the obligations affected by it and the extent of its effect on those obligations; and
- d) the steps taken to rectify it.

19.1.2 the obligations under this document of the party giving the notice (other than obligations to pay money) are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.



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**19.2 Effort to overcome:** A party claiming a Force Majeure Event must use its reasonable commercial efforts to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute in any way it does not want to.

## 20. CONFIDENTIALITY

**20.1 Confidentiality Obligation:** Each party will keep confidential all information provided by the other party and will not:

20.1.1 disclose any of that information to any other person; or

20.1.2 use any of the Information for any purpose other than to give effect to that party's rights or obligations under this Agreement;

except as provided in clause 20.2.

**20.2 Exceptions:** Clause 20.1 does not apply to the disclosure of information in the following circumstances:

20.2.1 to employees, legal advisers, auditors and other consultants provided they have agreed to be bound by an obligation of confidence of the same scope and effect as set out in clause 20.1;

20.2.2 where disclosure is expressly permitted under the terms of this Agreement or with the prior written consent of the party that supplied the Information;

20.2.3 where disclosure is required by law or the requirements of any stock exchange;

20.2.4 where disclosure is to a financier or potential acquirer of all or part of EVN's business;

20.2.5 where disclosure is required in connection with any legal proceedings, mediation or arbitration relating to this Agreement; and

20.2.6 where the information is generally and publicly available other than as a result of a breach of confidence by the party receiving the information.

## 21. TERMINATION

**21.1 Termination:** This Agreement will terminate on:

21.1.1 the day after notice is given by one party to the other party terminating this Agreement for reason of an Event of Default occurring in relation to the other party;

21.1.2 the day after notice is given by either party to the other party terminating this Agreement for the reason that performance of any material provision of this Agreement by either party has to a material extent become illegal and the parties acting reasonably agree that it is not practicable for this Agreement to continue;

21.1.3 the 11th Working Day after notice is given by either party to the other terminating this Agreement for the reason that an event of Force Majeure, which has resulted in the party's failure to perform a material obligation under this Agreement, is of such magnitude or duration that it is impracticable or unreasonable for the party giving

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notice to remain bound by its obligations under the this Agreement (provided that such notice may not be given until an event of Force Majeure has been in continuous effect for at least six months); or

21.1.4 the Expiry Date as defined in clause 3.2 of this Agreement.

**21.2 Effect of Termination:** Upon termination of this Agreement, other than to the extent provided in any other agreement between the parties:

21.2.1 unless otherwise agreed, each party will return to the other party all property of that party held by the first party; and

21.2.2 the Network User will have no further right to have its gas accepted and distributed across the Network.

**21.3 No Waiver:** Termination of this Agreement will not operate as a waiver of any breach of this Agreement or any other agreement by either of the parties and will be without prejudice to any rights, liabilities or obligations of either party which have accrued up to the date of termination. This clause and clauses 18, 20, 22 and 23 together with any other provisions which provide EVN with the benefit of an indemnity or are otherwise expressly or by implication are intended to survive termination, will continue in full force and effect notwithstanding termination.

## 22. RESOLVING DISPUTES

**22.1 Good Faith Discussion:** The parties intend that any dispute or difference between them concerning this Agreement will be resolved amicably by good faith discussion.

**22.2 Ability to Commence Legal Proceedings:** Where any dispute or difference arises between the parties concerning this Agreement, a party may commence any legal proceedings without complying with the procedures set out in this clause 22. The parties hope that any dispute can be resolved through the application of these provisions; however, each party reserves the right to commence proceedings unconstrained by this clause 22.

**22.3 Escalation to CEOs:** If any dispute or difference arises between the parties concerning this Agreement, either party may give notice to the other party. If the dispute or difference is not resolved by discussion between operational staff within 20 working days of notice being given, the matter is to be referred to the Chief Executives or delegate of the parties for resolution.

**22.4 Mediation:** If the dispute or difference cannot be resolved by the Chief Executives or delegate within 15 working days of the matter being referred to them, either party may require the matter to be referred to mediation by notice to the other party setting out the general nature of the difference.

**22.5 Appointment of Mediator:** Within 10 working days of receipt of the notice referring the dispute to mediation the parties will agree on the appointment of a mediator or, where they cannot agree within that timeframe, a mediator will be appointed by the President for the time being of the Law Institute of Victoria. In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree, these matters will be determined by the mediator.

**22.6 Representatives:** Each of the parties will appoint a representative who will have authority to reach an agreed solution and effect settlement.

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- 22.7 Act in good faith:** In all matters relating to the mediation notice, the parties and their representatives will act in good faith and use all reasonable endeavours to ensure the expeditious completion of the mediation procedure.
- 22.8 Without prejudice:** All proceedings and disclosures in the course of the mediation will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings.
- 22.9 Non-binding outcome:** Any decision or recommendation of the mediator will not be binding on the parties in respect of any matters other than the conduct of the mediation.
- 22.10 Mediation Costs:** The costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 22.11 Arbitration:** If the difference is not resolved through mediation within 60 days of the appointment of a mediator, the matter will be referred to arbitration under the Commercial Arbitration Act 2011 before a sole arbitrator and in relation to any such arbitration, the following provisions will apply:
- 22.11.1 in addition to the stated methods of giving notice, facsimile will also be permitted;
- 22.11.2 the parties will endeavour to agree the choice of an arbitrator and failing agreement, the arbitrator will be appointed by the President of the Law Institute of Victoria;
- 22.11.3 the venue of the arbitration will be Melbourne;
- 22.11.4 the arbitrator will not appoint any expert to advise except with the written consent of both parties.
- 22.13 Injunctive Relief:** Nothing in this clause 22 will preclude either party from taking immediate steps to seek urgent injunctive or equitable relief before an appropriate court.

## 23. GENERAL

- 23.1 Costs:** Subject to clause 23.2, each party must pay its own expenses incurred in negotiating and executing this document.
- 23.2 Duty:** The Network User must indemnify EVN against and must pay EVN on demand the amount of any duty that is payable on or in relation to this document and the transactions this document contemplates.
- 23.3 Partial Invalidity:** The provisions of this Agreement will apply to the extent that they are permitted by and not in conflict with any statutory requirements for the Network and the supply of gas. Except as provided in clause 21.1.2, the illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
- 23.4 Inconsistency with Applicable Gas Laws:** If there is any inconsistency between a party's rights and obligations under this Agreement and its obligations or rights under any applicable laws, then its rights and obligations under the applicable laws will prevail to the extent of the inconsistency.

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### 23.5 Assignment and Subcontracting:

23.5.1 EVN may sub-contract any of its obligations under this Agreement but will remain liable in accordance with this Agreement for the sub-contractor's default. EVN may assign its rights and obligations under this Agreement without the consent of the Network User.

23.5.2 The Network User may not assign this Agreement without the prior written consent of EVN, which consent will not be unreasonably withheld.

- a) The parties acknowledge that they have granted various securities pursuant to the Development Agreement and that no such grant of a security, or any enforcement of a security, constitutes a breach of this clause 23.5.
- b) No dealing with this Agreement or a party's assets which is required by the Development Agreement (including because of a party's breach of the Development Agreement) constitutes a breach of this Agreement.
- c) Nothing in this clause 23.5 prevents a party mortgaging, charging or encumbering its rights under this Agreement in favour of a reputable financier, the State of Victoria or Regional Development Victoria in connection with financial accommodation extended to that party or its Related Bodies Corporate.

**23.6 Entire Agreement:** This Agreement and any document expressly incorporated into this Agreement contains all terms of the arrangement between the parties with respect to the subject matter of this Agreement.

**23.7 Implied Terms:** All terms and conditions relating to the subject matter of this Agreement that are, or may at any time be, implied by law or custom are excluded to the maximum extent permitted by law except to the extent they are expressly incorporated into this Agreement.

**23.8 Non-Waiver:** Nothing in this Agreement will be considered to be waived by either party except when such waiver is given in writing. Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision or any other provision.

**23.9 No Third Party Rights:** Except as expressly provided in this Agreement the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and this Agreement will be for the sole and exclusive benefit of the parties.

**23.10 Further Assurances:** Each party undertakes to do all acts and things and execute all deeds and documents which may be required to be executed to carry out or give effect to this Agreement.

**23.11 Notices:** Any notice required to be served pursuant to this Agreement will be in writing executed by the party giving the notice or signed on behalf of that party by any officer or solicitor of that party and served at the address or to the facsimile number or e-mail address and to the attention of the person as set out in Schedule 1 or as otherwise notified in writing by the other party. Any notice or document will be deemed to be duly given or made if:

23.11.1 delivered by hand, when so delivered;

23.11.2 sent by facsimile or e-mail, when the person effecting the transmission receives an electronic recorded acknowledgement that the facsimile or e-mail has been delivered; or

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23.11.3 sent by post, on the third working day following posting.

**23.12 Relationship:** Nothing in this Agreement should be interpreted as constituting either party an agent, partner or employee of the other and neither party may pledge the credit of the other nor represent to anyone that:

23.12.1 it is the other party or is an agent, partner or employee of the other party; or

23.12.2 it has any power or authority to incur any obligation of any nature on behalf of the other party.

**23.13 Governing Law:** This Agreement is governed by the law in force in Victoria. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

## 24. DEVELOPMENT AGREEMENT

**24.1** Both Parties acknowledge this Agreement constitutes a “Key Contract” for the purposes of the Development Agreement.

**24.2** Each Party must at all times perform its obligations under this Agreement in a manner which enables the other Party to comply with its obligations under the Development Agreement and must take such steps, as the other Party requests and provided those steps are relevant given the nature and subject matter of this Agreement, to ensure the other Party is able to comply with the Development Agreement.

**24.3** Each Party must comply with all provisions of the Development Agreement that are relevant to their part in the performance of their obligations arising from or in connection with the Development Agreement, including the provisions referred to in clause 26.4 of the Development Agreement.

**24.4** If the Development Agreement is terminated, both Parties must, promptly upon request from the other Party or Regional Development Victoria, consent to and enter into a deed on terms satisfactory to Regional Development Victoria to effect a novation of this Agreement to Regional Development Victoria or its nominee(s) on the basis that all accrued obligations and liabilities of the each Party under this Agreement as at the date of the novation remain with the each Party and are not to be transferred to, or assumed by, Regional Development Victoria or its nominee(s).

## 25. ANTI-BRIBERY AND CORRUPTION

**25.1** Each party will ensure that it is aware of all of its obligations under anti-bribery laws, as applicable, and comply with their requirements.

**25.2** Each Party warrants and undertakes to the other Party that:

- a) it has not offered, promised, given or agreed to give and shall not during the term of this agreement offer, promise, give or agree to give to any person any bribe on behalf of the other Party or otherwise with the object of obtaining a business advantage for the other Party or otherwise;

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- b) it will not engage in any activity or practice which would constitute an offence under any applicable Anti-bribery laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, the United Kingdom's Bribery Act 2010 and Canada's Corruption of Public Officials Act;
- c) it has and during the Term will maintain in place its own policies and procedures to ensure compliance with any applicable Anti-corruption laws;
- d) it will procure that any person who performs or has performed services for or on its behalf (Associated Persons) in connection with this agreement complies with this clause 25;
- e) it will not enter into any agreement with any Associated Person in connection with this agreement, unless such agreement contains undertakings on the same terms as contained in this clause 25;
- f) it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with this agreement;
- g) from time to time during the term of this agreement, at the reasonable request of the other Party, it will confirm in writing that it has complied with its undertakings under this clause 25 and will provide any information reasonably requested by the other Party in support of such compliance;
- h) it will report to the other Party or to the Reporting Hotline (1800 152 863) as soon as practicable any request or demand for any improper payments or other improper advantage of any kind received by the Party from the other Party or any other person in connection with the performance of this agreement; and
- i) it shall notify the other Party as soon as practicable of any breach of any of the undertakings contained in this clause 25 of which it becomes aware.

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## 26. EXECUTED AS AN AGREEMENT

Executed by **Enwave Victorian Networks Pty Ltd** (ABN 69 163 231 696)

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*Signature*

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*Printed Name*

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*Position*

---

*Date*

Executed by **<Insert Name Here>** (**<Insert ABN Here>**)

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*Signature*

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*Printed Name*

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*Position*

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*Date*

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## SCHEDULE 1 GENERAL

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**Network User:** [Insert legal name of Network User]

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**Commencement Date:** [Insert commencement date]

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**Addresses for Notices:**

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**Brookfield Regional Networks:** Add address here  
Attn: **Commercial** Manager

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**Network User:** [Network User address details]

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**Single Event Liability Amount:** \$10,000.00

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**Annual Liability Amount:** \$100,000.00

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## SCHEDULE 2 PRUDENTIAL REQUIREMENTS

The following are EVN's Prudential Requirements with which the Network User must comply at all times, unless otherwise agreed.

### 1. ACCEPTABLE CREDIT RATING OR CREDIT SUPPORT

- 1.1 The Network User will either maintain an Acceptable Credit Rating or provide Credit Support in a form and on terms acceptable to EVN.
- 1.2 If EVN is concerned, on reasonable grounds, that the Network User is unable to maintain an Acceptable Credit Rating, EVN may request, in writing, that the Network User provide Credit Support in accordance with this Schedule 2.

### 2. CREDIT SUPPORT

- 2.1 Credit Support means that the Network User must provide:
  - 2.1.1 an unconditional guarantee in favour of EVN with a third party guarantor who has and maintains an Acceptable Credit Rating, such guarantee to be for all amounts owing by the Network User to EVN from time to time; or
  - 2.1.2 a performance bond in favour of EVN and issued by a third party which has and maintains an Acceptable Credit Rating, such performance bond to be for an amount equal to EVN's reasonable estimate of one-fourth of the annual Charges (inclusive of GST) payable by the Network User; or
  - 2.1.3 a cash bond that is in Australian dollars equal to EVN's reasonable estimate of one-fourth of the annual Charges (inclusive of GST) payable by the Network User; or
  - 2.1.4 such other security that EVN (acting reasonably) may require.
- 2.2 Where the Network User elects to provide a guarantee or performance bond pursuant to clause 2.1 of this Schedule, the guarantee or performance bond is to be in a form satisfactory to EVN (acting reasonably).
- 2.3 Where the Network User elects to provide a cash bond pursuant to clause 2.1 of this Schedule:
  - 2.3.1 EVN will pay the Network User interest, at the Interest Rate, on the amount of the cash bond, with interest to accrue daily and capitalised every 30 days and added to the value of the cash bond; and
  - 2.3.2 the Network User may request a review of the amount of the cash bond on a quarterly basis and if EVN determines that the value of the cash bond exceeds EVN's reasonable estimate of one-fourth of the annual Charges (inclusive of GST) payable by the Network User, then EVN will refund the excess to the Network User.
- 2.4 The Credit Support may be reviewed on a two-monthly basis by EVN and any change in value required for the Network User to comply with clause 2.1 will be notified to the Network User who will provide additional Credit Support to EVN equal to the revised value required by EVN.

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## 3. FAILURE TO PAY

**3.1** If the Network User fails to pay to EVN any amount set out in any invoice issued by EVN pursuant to this Agreement on the due date for payment (otherwise than for Manifest Error) then, (without limiting any other right of EVN under this Agreement) EVN may do any or all of the following:

3.1.1 make a claim under any Credit Support to the extent payment is due;

3.1.2 where the amount unpaid is equal to 1% or more of the invoice and remains unpaid after two working days' notice from EVN, EVN may (acting reasonably):

(a) require Credit Support from the Network User, if Credit Support has not already been provided by the Network User; or

(b) require a change to the type of Credit Support provided by the Network User; or

(c) require an increase to the level of Credit Support held by EVN.

## 4. REPLACEMENT CREDIT SUPPORT

**4.1** Where any claim is made under a Credit Support instrument the Network User, upon notification from EVN, will procure replacement Credit Support so that the Credit Support requirements set out in this Schedule continue to be met.

**4.2** Where the Network User is required to provide new, replacement or additional Credit Support, it must do so within 20 working days of a written request from EVN.

## 5. FAILURE TO PROVIDE CREDIT SUPPORT

**5.1** If, at any time, EVN issues the Network User a written request in accordance with clause 4.2 of this Schedule and the Network User does not supply acceptable Credit Support within the specified time, EVN may, in addition to the monthly Charges, charge the Network User a fee that reflects the additional risk that EVN must bear. This additional fee per month will be one-twelfth of the Interest Rate, plus 5%:

i.e.

$$CT = Ci + ((I+5\%)/12 \times Ci)$$

Where:

Ci = the monthly Charges

I = the Interest Rate

Ct = the Charges owed with the additional fee.

## SCHEDULE 3 BILLING AND SETTLEMENT PROCESS

### 1. BILLING

- 1.1** EVN will group Delivery Points together into meter reading rounds (“Meter Reading Rounds”) based on their location and Maximum Hourly Quantity.
- 1.2** EVN will carry out a reading of the meters at the Delivery Points in any given Meter Reading Round (but EVN is not required to read the Metering Equipment at any individual Delivery Point if EVN cannot reasonably access that Metering Equipment at the time the Meter Reading Round is carried out, in which case clause 1.5 of this Schedule will apply).
- 1.3** The billing period for a Delivery Point (“Billing Period”) will be the time period between:
- 1.3.1 the date the Metering Equipment at the Delivery Point is read (or a reading is estimated); and
  - 1.3.2 the next date that the Metering Equipment at the Delivery Point is read (or a reading is estimated).
- The length of a Billing Period for a Delivery Point will vary from time to time, depending on the frequency with which the relevant Meter Reading Round is carried out.
- 1.4** After the conclusion of each Billing Period EVN will calculate the Charges payable for that Billing Period and will send an invoice to the Network User for:
- 1.4.1 the Charges for that Billing Period; and
  - 1.4.2 any other amounts due and payable by the Network User under this agreement.
- 1.5** The calculation will, where possible, be based on actual consumption information for the relevant Consumers. If EVN does not have consumption information (i.e., information on the actual quantity of gas delivered to any of the relevant Consumers during the Billing Period), EVN may estimate the Consumers’ gas consumption, and the Charges, for the Billing Period.
- 1.6** The invoice (covering the Billing Period for each Delivery Point) will be sent to the Network User by the 9th working day following the end of that Billing Period and will be payable on the 20th working day following the end of that Billing Period. If EVN fails to send an invoice to the Network User by the 9th working day following the end of the Billing Period then the due date for payment will be extended by one working day for each working day that the invoice is late.
- 1.7** Where EVN has estimated the Network User’s Charges and complete and accurate consumption information subsequently becomes available, EVN will issue an adjustment note for the wash-up amount to the Network User and will adjust the invoice to be issued in the next monthly billing cycle to take into account the wash-up.

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## 2. CONTENTS OF INVOICES

**2.1 Contents of Invoices:** Invoices rendered under clause 1 of this Schedule shall include the following information:

- 2.1.1 the MIRN for each Delivery Point for which Charges are contained in the invoice;
- 2.1.2 the actual or estimated gas consumption for each of those Delivery Points during the Billing Period;
- 2.1.3 the Charges for each of those Delivery Points for the Billing Period;
- 2.1.4 any other amounts charged on the invoice; and
- 2.1.5 GST and other amounts payable.

**2.2 Tax Invoice:** EVN must ensure that each invoice contains, for each taxable supply (including any taxable supply made by the Non-Invoicing Party), a tax invoice (or an adjustment notice) prepared in accordance with the GST Act.

## 3. PAYMENT

**3.1** The Network User shall pay the amount stated as payable on any invoice by direct credit to a bank account nominated by EVN from time to time, or by such other method as is agreed in writing, no later than the due date for payment specified in the invoice. No deduction from the amounts invoiced may be made, except that:

- 3.1.1 If the Network User has received a credit note from EVN with the invoice, the Network User may deduct the amount of the credit note from the amount payable under the invoice.
- 3.1.2 If any part of an amount of any invoice is due to Manifest Error, the Network User may deduct the amount due to that Manifest Error from the amount payable under the invoice.

**3.2** For the purposes of this clause 2.1 of this Schedule, “deduction” means any legal or equitable set off, and/or any legal or equitable counterclaim, and/or any cross-demand and/or any other legal or equitable claim and/or any disputed amount.

## 4. DISPUTED INVOICES

**4.1 Disputed Invoices:** In the event of any dispute concerning an invoice the Network User shall, within 10 Business Days from the date it receives the invoice, notify EVN in writing identifying the amount in dispute and giving full reasons for the dispute. Subject to clause 3 of this Schedule, the Network User must pay the whole amount of any invoice including the amount of any invoice in dispute. Any such dispute shall be determined in accordance with the arbitration procedure under clause 22.

**4.2 Time Limit:** Neither EVN nor the Network User may initiate a dispute in relation to any invoice after 15 months from the date of the invoice.

**4.3 Interest on Disputed Amount:** Where as a result of the determination of a dispute either party has to pay money to the other then interest shall be payable on the amount of the payment at a rate equal to the Interest Rate from the date of the disputed invoice until actual payment.

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- 4.4 Incorrect Invoices:** If the Network User has been overcharged or undercharged under this Agreement then within 30 days after the amount of the error has been agreed or determined by arbitration under clause 21 EVN shall, if the Network User has paid the invoices containing an overcharge, refund the amount of the overcharge or the Network User shall pay to EVN the amount of any undercharge. Interest shall be payable on the amount of an overcharge or undercharge at the Interest Rate from the due date for payment of the incorrect invoice until the date of refund or payment of the overcharge or undercharge.

## SCHEDULE 4 EVN VICTORIA GAS PRICING SCHEDULE 2017

### 1. DELIVERY POINT CHARGES (ex GST)

The Network User will pay charges for each Delivery Point, based on the type of connection at the Delivery Point, as follows:

a) Domestic/Residential connections:

Standard            \$6.93 GJ plus .34c/day

Domestic/Residential connections are generally intended to be connections for which the prime purpose is gas usage solely associated with non-profit occupancy and, for the purposes of EVN's connection policy, includes rental properties. In the event of any dispute, EVN's determination of whether or not a connection qualifies as a Domestic/Residential Connection will be final.

b) Commercial connections with usage of less than 1 TJ p.a:

Standard            \$10.00 GJ plus \$0.62/day

c) Commercial connections with usage of 1 or more TJ per annum:

Price as advised by EVN on request, based on individual usage/requirements. EVN may, at its discretion, enter into individual pricing arrangements with the Network User in relation to specific Consumers with usage of 1 or more TJ per annum.

EVN reserves the right to change a commercial End Consumer who moves from a rolling 12 month annual usage of 1 TJ or greater to a rolling 12 month annual usage of less than 1 TJ to standard pricing.

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### 2. MISCELLANEOUS CHARGES (ex GST)

In addition, the Network User shall pay the following miscellaneous charges:

| Action                                                                                                             | Charge                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Residential/Commercial meter supply pressure alteration assessment (at customer's request)                         | Assessment free                                                                                                             |
| Residential meter testing at customer's request (where meter found to be accurate)                                 | Initial on site test - Free<br>Off-site certified test - \$100                                                              |
| Commercial meter testing at customer's request (where meter found to be accurate)                                  | Initial on-site test - Free<br>Off-site certified test - \$300                                                              |
| Residential/Commercial meter relocation at customer's request                                                      | Price on application                                                                                                        |
| Meter capacity change (Residential and Commercial)                                                                 | To be assessed on case by case basis                                                                                        |
| Temporary Disconnection/Isolation or Reconnection of an installed meter at the request of the retailer or customer | \$100 if during normal business hours, otherwise \$250                                                                      |
| Removal and decommissioning of a gas meter and service at the request of the Retailer                              | Residential service and meter - \$100<br>Commercial service and meter - POA                                                 |
| Special meter reading at request of retailer or customer                                                           | \$100 if during normal business hours, otherwise \$250                                                                      |
| Final meter reading at request of retailer or customer                                                             | \$100 if during normal business hours, otherwise \$250                                                                      |
| Service pipe on-site location and marking on private property for residential and commercial customers             | Free if 3 working days' notice provided and within normal business hours, otherwise \$100                                   |
| Service pipe on-site location and marking for Local Government and other authorities                               | Price on application                                                                                                        |
| Any other services specifically requested by the Retailer, Network User or Consumers                               | Price on application                                                                                                        |
| Commercial/Residential late connection fee                                                                         | First 6 months after Township Network commissioning connection cost is free. To be advised as this changes in 2018 charges. |

## SCHEDULE 5 CONSUMER INFORMATION SHEETS, CONNECTION AND DISCONNECTION

### 1. NEW CONNECTIONS

Where the Network User wishes to supply gas to a person whose premises are not at that time connected to the Network or where any Consumer wishes to have installed a new or additional connection to the Network the following will apply.

- 1.1** The Network User must provide EVN with a completed request for a new Network connection containing the following information:
  - 1.1.1 the name, address and contact details of the Consumer;
  - 1.1.2 the required location of the Delivery Point;
  - 1.1.3 requested Maximum Hourly Quantity (MHQ);
  - 1.1.4 anticipated load factor;
  - 1.1.5 the preferred date for commencement of supply;
  - 1.1.6 any other information required under relevant Victorian gas codes and procedures; and
  - 1.1.7 any other relevant information reasonably requested by EVN.
- 1.2** EVN will respond in a timely manner to receipt of the completed application, advising whether or not it accepts the Network connection request. EVN will not unreasonably reject a Network connection request. If EVN rejects the request it will provide reasons and EVN and the Network User will endeavour to negotiate amendments to the request that make it acceptable to EVN.
- 1.3** For the avoidance of doubt, it shall be reasonable for EVN to reject a Network connection request if EVN determines, in its absolute discretion, that such connection would be uneconomic for EVN. In such circumstances EVN may request that the Network User or the Consumer make a financial contribution towards the cost of connection so as to render the connection economic for EVN.
- 1.4** Where EVN accepts a Network connection request it will advise the Network User of the MIRN for the Delivery Point, the pressure available for the relevant MHQ and what is required in order for the Network connection to occur. Subject to EVN's requirements under this Schedule being met, EVN will use all reasonable endeavours to expedite the connection of Consumers.
- 1.5** The Network User must comply, and must ensure that the Consumer or prospective Consumer complies with all requirements notified by EVN for the Network connection.
- 1.6** In the event that a financial incentive is offered by EVN to any Consumer(s) to encourage the Consumer(s) to connect certain loads within a prescribed timeframe, the Network User acknowledges that any such incentive shall be an arrangement between EVN and the Consumer(s) and the Network User will not interfere with such arrangement, any communication between EVN and the Consumer(s) or the payment of the incentive.



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1.7 EVN acknowledges its obligations in respect of connections under the Gas Distribution System Code.

## 2. CONSUMER TRANSFERS

Where a Consumer that is connected to the Network elects to change retailers to a new Network user, the transfer will take place in accordance with the procedures set out in the Victorian Gas Retail Market Procedures or applicable codes and procedures.

## 3. CONSUMER'S EQUIPMENT

The Network User will require that all Consumer's Equipment complies at all times with the Network Connection Requirements and will require (and satisfy EVN) that the Consumer's Equipment is not connected to another gas distribution system.

## 4. DISCONNECTION

**4.1 Disconnection Event:** EVN may disconnect a Delivery Point from the Network if a Disconnection Event occurs in relation to that Delivery Point. EVN will use all reasonable endeavours to reconnect a Delivery Point disconnected pursuant to this clause 4.1 as soon as reasonably practicable once it is satisfied (acting reasonably) that the Disconnection Event has ceased or has been remedied to its satisfaction (as the case may be).

**4.2 Disconnection on Request:** The Network User may, at any time, provide a written request to EVN to disconnect an End Consumer being supplied by the Network User where such request is permitted by the relevant code(s) (and the Network User has complied with the requirements of the relevant code). On receipt of such request EVN will disconnect the End Consumer as soon as is reasonably practicable. Where EVN disconnects an End Consumer pursuant to this clause, the Network User must pay to EVN the disconnection charge specified in Schedule 4. The disconnection charge must be paid by the Network User within 10 Working Days of receipt of an invoice from EVN for such disconnection charge.

**4.3 Disconnection for fault identification:** EVN may, in accordance with Good Industry Practice, isolate, disconnect or reconnect a Delivery Point for the purposes of identifying and or correcting a fault with the Consumer's Equipment.

**4.4 Continued disconnection:** If a Delivery Point remains disconnected for a period in excess of 60 days, EVN has the right to physically disconnect that Delivery Point and remove its Network equipment from that Delivery Point.

**4.5 No liability:** EVN shall not be liable for any loss the Network User or Consumer may suffer or incur as a result of any disconnection in accordance with this clause 4.

**4.6 Costs:** The Network User shall reimburse EVN for all costs relating to the disconnection (and of any reconnection) pursuant to this clause 4.

**4.7 Supply Agreement:** The Network User will ensure that each Supply Agreement provides for the rights of EVN to disconnect (and reconnect) a Delivery Point in accordance with this clause 4.

**4.8** EVN acknowledges its obligations in respect of disconnections under the Gas Distribution System Code.

## SCHEDULE 6 MEASUREMENT OF GAS

### 1. METERING EQUIPMENT

- 1.1 Provision of Metering Equipment:** Subject to the Network User procuring the grant and provision of the Rights of Access as set out in clause 11.1, EVN will ensure that Metering Equipment is installed and maintained at or near each Delivery Point. All such Metering Equipment and the conversion of measured volume to standard value of energy will meet the Gas Measurement Standard.
- 1.2 Check Metering and Telemetry Equipment:** Each Party may, at its own cost, install check Metering Equipment and/or a pressure temperature monitoring point on or near any Delivery Point and may connect the check Metering Equipment and/or a pressure temperature monitoring point to any on-line monitoring system operated by EVN.

### 2. READINGS

- 2.1 Meter Readings:** EVN will be responsible for taking meter readings from all Delivery Points and providing such data to the Network User as is required in accordance with the relevant codes or procedures. EVN will use reasonable efforts to ensure that readings are taken from the Metering Equipment at each Delivery Point at least once every three months. EVN will not be in breach of this obligation if, for any reason, it is unable to access and read the Metering Equipment at any Delivery Point.
- 2.2 Special Meter Reading Requests:** The Network User may, at any time, provide a written request to EVN to carry out a special meter reading of EVN's Metering Equipment located at the delivery point. Such request must be given at least 2 business days prior to the proposed meter read. On receipt of such request, EVN will use reasonable endeavours to carry out the special meter read in accordance with the request. If EVN is unable to carry out the special meter read as requested, EVN will notify the Network User. Where EVN carries out a special meter read pursuant to this clause, the Network User must pay to EVN the special meter read charge specified in Schedule 4. The special meter read charge must be paid by the Network User within 10 Working Days of receipt of an invoice from EVN for such special meter read charge.

### 3. ACCURACY OF GAS METERING EQUIPMENT

- 3.1 Quantity of Gas:** The quantity of energy delivered will be determined by converting the value recorded by the Metering Equipment to a standard value of energy in accordance with the Gas Measurement Standard. If, however, the Network User or EVN wishes to dispute the accuracy of the Metering Equipment, written notice must be given to the other party.
- 3.2 Dispute over Accuracy of Metering Equipment:** In the event notice under clause 3.1 of this Schedule is given, the following procedure is to be followed:
- 3.2.1 The Network User and EVN will, as soon as practicable, provide each other with any information they may have that is relevant to the checking of the Metering Equipment.
- 3.2.2 EVN will arrange for the Metering Equipment to be tested in accordance with the relevant codes or procedures.

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- 3.2.3 The Metering Equipment is deemed to be accurate if it does not exceed the margins of error specified in the Gas Measurement Standard.
- 3.2.4 The party disputing the accuracy of the Metering Equipment is to pay the reasonable costs of testing, unless the Metering Equipment is found to be inaccurate, in which case EVN is to bear the costs.
- 3.2.5 If it is established that any Metering Equipment is not measuring accurately, the quantity of gas delivered during the period when the Metering Equipment was not measuring accurately (determined through reference to a check meter or other available information) will be corrected in accordance with the relevant codes or procedures. If no reliable data is available to confirm the period when the Metering Equipment was not measuring accurately, or the amount by which it was inaccurate, the correction will not be applied for more than 60 days prior to the date when the inaccuracy was first notified or detected.
- 3.2.6 Where any Metering Equipment has failed to measure the quantity of gas, the method of calculating the quantity of gas delivered will be in accordance with the relevant codes or procedures.

## SCHEDULE 7 OUTAGES

### 1. COMMUNICATION OF PLANNED OUTAGE

- 1.1 Where EVN plans any outage to any part of the Network that will affect the conveyance of Gas to any Consumers, EVN will, where practicable, provide the Network User with at least 10 working days' advance notice.
- 1.2 EVN will consider alternative outage times if the Network User notifies EVN that its Consumers may be materially adversely affected by a planned outage. However, EVN retains absolute discretion to determine outage times.
- 1.3 EVN will provide any update or variation to a planned outage as soon as is reasonably practicable.

### 2. MANAGEMENT OF UNPLANNED OUTAGES AND EMERGENCIES

- 2.1 Subject to any applicable law, EVN will be solely responsible for the management of Network emergencies. For the purposes of this clause, an emergency is an unplanned interruption to supply or an unplanned event which presents, or has the potential to present, a hazard to life and/or property and/or the environment. Emergency management will include the actions necessary to:
  - 2.1.1 assess and make safe any situation;
  - 2.1.2 control the flow of gas into and out of the Network;
  - 2.1.3 make temporary or permanent repairs to any part of the Network;
  - 2.1.4 restore the Network back to its previous operational condition;
  - 2.1.5 co-ordinate with Network Users to restore the supply of gas; and
  - 2.1.6 keep users of the Network and the public informed of developments.
- 2.2 EVN will maintain an emergency management plan outlining the resources available and actions likely to be taken when handling any foreseeable emergency involving the Network. The plan will include load shedding principles and schedules, emergency liaison, and take into account the plan developed by the owner or operator of the Supply System ("Emergency Response Plan").
- 2.3 Both EVN and the Network User will nominate and notify each other of the name of the person who will act as the Incident Controller in the event of an outage or emergency.
- 2.4 The Network User must take no action, and must ensure that its Consumers take no action, during the course of a Network emergency to compromise EVN's ability to manage the emergency.
- 2.5 Once the Network has been returned to normal operating condition, EVN will advise the Network User and the parties will liaise to restore supply to Consumers' Equipment. Where the emergency has resulted from an incident on the Network, EVN will meet the costs of restoring supply to Consumers' Equipment including the re-lighting of pilots. Where the emergency has resulted from an incident upstream of the

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Network, the costs of restoring supply to the Consumers' Equipment including the re-lighting of pilots will not be the responsibility of EVN.

- 2.6** In the event of loss of gas supply it may become necessary to implement load shedding on the Network. In order to manage that event, EVN will develop and maintain a load shedding plan.
- 2.7** Where requested, EVN will provide to the Network User the load shedding plan.
- 2.8** The initial objective in any load shedding is to stabilise the System or Network. Once stabilisation is achieved EVN will use reasonable endeavours to ensure that the available gas supplies are allocated in accordance with the prevailing contractual arrangements for the supply of gas which have been notified to EVN by the Network User and other users of the Network. In allocating available gas supplies, once stabilisation is achieved, EVN will be entitled to rely on any such notice given by the affected users of the Network. In the absence of any such notice, EVN will be entitled to allocate available gas supplies as it sees fit.
- 2.9** EVN acknowledges its obligations in respect of Guaranteed Service Levels under the Gas Distribution Codes for Tariff V customers.