

# Reference Service Agreement

Evoenergy's gas distribution network in the  
ACT and Queanbeyan-Palerang

1 July 2021 – 30 June 2026

Approved under AER Final Decision April  
2021

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## Agreement dated

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**Parties** Evoenergy ABN 76 670 568 688 a partnership between **Jemena Networks (ACT) Pty Limited** ABN 24 008 552 663 and **Icon Distribution Investments Limited** ABN 83 073 025 224 (**Evoenergy**); and

**The person described as the User in Annexure 1 (User).**

## Background

Evoenergy has agreed to provide and the User has agreed to receive the Reference Service under the Access Arrangement on the terms and conditions set out in this Agreement.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement, unless otherwise indicated:

**Access Arrangement** means the current access arrangement in relation to the Network approved by the AER, for the purposes of and in accordance with the National Gas Law;

**ADC** means the Australian Dispute Centre;

**AEMC** means the Australian Energy Market Commission;

**AER** means the Australian Energy Regulator;

**Agreement** means this document (including the annexures), the Reference Tariff Schedule, and any other document, or part of a document, incorporated into this Agreement by reference;

**Ancillary Charge** means an ancillary charge specified in the Reference Tariff Schedule;

**Assignment Date** means the date determined in accordance with:

- (a) clause 9.2(d)(i); or
- (b) the date on which a Delivery Point was most recently assigned to its current Tariff Category by Evoenergy, as set out in the relevant Customer List;

**Associates** means, with respect to a Party (or Related Body Corporate of a Party), its directors, officers, employees, agents and contractors;

**Australian Energy Market Operator** or **AEMO** means Australian Energy Market Operator Limited (ACN 072 010 327);

**Australian Standard AS ISO 1000-1998** means *'The International System of Units (SI) and its Application'*, the Commonwealth *'Weights Measures (National Standards) Act 1960 - 1965'* and Regulations thereunder, and AS/NZ1376:1996 Conversion Factors;

**Authorised Overrun** has the meaning given to that term in clause 5.3;

**Authorised Overrun Quantity** has the meaning given to that term in clause 5.7;

**Authorised Retailer** means a person who is the holder of a Retailer Authorisation in respect of the sale of Gas;

**Basic Metering Equipment** means the meter set at a Delivery Station comprising Gas meter, filter, pipework and isolation valves and may further include, where required by Evoenergy, water meter, pressure regulators, safety valves, pressure and temperature measurement instruments and flow calculation equipment;

**Billing Period** means the period between the dates on which a meter is read for a Non-Daily Metered Delivery Point, or one Calendar Month for a Daily Metered Delivery Point;

**Business Day** means any day which is not a Saturday, Sunday or a gazetted public holiday in New South Wales or the Australian Capital Territory;

**Calendar Month** means the period beginning at 06:00am on the first day of a calendar month and ending at 06:00am on the first day of the next succeeding calendar month;

**Calendar Year** means the period commencing at 06:00am on 1 January and terminating at the same time on 1 January of the following year;

**Capacity Entitlement** means:

- (a) in respect of a Demand Customer Delivery Point:
  - (i) on a Day, the MDQ , and
  - (ii) in an Hour, the MHQ,specified in the Demand Customer List for that Delivery Point;
- (b) in respect of a Volume Customer Delivery Point;
  - (i) if there is an MHQ specified in the Volume Customer List in an Hour, that MHQ, as varied from time to time pursuant to clause 4.2; or
  - (ii) if there is no MHQ specified in the Volume Customer List, the Quantity of Gas withdrawn by the User from the Delivery Point in an Hour, up to a maximum Quantity of 6m<sup>3</sup>/Hour;

**Chargeable Demand** means, for a Demand Customer Delivery Point, the Quantity of Gas determined in accordance with this Agreement which is used to determine the Demand Charge;

**Charges** means the charges payable by the User to Evoenergy under clause 17.1 of this Agreement;

**Commencement Date** means:

- (a) in respect of a Delivery Point listed in a Customer List immediately prior to the most recent amendment to this Agreement under clause 1.2, the commencement date specified in the Customer List; or
- (b) in respect of a Delivery Point which is added to a Customer List pursuant to clause 9.2, the date on which a change of user transaction under the Retail Market Procedures takes effect such that the User becomes the FRO for the Delivery Point; or
- (c) in respect of a new Delivery Point added to the Customer List pursuant to clause 9.3, the date specified by Evoenergy;

**Communications Facilities** means equipment used to communicate electronically Daily metering data from Daily Meter Reading Facilities at a Delivery Station to Evoenergy;

**Confirmed Nomination** has the meaning given to that term in the Gas Balancing Annexure;

**Confidential Information** means all information which either Party discloses to the other under or in connection with the performance of any obligations under this Agreement, whether that disclosure is made orally, in writing, electronically or by any other means;

**Consequential Loss** means any of the following, however caused or arising whether under common law, equity, contract, any fiduciary duty, tort (including negligence) or delict as a consequence of breach of any duty (statutory or otherwise) or under any other legal doctrine or principle whatsoever, irrespective of whether recoverable in law or equity:

- (a) loss of revenue, reputation or profit;
- (b) cost, loss, liability, penalty, expense or damage associated with business interruption (including overheads incurred during business interruption);
- (c) punitive or exemplary damages;
- (d) cost, loss, liability, penalty, expense or damage incurred, or liquidated or pre-estimated damages or penalties of any kind whatsoever, borne or payable under any contract for the sale, exchange, transportation, processing, storage or other disposal of Gas (other than this Agreement);
- (e) cost, loss, liability, penalty, expense or damage arising in connection with a Third Party Claim;
- (f) loss of bargain, contract, expectation or opportunity; and
- (g) any indirect or consequential loss or damage;

**Curtailed Plan** means a written procedure, which is reasonably acceptable to Evoenergy, that describes the timing and steps to be taken by a Customer to reduce and maintain Hourly Gas withdrawals

at the Delivery Point to pre-quantified levels which correspond to the Load Shedding Priorities set out in the ELMS Data for the Delivery Point;

**Customer** means:

- (a) a person who consumes the Gas delivered by Evoenergy at a Delivery Point or Energy produced from that Gas and whose Energy consumption is individually metered by Evoenergy to measure Gas withdrawn at the Delivery Point;
- (b) a person who on-supplies to third parties the Gas delivered by Evoenergy at a Delivery Point or Energy produced from that Gas;
- (c) the User, where the User consumes the Gas delivered by Evoenergy at a Delivery Point or Energy produced from that Gas; or
- (d) the User, where the User is not an Authorised Retailer or an Exempt Seller and on-supplies to third parties Gas delivered by Evoenergy at a Delivery Point or Energy produced from that Gas;

**Customer Connection Contract** in force at a Delivery Point means a customer connection contract, as defined in the NERL, which has taken effect as between Evoenergy and a Customer in respect of supply of Gas at that Delivery Point, in accordance with the NERL;

**Customer List** means:

- (a) in respect of a Demand Customer Delivery Point, the Demand Customer List; and
- (b) in respect of a Volume Customer Delivery Point, the Volume Customer List,

as amended from time to time, listing all Delivery Points to which Evoenergy provides a Service under this Agreement;

**Customer's Personal Information** means Personal Information in respect of a Customer or prospective Customer;

**Daily Meter Reading Facilities** means equipment at a Delivery Station necessary to enable a Customer's Daily consumption of Gas to be recorded and measured;

**Daily Metered Delivery Point** means a Delivery Point where Gas consumption is measured on a Daily basis;

**Day** means a period of 24 consecutive Hours beginning at 06:00am and **Daily** has a corresponding meaning;

**Declared Heating Value** of Gas for a Day means the Heating Value of Gas applicable to the Delivery Point for the Day as determined by Evoenergy;

**Delivery Point** means a Demand Customer Delivery Point or a Volume Customer Delivery Point which is listed in a Customer List under this Agreement;

**Delivery Station** means facilities (including Measuring Equipment) installed at a Delivery Point to enable the delivery of Gas from the Network and which regulate the delivery, and measure the Quantity, of Gas withdrawn at that Delivery Point;

**Demand Charge** means the annual charge calculated by multiplying the Demand Capacity Rate (or other charge component set out in the Reference Tariff Schedule that is expressed in units of \$/(GJ of Chargeable Demand) per annum) by the Chargeable Demand;

**Demand Customer Delivery Point** means a delivery point for which:

- (a) a Demand Tariff (or a Volume Tariff which includes a Demand Charge) has been assigned by Evoenergy in accordance with the Access Arrangement; and
- (b) Evoenergy has agreed to provide a Service under this Agreement (as evidenced by inclusion of it on the Customer List);

**Demand Customer List** means a list in electronic form which sets out the following items for each Demand Customer Delivery Point as updated from time to time:

- (a) the station ID;
- (b) the Receipt Point;
- (c) the assigned Tariff Category;
- (d) the Commencement Date;
- (e) the Chargeable Demand;
- (f) the MDQ;
- (g) the MHQ;
- (h) the Assignment Date;
- (i) the Demand Reset Date; and
- (j) the ELMS Data;

**Demand Reset Date** means, for a Demand Customer Delivery Point, the date on which the Chargeable Demand for that Delivery Point was last changed under clause 4.4(d), 4.4(e) or 4.5(g);

**Demand Tariff** means a Tariff Category designated as a Demand Tariff in the Reference Tariff Schedule;

**Disclosing Party** has the meaning given to that term in clause 29(b);

**Dispute** has the meaning given to that term in clause 30.2;

**Due Date** has the meaning given to that term in clause 18.4(a);

**ELMS Data** means information held by Evoenergy for the purposes of facilitating emergency Load Shedding including, but not limited to, for each Demand Customer Delivery Point:

- (a) Load Type;
- (b) the corresponding Quantity of Load for each Load Type; and
- (c) 24-hour, seven day a week User and Customer contact details,

and includes any Curtailment Plan provided by a User or Customer in respect of a Delivery Point;

**End Consumer** means a person who buys or and consumes Gas delivered by Evoenergy to a Delivery Point or Energy produced from that Gas, and who is not a Customer;

**Energy** means energy (or an energy source) in any form and includes natural gas, electricity or thermal energy in any form (for example steam or hot water and whether used for heating, cooling or some other purpose);

**Exempt Seller** means a person who is exempted by the AER under the NERL from the requirement to hold a Retailer Authorisation;

**Evoenergy** means Evoenergy or its successors or assigns;

**Financial Report** has the meaning given to that term in the *Corporations Act 2001* (Cth);

**Financial Year** means the 12 month period ending on 30 June in any year;

**Financially Responsible Organisation** or **FRO** for premises means the person who is responsible for settling the account for Gas withdrawn from the delivery point associated with premises under the Retail Market Procedures;

**Flow and Pressure Control System** means the flow and pressure control system associated with a Receipt Station;

**Force Majeure Event** has the meaning given to that term in clause 22.1;

**Forecast Withdrawal** has the meaning given to that term in clause 2 of Annexure 3;

**Gas** means natural gas;

**Gas Balancing** means operational Gas balancing carried out to ensure safe and reliable supply of Gas;

**Gas Balancing Adjustments** means adjustments to the Quantity of Gas transported for a User made pursuant to the relevant Network operational requirements at the time (including in relation to Gas Balancing and the maintenance of linepack in the Network);

**Gas Supply Act** means *Gas Supply Act 1996* (NSW);

**GJ** means one gigajoule and is equal to one thousand MJ;

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

**GST law** has the meaning given to such term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or a successor Act;

**Heating Value** is the number of megajoules liberated when one cubic metre of Gas at Standard Conditions is completely burnt in air, with all water formed by the combustion process condensed to the liquid state, and with all products of combustion at Standard Conditions;

**Hour** means any period of 60 consecutive minutes, the first Hour in a Day starting at 06:00am, and **Hourly** has a corresponding meaning;

**Joule** or **J** means a unit of energy as defined in Australian Standard AS ISO 1000-1998;

**kPa** means one kilopascal and is equal to one thousand pascals as defined in Australian Standards AS ISO 1000-1998, and unless otherwise specified, refers to a gauge pressure in excess of the prevailing atmospheric pressure;

**Large Customer** has the meaning given to that term in the National Energy Retail Law;

**Law** means:

- (a) any statute, regulation, order, rule, subordinate legislation or industry code including the *Utilities Act 2000 (ACT)*, the *Utilities (Technical Regulation) Act 2014*, the *Gas Safety Act 2000 (ACT)*, the *National Gas (ACT) Act 2008 (ACT)*, the *National Gas (New South Wales) Act 2008 (NSW)*, the *Gas Supply Act 1996 (NSW)*, the National Energy Retail Law and National Energy Retail Rules, and
- (b) any other document enforceable under any statute, regulation, rule or subordinate legislation, including but not limited to, the Access Arrangement, Retail Market Procedures, any procedures or rules made or enacted by the Australian Energy Market Operator, the AER or the AEMC, applying to the Network, any other codes, guidelines, orders in council, licences, proclamations, directions or standards, the reticulator's authorisation held by Evoenergy and, if it holds one, the Retailer Authorisation or the Seller's Exemption held by the User and any licence issued under the *Utilities Act 2000 (ACT)*, the *Utilities (Technical Regulation) Act 2014* or the *Gas Supply Act 1996 (NSW)*,

that applies to the relevant part of the Network, or any Delivery Point or Receipt Station, and in accordance with clause 32.11 of this Agreement;

**Load** means the taking or withdrawal of Gas from the Network;

**Load Shedding** means the process of reducing or ceasing the withdrawal or taking of Gas from the Network;

**Load Shedding Priority** means a load shedding priority as set out and described in the Operational Schedule;

**Load Type** means, in respect of each Delivery Point, the uses to which Gas withdrawn or taken from the Network at that Delivery Point is put, as described in the Operational Schedule in respect of each Load Shedding Priority;

**Loss** includes any costs (including any charge or deductible payable in in respect of any insurance and any costs of any adviser on a full indemnity basis), liabilities (including any charge, compensation, debt or fine), losses, penalties, expenses or damage, present or future, ascertained or unascertained, actual, contingent or prospective, or (to the extent not against public policy or prohibited by Law) any fine or penalty of whatsoever nature or description suffered or incurred by a person and including Consequential Loss;

**Maximum Daily Quantity** or **MDQ** means the maximum Quantity of Gas which Evoenergy is obliged to transport and delivery to a Demand Customer Delivery Point on behalf of the User on any Day as specified in the Customer List as varied from time to time by clauses 4.1(g), 4.2 and 4.5;

**Maximum Hourly Quantity** or **MHQ** means the maximum Quantity of Gas which Evoenergy is obliged to transport and deliver to a Delivery Point on behalf of the User in any Hour as specified in the Customer List as varied from time to time by clauses 4.1(g), 4.2 and 4.5;

**Measuring Equipment** means all the equipment and facilities (including Basic Metering Equipment, Communications Facilities and Daily Meter Reading Facilities) forming part of a Delivery Station or a Receipt Station required to measure the Quantity delivered to or at the Delivery Point or Receipt Point;

**Minimum Charge** means the minimum amount payable over a period of time for:

- (a) a Service or for a component of a Service; or
- (b) a Delivery Point as agreed with Evoenergy;

**MJ** means one megajoule and is equal to one million Joules;

**National Energy Retail Law or NERL** means the *National Energy Retail Law* adopted under the *National Energy Retail Law (Adoption) Act 2012 (NSW)* or the *National Energy Retail Law* adopted under the *National Energy Retail Law (Adoption) Act 2012 (ACT)* as applicable;

**National Energy Retail Rules or NERR** means the *National Energy Retail Rules* adopted under the *National Energy Retail Law (Adoption) Act 2012 (NSW)* or the *National Energy Retail Rules* adopted under the *National Energy Retail Law (Adoption) Act 2012 (ACT)* as applicable;

**National Gas Law** means the *National Gas Law* adopted under the *National Gas (New South Wales) Act 2008 (NSW)* or the *National Gas Law* adopted under the *National Gas (ACT) Act 2008 (ACT)* as applicable;

**National Gas Rules** means the *National Gas Rules* adopted under the *National Gas (New South Wales) Act 2008 (NSW)* or the *National Gas Rules* adopted under the *National Gas (ACT) Act 2008 (ACT)* as applicable;

**Network** means Evoenergy's distribution system in the ACT, Queanbeyan-Palerang Region, consisting of a system of pipes and associated facilities including any Receipt Station components, Delivery Station components and Measuring Equipment owned by Evoenergy;

**Network Section** means a part of its Network that Evoenergy has designated as a Network Section, and if none have been designated then it means the Network;

**Network User** means any party that enters into a Service Agreement with Evoenergy;

**NGR Part 12A Connection Contract** for a delivery point means a connection contract under Part 12A of the National Gas Rules between Evoenergy and a Customer or between Evoenergy and the User or another person on behalf of a Customer for the provision of a connection service to the premises serviced by the delivery point;

**Non Daily Metered Delivery Point** means a Delivery Point where Gas consumption is not recorded on a Daily basis;

**Operational Schedule** means the Operational Schedule set out in Schedule 7 of the Access Arrangement;

**Out-of-Specification Gas** has the meaning given to that term in clause 8.3;

**Overrun** means, the withdrawal at a Delivery Point of a Quantity of Gas exceeding the MHQ in any Hour or the MDQ on any Day for that Delivery Point;

**Overrun Day** means the Day on which an Overrun is expected to occur;

**Party** means a party to this Agreement;

**Personal Information** has the meaning given in the applicable Privacy Laws;

**Pipelines** means the Moomba-Sydney Pipeline, the Eastern Gas Pipeline and any other Gas works connecting to the Network upstream of any Receipt Point;

**PJ** means one petajoule and is equal to one thousand TJ;

**Primary Measurement** means the direct or inferential measurement of a mass or volumetric flow at Network conditions;

**Privacy Laws** means the *Privacy Act 1988* (Cth) and any other applicable laws, including codes or other instruments made, approved or issued under such laws governing the handling of Personal Information;

**Provision of Basic Metering Equipment Charge** means an annual charge specified as such in the Reference Tariff Schedule;

**Quantity** or **Quantity of Gas** means, the quantity of Gas, expressed in GJ, calculated as the product of the Declared Heating Value and the Volume of Gas, subject to clause 15 in respect of Gas delivered at a Delivery Station;

**Queanbeyan-Palerang Region** means the area known as Queanbeyan-Palerang Region by proclamation under the *Local Government Act 1993* (NSW);

**Receipt Point** means any point at which Gas is received into the Network;

**Receipt Station** means the facilities at a Receipt Point through which Gas is or can be received into the Network;

**Reference Service** has the meaning given to that term in the Access Arrangement;

**Reference Tariff** means a tariff which relates to the Reference Service;

**Reference Tariff Schedule** means the Reference Tariff Schedule in the Access Arrangement amended from time to time in accordance with the terms of the Access Arrangement;

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth);

**Relevant Receipt Point** means, in relation to a Delivery Point, any Receipt Point connected (directly or indirectly) to the part of the Network in which that Delivery Point is located as listed from time to time on the Customer List;

**Relevant Region** means New South Wales or the Australian Capital Territory as applicable;

**Replacement Gas** means:

- (a) Gas; or
- (b) hydrogen or any other gas,

procured by Evoenergy to make up for Gas unaccounted for in the Network;

**Request** means a request for a Service using a request for service form set out in Schedule 2 to the Access Arrangement or such other request for service form as Evoenergy may determine and **Requesting** and **Requested** have a corresponding meaning;

**Retail Market Procedures** means the Retail Market Procedures (NSW and ACT) or such other procedures for the operation of the retail market for Gas in New South Wales or ACT as are approved by AEMO;

**Retailer Authorisation** means a retailer authorisation issued under Part 5 of the NERL;

**Safety and Operating Plan** means a safety and operating plan lodged by Evoenergy under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW), or prepared by Evoenergy under the *Gas Safety and Operating Code 2000* (ACT), as amended from time to time;

**Safety Regulator** means any person having any investigatory or regulatory function under the Law (including, for avoidance of doubt, the Secretary under *Gas Supply (Safety and Network Management) Regulation 2013* (NSW));

**Secondary Measurement** means any measurement of the quality of the Gas or of the flowing Network conditions (such as pressure or temperature) used to convert the Primary Measurement to Quantity;

**Security** means, at the User's option, one or a combination of the following:

- (a) a refundable deposit, or bank guarantee;
- (b) if Evoenergy agrees (in its discretion acting reasonably), a parent company guarantee; or
- (c) such other form of security as agreed between the User and Evoenergy,

which must be in a form satisfactory to Evoenergy acting reasonably;

**Seller's Exemption** means an exemption issued by the AER under Division 6 of Part 5 of the NERL;

**Service** means the service(s) to be provided by Evoenergy to the User under this Agreement, being a Reference Service under the Access Arrangement;

**Service Agreement** has the meaning given in the Access Arrangement;

**Small Customer** has the meaning given to that term in the National Energy Retail Law;

**Small Customer Delivery Point** means a Delivery Point at which the Customer consuming Gas at the premises serviced by the Delivery Point is a Small Customer;

**Specification** means the specifications described in clause 8.1(a);

**Specified Period** has the meaning given to that term in clause 5.4(a)(ii);

**Standard Conditions** means a temperature of 15°C and an absolute pressure of 101.325 kPa;

**Tariff Category** means the Tariff Category set out in the Reference Tariff Schedule to which a Delivery Point is assigned in accordance with the Access Arrangement;

**Third Party Claim** means a demand, claim, action or proceeding made or brought by or against a person by a third party, however arising and whether present, unascertained, immediate, future or contingent;

**TJ** means one terajoule and is equal to one thousand GJ;

**Unauthorised Overrun** has the meaning given to that term in clause 5.9;

**Volume** means volume of Gas measured in cubic metres (m<sup>3</sup>) at actual conditions converted to Standard Conditions using either a flow corrector forming part of the Measuring Equipment or an algorithm determined by Evoenergy acting reasonably;

**Volume Customer Delivery Point** means a delivery point for which:

- (a) a Volume Tariff (except a Volume Tariff which includes a Demand Charge) has been assigned by Evoenergy to the User in accordance with the Access Arrangement; and

- (b) Evoenergy has agreed to provide a Service under this Agreement (as evidenced by inclusion of it on the Customer List);

**Volume Customer List** means a list in electronic form which sets out the following items for each Volume Customer Delivery Point as updated from time to time:

- (a) station ID;
- (b) the Receipt Point;
- (c) the assigned Tariff;
- (d) the Commencement Date;
- (e) where the User requires, and the MHQ is in excess of 6 m<sup>3</sup>/Hour, the MHQ;
- (f) the Assignment Date;

**Volume Tariff** means a Tariff Category designated as a Volume Tariff in the Reference Tariff Schedule.

## 1.2 Amendments to this Agreement approved by relevant authority

Where:

- (a) the AER has approved amendments to this Service Agreement in accordance with the Access Arrangement or in connection with the approval by the AER of a revised or new access arrangement; or
- (b) where amendments to this Service Agreement are made pursuant to any orders made by any Court, or made or ordered by the Australian Competition Tribunal (**Tribunal**), in connection with any judgement by a Court, or determination by the Tribunal, in relation to a revised or new access arrangement,

then:

- (c) Evoenergy will provide notice to the User promptly after becoming aware of such amendments; and
- (d) the Parties each agree that such amendments will vary the terms of this Agreement, effective no less than 10 Business Days from the date of the notice, unless the User can demonstrate to Evoenergy's reasonable satisfaction that it is not able to comply with this timeframe in which case Evoenergy will grant a reasonable extension.

## 1.3 Construction

In the construction of this Agreement, unless the context otherwise requires:

- (a) a reference to a clause or an annexure is to a clause in, or an annexure to, this Agreement;

- (b) the singular includes the plural and vice versa;
- (c) the words include, includes or including are to be construed without limitation;
- (d) references to any laws shall be deemed to be references to the laws as from time to time amended, consolidated, re-enacted or replaced including substituted provisions or instruments that substantially correspond to those referred to;
- (e) references to any agreement, deed, instrument, document or publication shall be deemed to be references to the agreement, deed, instrument, document or publication as from time to time amended, supplemented, novated or replaced;
- (f) clause headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (g) expressions referring to writing will be construed as including references to words printed, type-written, telexed, lithographed or otherwise traced, copied or reproduced;
- (h) references to dollars and \$ are references to Australian dollars;
- (i) a reference to a Party includes a reference to its successors in title and permitted assigns;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally or if given in favour of two or more persons may be enjoyed by them jointly or severally or jointly and severally;
- (k) references to time are Australian Eastern Standard Time (EST) unless specified otherwise;
- (l) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (m) when referring to a particular Day, the date of the Day shall be the date on which that Day begins; and
- (n) a reference to any firm, body corporate, partnership, unincorporated body or association or government agency (that is not a Party to this Agreement) shall, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other firm, body corporate, partnership, unincorporated body or association or government agency, be deemed to refer respectively to the firm, body corporate, partnership, unincorporated body or association or government agency established or constituted in lieu thereof or as nearly as may be succeeding to the powers or function thereof.

## **2. Commencement and Expiry of the Service**

The Service for a Delivery Point:

- (a) commences on the Commencement Date for that Delivery Point; and

- (b) expires on the earlier of:
  - (i) the deletion of that Delivery Point from the Customer List; and
  - (ii) termination of this Agreement.

### **3. Service**

#### **3.1 Requests for Service**

If the User requests a Service to a delivery point, and the relevant requirements of the Access Arrangement are met by the User and Evoenergy, Evoenergy must provide the Service in accordance with this Agreement.

#### **3.2 Addition and Deletion of Delivery Points from Customer List**

The Parties agree that delivery points may be added to the Customer Lists in accordance with clause 9 and Delivery Points may be deleted from the Customer Lists in accordance with clause 10.

#### **3.3 Evoenergy's delivery obligation**

- (a) Evoenergy will in respect of each Delivery Point, subject to the terms of this Agreement:
  - (i) receive a Quantity of Gas into the Network from or for the account of the User at the Relevant Receipt Point for delivery to that Delivery Point (**Transportation Quantity**); and
  - (ii) taking into account Gas Balancing Adjustments, deliver a Quantity of Gas thermally equivalent to the Transportation Quantity to or for the account of the User to that Delivery Point.
- (b) Evoenergy's obligations under clause 3.3(a) are subject to the aggregate deliveries from the User and all other Network Users on a Day to a Network Section being equal to the aggregate withdrawals by the User and all other Network Users on that Day from that Network Section (unless any imbalance between the two would not affect the ability of a prudent service provider acting reasonably to provide the Service under this Agreement).
- (c) Evoenergy is not obliged to transport or deliver a Quantity of Gas to a Delivery Point which is greater than the Capacity Entitlement plus Authorised Overruns.
- (d) Where any Gas delivered to a Delivery Point under this Agreement is used in connection with the supply of Energy to, or the consumption of Energy by, one or more End Consumers, then the additional terms and conditions set out in Annexure 5 apply as between Evoenergy and the User.

## **4. MDQ, MHQ and Chargeable Demand**

### **4.1 MDQ and MHQ**

- (a) Each Demand Customer Delivery Point and its MHQ and MDQ is set out in the Demand Customer List.
- (b) Each Volume Customer Delivery Point and its MHQ is set out in the Volume Customer List. Where there is no MHQ in the Volume Customer List, the MHQ for the Delivery Point will be the Quantity of Gas actually withdrawn at that Delivery Point in any Hour, up to a maximum of 6m<sup>3</sup>/Hour.
- (c) In any Request in respect of a Delivery Point with Hourly demand greater than 6m<sup>3</sup>/Hour, the User must specify a MHQ that fairly and reasonably reflects the maximum Hourly requirements at that Delivery Point and is based on prior consumption data (where available and where applicable) or, where such data is not available or applicable, is an estimate provided by the User and acceptable to Evoenergy (acting reasonably).
- (d) In any Request for a Demand Customer Delivery Point, the User must also specify a MDQ that fairly and reasonably reflects the maximum Daily requirements at that Delivery Point and is based on prior consumption data (where available and where applicable) or, where such data is not available or applicable, is an estimate provided by the User and acceptable to Evoenergy (acting reasonably).
- (e) The MDQ and MHQ for a Delivery Point can only be changed as provided in clauses 4.1(g), 4.2 and 4.5(f).
- (f) The User must not, at any Delivery Point, take more than the Capacity Entitlement (plus Authorised Overruns) for that Delivery Point.
- (g) The User must notify Evoenergy promptly upon becoming aware if the MHQ or MDQ requirement for a Demand Customer Delivery Point decreases, in which case the MHQ or MDQ for that Delivery Point may be reduced by Evoenergy to accord with those requirements.

### **4.2 Procedure for Requests to increase MHQ or MDQ requirements**

Evoenergy must agree to an increase in the MDQ or MHQ for any Demand Customer Delivery Point if:

- (a) the User complies with the provisions of the Access Arrangement and National Gas Law relating to Requests, including payment of the costs of processing that Request as set out in the Access Arrangement;
- (b) Evoenergy has sufficient capacity available in the Network to provide the Service to the Delivery Point;
- (c) the User accepts Evoenergy's offer to change the MDQ or MHQ (as the case may be); and

- (d) the User has provided updated ELMS Data for the Delivery Point in accordance with clause 21.6.

The User acknowledges that if the MDQ is increased under this clause 4.2, the Chargeable Demand may be adjusted under clause 4.3.

#### **4.3 Chargeable Demand**

- (a) This clause 4.3 applies where the Delivery Point is a Demand Customer Delivery Point.
- (b) Evoenergy will calculate the Demand Charge for a Delivery Point using the Chargeable Demand applicable to that Delivery Point as determined under this Agreement and as varied from time to time in accordance with clauses 4.3(c), 4.4, 4.5 or the Reference Tariff Schedule.
- (c) The Chargeable Demand for a Delivery Point for any Day must be equal to or greater than the larger of:
  - (i) the MDQ for that Delivery Point; and
  - (ii) ten times the MHQ for that Delivery Point.

#### **4.4 Increases in Chargeable Demand**

- (a) This clause 4.4 applies where the Delivery Point is a Demand Customer Delivery Point.
- (b) Where a Delivery Point is equipped with Daily Meter Reading Facilities, Evoenergy may increase the Chargeable Demand to equal the ninth-highest actual Quantity of Gas withdrawn at that Delivery Point in any one Day over the previous 12 month period (or if data from the Daily Meter Reading Facilities is not available for that 12 month period, any lesser period of time for which such information is available).
- (c) Where a Delivery Point is not equipped with Daily Meter Reading Facilities, Evoenergy may increase the Chargeable Demand to equal the average daily Quantity of Gas withdrawn from that Delivery Point during any Calendar Month during the previous 12 month period.
- (d) Where Evoenergy increases the Chargeable Demand for a Delivery Point pursuant to clauses 4.4(b) or 4.4(c), the increase shall take effect from the first Day of the Calendar Month immediately following the Calendar Month in which the Daily or monthly consumption (as applicable) occurred that was used to calculate the increased Chargeable Demand. That Day will be the Demand Reset Date for that Delivery Point with respect to that Chargeable Demand.
- (e) Where the MHQ or MDQ for a Delivery Point is increased under clause 4.2, Evoenergy may increase the Chargeable Demand for a Delivery Point to the extent necessary for the Chargeable Demand to meet the requirements of clause 4.3(c). The increase will take effect on the date reasonably determined by Evoenergy which must be on or after the date on which the increased MHQ or MDQ first applied. The date so determined will be the Demand Reset Date for that Delivery Point with respect to that Chargeable Demand.

#### 4.5 Decreases in Chargeable Demand

- (a) This clause 4.5 applies to Demand Customer Delivery Points.
- (b) Where a Customer at a Delivery Point has experienced a significant reduction in its requirements for Gas supply, the User may request Evoenergy to reduce the Chargeable Demand for the Delivery Point (Reduction Request), provided that:
  - (i) the requested Chargeable Demand and any reduction in the MDQ and/or MHQ is nominated in the Reduction Request;
  - (ii) the Reduction Request is received by Evoenergy no less than 12 months after the Demand Reset Date in respect of the current Chargeable Demand; and
  - (iii) the User provides a letter from the Customer setting out the reasons for its reduction in Gas requirements and demonstrating to Evoenergy's reasonable satisfaction that the reduction is significant and that the Chargeable Demand should be reduced to the requested level.
- (c) Evoenergy will not unreasonably withhold its consent to a Reduction Request and must advise whether or not it will consent to a Reduction Request within one month of the date on which it receives the Reduction Request from the User. If Evoenergy does not consent to the Reduction Request, Evoenergy must provide written reasons for its decision.
- (d) In considering a Reduction Request, in addition to the information provided as part of the Reduction Request Evoenergy may take into account any other factors Evoenergy considers relevant, including but not limited to:
  - (i) past patterns of actual Gas consumption at the Delivery Point and reasoned forecasts of expected future demand for Gas at the Delivery Point;
  - (ii) any previous requests to reduce the Chargeable Demand or increase or decrease the MHQ or MDQ at the Delivery Point; and
  - (iii) whether, and if so the extent to which, the proposed reduction will compromise Evoenergy's ability to recover any capital expenditure Evoenergy has incurred in relation to the Delivery Point (including whether Evoenergy incurred such capital expenditure in reliance on an undertaking to maintain a certain level of MDQ or Chargeable Demand for a minimum period of time).
- (e) If Evoenergy consents to a Reduction Request, the Chargeable Demand for the Delivery Point will be reduced to the higher of:
  - (i) the reduced Chargeable Demand nominated in the Reduction Request; or
  - (ii) the ninth-highest Quantity of Gas withdrawn at that Delivery Point in any one Day in the 12 month period immediately preceding receipt of the Reduction Request (if the Delivery Point is equipped with Daily Meter Reading Facilities).

- (f) If Evoenergy agrees to a Reduction Request the MDQ and MHQ will be reset to levels consistent with clause 4.3(c), and the User must bear the cost of any modifications to Measuring Equipment at the Delivery Point to accommodate or reflect the revised MDQ and MHQ.
- (g) A reduction in Chargeable Demand pursuant to clause 4.5(e) will take effect from the first Day of the Calendar Month immediately following the date of receipt of the complete Reduction Request. That Day will be the Demand Reset Date for that Delivery Point with respect to that Chargeable Demand.
- (h) If Evoenergy increases the Chargeable Demand pursuant to clause 4.4 after the date of receipt of a Reduction Request, then notwithstanding Evoenergy's previous consent to the Reduction Request, the relevant Reduction Request will be deemed to have been rejected by Evoenergy.
- (i) Evoenergy may agree to a Reduction Request where the requirement of clause 4.5(b)(ii) is not met, if the User can demonstrate that there are exceptional circumstances applicable to the Delivery Point such that the clause should not apply.
- (j) Evoenergy will, on request of the User, provide written confirmation as to whether Evoenergy consents to a Reduction Request or the deemed rejection of the Reduction Request under paragraph (h).

## **5. Overruns**

### **5.1 General**

This clause 5 does not vary the MDQ and/or the MHQ for a Delivery Point.

### **5.2 Gas exceeding MHQ or MDQ**

Evoenergy may in its discretion, acting reasonably agree to an Overrun.

### **5.3 Authorised Overruns**

An Overrun agreed to by Evoenergy in accordance with this Agreement before it occurs is an authorised Overrun (**Authorised Overrun**).

### **5.4 Procedure for authorisation of Overruns**

- (a) If the User wishes to withdraw a Quantity of Gas in excess of the Capacity Entitlement at a Delivery Point (Overrun Quantity), the User:
  - (i) must notify Evoenergy of the expected Overrun and requested Overrun Quantity by no later than 1:00pm on the Business Day which immediately precedes the Overrun Day; or

- (ii) where the User requests approval so that Overruns may occur at any time within a specified period (**Specified Period**), must notify Evoenergy of the expected Overruns and requested Overrun Quantities by no later than 1:00pm on the Business Day which immediately precedes the Day on which the first Overrun is required or expected to occur.
- (b) Evoenergy may charge the User for processing any request made under this clause 5.4 at the hourly charge rate specified in the Reference Tariff Schedule (based on a minimum of two Hours of work). That charge will be payable irrespective of whether the request is authorised or refused, or is authorised but later revoked.
- (c) In this clause 5.4, references to time are references to Australian Eastern Standard Time or Australian Eastern Summer Time when it applies in the ACT.

## 5.5 Notification of acceptance of Overrun as authorised

- (a) Evoenergy must notify the User within 2 hours from receipt of the notice under clause 5.4 (if the notice is received before 1.00pm on the Business Day preceding the Overrun Day) or within 24 hours from receipt (if the notice is received otherwise) whether:
  - (i) it agrees to provide the Service for the requested Overrun Quantity;
  - (ii) it agrees to provide the Service for some lesser Quantity; or
  - (iii) it is unable to provide the Service,for the Overrun Day or during the Specified Period as applicable.
- (b) Where Evoenergy notifies the User under clause 5.5(a)(ii) that it agrees to provide the Service for a lesser Quantity than that requested by the User, the User must notify Evoenergy whether it accepts the lesser Quantity:
  - (i) within 2 hours from receipt of such a notice from Evoenergy where the request for the authorisation of the Overrun was made under clause 5.4(a)(i) in respect of a specific Overrun Day; or
  - (ii) at least one Business Day prior to the commencement of the relevant Specified Period where the request for the authorisation of the Overrun was made under clause 5.4(a)(ii) in respect of a Specified Period.
- (c) If no notification is made by the User in accordance with clause 5.5(b), the Overrun will not be an Authorised Overrun and clause **Error! Reference source not found.** will apply in respect of that Overrun.
- (d) The Quantity agreed to by Evoenergy under clause 5.5(a)(i) or the lesser Quantity agreed by Evoenergy under clause 5.5(a)(ii), and accepted by the User under clause 5.5(b), is the Authorised Overrun Quantity.

- (e) In this clause 5.5, references to time are references to Australian Eastern Standard Time or Australian Eastern Summer Time when it applies in the ACT.

## **5.6 Revocation of authorisation**

- (a) Where Evoenergy has agreed to an Authorised Overrun for a Specified Period, Evoenergy may by notice to the User revoke such approval (in whole or in part) at any time and for any length of time if, in Evoenergy's reasonable opinion, the capacity in the Network is insufficient to allow Evoenergy to transport the Authorised Overrun Quantity. Evoenergy will use reasonable endeavours to provide the User with as much notice of such revocation as is possible in the circumstances.
- (b) The User acknowledges and agrees that it will take all necessary steps to inform the Customer at the Delivery Point that Evoenergy may at any time revoke an Authorised Overrun at short notice, and will use reasonable endeavours to notify the Customer of any such revocation promptly after being notified by Evoenergy.

## **5.7 Evoenergy's obligation on Authorised Overrun Day**

- (a) Subject to clause 5.6, on each relevant Day, Evoenergy must provide the Service to the Delivery Point for a Quantity equal to the Capacity Entitlement, plus the Authorised Overrun Quantity for that Day or Hour.
- (b) Unless expressly agreed by Evoenergy in writing, an agreement by Evoenergy to transport and deliver Gas in excess of the MDQ is not an agreement to transport and deliver Gas in excess of the MHQ in any Hour.

## **5.8 Delivery Point with multiple services**

If an Overrun occurs at a Delivery Point served by more than one service then, regardless of whether those services are provided under this Agreement or one or more other service Agreement(s), an Overrun will be deemed to have occurred for each of those services.

## **5.9 Unauthorised Overruns**

- (a) An Overrun which is not agreed to by Evoenergy in accordance with this Agreement before it occurs is an unauthorised Overrun (Unauthorised Overrun).
- (b) If an Unauthorised Overrun occurs, Evoenergy may (subject to clause 5.9(c)), at the User's cost, install flow control mechanisms on the Measuring Equipment at the relevant Delivery Point, allowing Evoenergy to control the amount of Gas taken by the User at that Delivery Point so as to restrict the Quantity of Gas taken to a Quantity equal to the Capacity Entitlement for that Delivery Point.
- (c) Evoenergy will only exercise its rights under clause 5.9(b) where, after consultation with the User, Evoenergy reasonably considers that installation of such mechanisms is necessary for the safe, secure or efficient operation of the Network having regard to the number of occasions on

which an Unauthorised Overrun has occurred, the likelihood of another Unauthorised Overrun occurring and the potential impact of such an Unauthorised Overrun on the Network, other Network Users and Customers of the Network.

## **6. Nomination and Balancing**

### **6.1 Nomination and Gas Balancing**

- (a) The User and Evoenergy must comply with the Gas Balancing Annexure.
- (b) The User warrants that each nomination made under this Agreement will be made in accordance with the Gas Balancing Annexure.

### **6.2 User to provide Evoenergy with forecast of withdrawals**

- (a) The User must provide Evoenergy with its Forecast Withdrawals for each Network Section for each of the next three Days in accordance with Evoenergy's instructions (acting reasonably) from time to time:
  - (i) on each Day the User receives Services under this Agreement and any other agreement for the transportation of Gas between Evoenergy and the User; and
  - (ii) for each Receipt Point at which that Gas is received into the Network Section.
- (b) Where requested by Evoenergy for operational purposes, the User must provide its Forecast Withdrawals for a Network Section for each of the next seven Days.
- (c) In this clause 6.2, a Forecast Withdrawal for a Day is a forecast of the aggregate Quantity of Gas which the User intends to withdraw from a Network Section on the relevant Day under all agreements between Evoenergy and the User for the transportation of Gas. A forecast withdrawal must be made on a reasonable basis, in good faith and itemise:
  - (i) the forecast Gas requirement for Non Daily Metered Delivery Points; and
  - (ii) when required in advance of the relevant Day by Evoenergy, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and Evoenergy agree.

### **6.3 Network Section Deliveries**

- (a) The User must comply with each of User's Confirmed Nominations.
- (b) For the avoidance of doubt, the User is responsible for ensuring that the aggregate Quantity of Gas delivered by or for the account of the User, through the Receipt Point(s) for a Network Section, is equal to:

- (i) the aggregate quantity of Gas delivered to or for the account of the User to Delivery Points within that Network Section; plus
  - (ii) any change in linepack in the Network Section allocated to the User by Evoenergy or other share of aggregate needs for a Network Section to ensure safe and reliable supply.
- (c) When determining an allocation of the total change in linepack for a Network Section between the User and other Network Users, Evoenergy will seek to apply a methodology which reflects the linepack requirements of the Services which were provided to the User. If Evoenergy considers that a more direct method of allocation is not available, Evoenergy may pro rata total change in linepack based on each Network User's typical aggregate Capacity Entitlement for all Services.

#### **6.4 Liability for failing to deliver sufficient quantities of gas into the network**

Evoenergy is not obliged to provide a Service if the User does not comply with this clause 7, where such non-compliance negatively affects the ability of a prudent service provider, acting reasonably, to provide a Service.

## **7. Commingling, custody, control, responsibility and warranty**

### **7.1 Warranty**

- (a) The User warrants that as at the date of this Agreement and at any time during the term of this Agreement, it has all necessary authorisations and the legal right and full power and capacity to participate in the retail Gas market and to:
- (i) inject (or procure the injection of) Gas into the Network at the Receipt Points;
  - (ii) buy and, where the User is an Authorised Retailer or Exempt Seller, sell Gas; and
  - (iii) grant to Evoenergy custody and control over any Quantity of Gas the subject of this Agreement so as to allow Evoenergy to lawfully transport that Quantity of Gas through the Network, commingle Gas and deliver that Quantity of Gas to the Delivery Points,
- free and clear of liens, encumbrances and claims of any nature inconsistent with Evoenergy's operation of the Network and its rights and obligations under this Agreement.
- (b) The User warrants that on any Day (or any shorter period if Gas Balancing Adjustments occur in a shorter period than a Day) it has the legal right and full power and capacity to deliver in aggregate a Quantity of Gas to a Network Section equal to the aggregate withdrawals of Gas by the User (including any Gas Balancing Adjustments) on that Day (or shorter period, if applicable) from that Network Section.

## 7.2 Right to commingle

Evoenergy has the right to:

- (a) commingle the Gas delivered to any Receipt Point with other Gas in the Network; and
- (b) deliver Gas in a commingled state to a Delivery Point.

## 7.3 Custody and control of Gas

The custody and control of Gas:

- (a) delivered at a Receipt Point passes to Evoenergy at the Receipt Station at that Receipt Point; and
- (b) delivered by Evoenergy to or for the User at a Delivery Point passes from Evoenergy to the User or the User's nominee, agent or transferee at the Delivery Station at the Delivery Point.

## 7.4 Responsibility for Gas

Evoenergy is responsible for Gas in its custody and control between the Receipt Stations and the Delivery Station at each Delivery Point and must replace (by way of Replacement Gas in accordance with clause 7.5(d) and 7.5(e)) any Gas lost whilst in the care and control of Evoenergy at a time and on the terms determined by Evoenergy in its discretion, acting reasonably.

## 7.5 Replacement Gas

- (a) In this clause:
  - (i) **LG Period** means a period of time over which an LG Quantity is calculated being a period of not less than 12 Calendar Months;
  - (ii) **LG Quantity** means the Quantity of Gas that is calculated as follows:
    - (A) the aggregate of the measured Quantities of Gas received into the Network at all Receipt Points; less
    - (B) the aggregate of the measured Quantities of Gas Delivered on behalf of all Network Users to Delivery Points; less
    - (C) any increase (or plus any decrease) in linepack in the Network (as determined by Evoenergy acting reasonably),  
  
over an LG Period, as calculated at least 6 Calendar Months after end of that LG Period.
- (b) Evoenergy will calculate an LG Quantity on the basis of the available data at the time.

- (c) Evoenergy may update the LG Quantity at any time to reflect updated data for an LG Period. However, Evoenergy is not obliged to recalculate the LG Quantity for a LG Period once 12 months have elapsed since the end of that LG Period.
- (d) Evoenergy will procure Replacement Gas equal to:
  - (i) Evoenergy's forward estimate of the LG Quantity for an LG Period; less
  - (ii) the difference between the Quantities of Replacement Gas Evoenergy has previously procured for any earlier LG Period and the LG Quantity for that LG Period.
- (e) Evoenergy will procure Replacement Gas on a commercial basis determined by Evoenergy, acting reasonably, which may include (without limitation) any one or a combination of the following:
  - (i) utilising a competitive open tender for the supply and/or haulage of Gas over any period, as reasonably determined by Evoenergy; and
  - (ii) Evoenergy itself producing Replacement Gas, or Procuring Replacement Gas from a Related Body Corporate.
- (f) Evoenergy will recover all costs of procuring Replacement Gas through the Reference Tariffs in accordance with the provisions of the Access Arrangement, provided that if clause 7.5(e)(ii) applies, the costs will be no greater than the costs which would have applied if Evoenergy had procured the Replacement Gas from a third party.
- (g) Notwithstanding any other provision of this Agreement, Evoenergy's obligation under this Agreement to purchase a Quantity of Replacement Gas is subject to and only applies to the extent that Evoenergy has timely access to verified and sufficiently accurate data at each Receipt Point to be able to calculate the LG Quantity.

## **8. Gas quality**

### **8.1 Specification Gas**

- (a) As between Evoenergy and the User, the User must ensure and procure that Gas delivered to each Relevant Receipt Point complies with the following requirements (the Specification):
  - (i) the specification prescribed by any New South Wales Law, including but not limited to any regulation made under the *Gas Supply Act 1996* (NSW) applying during this Agreement that extends to any such Gas;
  - (ii) where the Law referred to in clause 8.1(a)(i) does not prescribe anything for a parameter set out in Annexure 2, or for any period during this Agreement in which there is no such Law, the initial specification set out in Annexure 2, as amended

from time to time by Evoenergy in response to a change of circumstances reasonably likely to impact Evoenergy's ability to ensure the continued quality, safety, reliability and security of supply of Gas; and

- (iii) where any Safety Regulator issues an exemption to Evoenergy in relation to the specification of Gas (for avoidance of doubt, under the *Gas Supply (Safety and Network Management) Regulation 2013 (NSW)*), then the specification under clause 8.1(a)(i) or clause 8.1(a)(ii) (as the case may be) is modified (for the period during which the exemption applies) to the extent necessary to accord with the terms of that exemption.
- (b) Where Evoenergy reasonably believes that the conveyance of Gas which does not meet the Specification is necessary to ensure the safety of the public or the security of the Network and the Gas is conveyed in accordance with regulation 24(2)(a) of the Gas Supply (Safety and Network Management) Regulation 2013 (NSW), then Evoenergy will be deemed to have delivered Gas that meets the Specification to the extent the Gas is delivered in accordance with regulation 24(2).
- (c) Evoenergy is not obliged to provide a Service if the Gas delivered at a Receipt Point does not comply with the Specification.
- (d) The User acknowledges that Gas delivered to a Receipt Point will enter into the Network in close proximity to and will be available for use by a large number of persons, and that Gas delivered at any Receipt Point which does not meet the Specification may result in those persons suffering damage.
- (e) The quantity of Out-of-Specification Gas delivered to a Receipt Point on behalf of the User will be determined by Evoenergy as follows:
  - (i) where Out-of-Specification Gas is delivered to a Receipt Point on a Network Section and the User is the only Network User withdrawing Gas from that Network Section, then all Out-of-Specification Gas delivered to that Receipt Point will be taken to have been delivered on behalf of the User; or
  - (ii) where Out-of-Specification Gas is delivered to a Receipt Point on a Network Section and there is more than one Network User withdrawing Gas from that Network Section, then the proportion of that Out-of-Specification Gas (the **User's Proportion**) delivered to the Receipt Point on behalf of the User will be that proportion of the total Gas withdrawn from that Network Section (on the Days during which the Out-of-Specification Gas was delivered) which is withdrawn by the User provided that, if information is obtained by Evoenergy from, or provided to Evoenergy by AEMO, the AER, the AEMC, a transmission pipeline service provider, the User, another Network user or some other source acceptable to Evoenergy and Evoenergy considers, acting reasonably, that the information so obtained or provided:
    - (A) is accurate and reliable; and

- (B) enables Evoenergy to determine the User's Proportion of that Out-of-Specification Gas more accurately,

then the User's Proportion may be adjusted by Evoenergy to take into account that information.

## **8.2 Amendment of Specification by Evoenergy**

Evoenergy must notify the User prior to any change to the Specification by Evoenergy pursuant to clause 8.1(a)(ii).

## **8.3 Evoenergy's rights in relation to Out-of-Specification Gas at Receipt Point**

If Evoenergy reasonably believes that Gas which does not comply with the Specification (**Out-Of-Specification Gas**) is being or may be delivered to any Receipt Point, whether the Out-Of-Specification Gas is being delivered by or on behalf of the User or otherwise, then Evoenergy may:

- (a) direct the User or any other person to cease or cause the cessation of the delivery of Gas to the Receipt Point or to cease or cause the cessation of the delivery of Gas to any pipe or system of pipes through which Gas is delivered to the Receipt Point; and/or
- (b) without prior notice to the User, cease to accept all or any portion of Gas being delivered to that Receipt Point and notify the User as soon as reasonably practicable thereafter of its actions.

## **8.4 Consequences of Evoenergy exercising rights under clause 8.3**

- (a) On receipt of a direction under clause 8.3(a), the User must immediately cease or cause the cessation of the delivery of Gas to the Receipt Point or the delivery of Gas to any pipe or system of pipes through which Gas is delivered by or on behalf of the User to the Receipt Point.
- (b) If Evoenergy issues a direction under clause 8.3(a) or ceases to accept Gas under clause 8.3(b), then:
  - (i) if Gas delivered to any Receipt Point was Out-Of-Specification Gas, the User will not be relieved of its obligation to pay any Charges under this Agreement; or
  - (ii) if Gas delivered to all Relevant Receipt Points did meet the Specification, then to the extent that Evoenergy is unable to deliver a Quantity of Gas equal to the MDQ at a particular Demand Customer Delivery Point for any period in excess of one Day, the Demand Charge for that Delivery Point for that period will be calculated by reference to the actual amount withdrawn at the Delivery Point on each Day during that period, rather than by reference to the Chargeable Demand for that Delivery Point.

## **8.5 User to satisfy Evoenergy**

The User must, on reasonable request by Evoenergy:

- (a) provide evidence to the reasonable satisfaction of Evoenergy that facilities and management plans exist to enable satisfactory measurement of the quality of Gas at each Receipt Point or any point where Gas is introduced into a pipe or system of pipes through which Gas is delivered to a Receipt Point;
- (b) provide facilities to enable Evoenergy to monitor continuously the quality of Gas at the points referred to in clause 8.5(a);
- (c) provide evidence that Gas quality measurement equipment at the points described in clause 8.5(a) is maintained and calibrated in accordance with good industry practice and appropriate Australian and internationally recognised standards; and
- (d) provide access to maintenance records for any Gas quality measurement equipment at the points described in clause 8.5(a) at a time and place agreed between the parties, acting reasonably.

## **8.6 User's preventative measures**

The User must have, and upon reasonable request by Evoenergy must demonstrate to Evoenergy's reasonable satisfaction that the User has, the contractual or other legal rights and management procedures in place to prevent Out-Of-Specification Gas being delivered to the Receipt Points.

## **8.7 Evoenergy must deliver Gas to Specification**

Subject to clause 8.8 provided that all Gas received by Evoenergy at all Receipt Points meets the Specification, the User complies with the provisions of this clause 8 and that any provisions to a similar or equivalent effect in Evoenergy's service agreements with other Network Users have been complied with by those Network Users (such that Evoenergy is able, taking into account clause 7.2, to receive and deliver Gas that complies with the Specification), Evoenergy must ensure that Gas delivered by it at each Delivery Point meets the Specification.

## **8.8 Exemption to Specification**

Evoenergy will not be in breach of this Agreement (and will be deemed to have complied in all respects with it, despite any Loss suffered or incurred by the User) as a result of a Safety Regulator issuing:

- (a) an exemption to Evoenergy under the Gas Supply (Safety and Network Management) Regulation 2013 (NSW) related to the specification of Gas; or
- (b) a direction to Evoenergy regarding the injection or conveyance of non-compliant Gas pursuant to regulation 29 of *the Gas Supply (Safety and Network Management) Regulation 2013 (NSW)*;  
  
and Evoenergy delivering gas in accordance with such exemption or direction for the period during which the exemption or direction applies.

## **8.9 Gas Source**

- (a) The User must notify Evoenergy in writing or ensure that Evoenergy is properly notified of the contractual source and all the possible physical sources of the Gas prior to its entry into the Network, and must notify Evoenergy in writing prior to any change or anticipated change in the source or sources of the Gas.
- (b) Prior to a change in the contractual or physical source or sources of the Gas, the User must comply with its obligations to provide evidence and information to Evoenergy under clauses 8.5 and 8.6 with respect to the Gas from the new source or sources.

## **8.10 User responsible for Gas Testing**

The User must:

- (a) test the Gas; or
- (b) cause the Gas to be tested,

in accordance with Evoenergy's Safety and Operating Plan.

## **8.11 Gas Testing by User**

- (a) The User must keep a register or cause a register (Register) to be kept containing copies of all Gas test results including raw measurements used to determine derived values such as Wobbe index values.
- (b) The Register must be kept at the User's main office or at the main office of the person conducting the tests.
- (c) The User must ensure (or cause the person conducting the tests to ensure) that the Register is open for public inspection during all business hours and copies are to be made available:
  - (i) to any Safety Regulator on request and at no cost to the Safety Regulator; and
  - (ii) to Evoenergy on request and at no cost to Evoenergy; and
  - (iii) to any other person upon request and on payment of a reasonable fee.
- (d) The User must maintain (or cause to be maintained) all testing equipment in accordance with Evoenergy's Safety and Operating Plan in respect of which Evoenergy will:
  - (i) make a copy available to the User upon request; and
  - (ii) provide reasonable notice to the User of relevant changes made by Evoenergy to the Safety and Operating Plan.

- (e) The User must make available (or cause to be made available) to Evoenergy all records relating to the maintenance of the testing equipment on Evoenergy's request.
- (f) The User must notify (or must cause the person conducting the tests to notify) the relevant Safety Regulator and Evoenergy without delay by telephone or email if it becomes aware of any test result that shows that the Gas to be delivered to a Receipt Point is Out-Of-Specification Gas.
- (g) Within 7 days of notifying the relevant Safety Regulator and Evoenergy by telephone or email pursuant to clause 8.11(f), the User must send notice (or cause such notice to be sent) to that Safety Regulator and Evoenergy.
- (h) Without limiting any of clauses 8.11(a)-(g), the User must make available or cause to be made available to Evoenergy any information relating to the testing of Gas, whether or not any Gas meets the Specification, test equipment, test results or notifications to any person in relation to whether or not Gas meets the Specification.

## **9. Addition of Delivery Points to the Customer List**

### **9.1 Addition of delivery points**

The User may at any time Request Evoenergy to add an existing delivery point to the Customer List in accordance with clause 9.2 or to add a new delivery point to the Customer List in accordance with clause 9.3.

### **9.2 Addition of an existing delivery point on receipt of churn notification from AEMO**

- (a) Final notification by AEMO to Evoenergy that transfer of a delivery point from another Network User (Outgoing User) to the User has been completed in accordance with the Retail Market Procedures will be deemed to be a Request and Evoenergy must add the delivery point to the relevant Customer List, provided that:
  - (i) the delivery point is already subject to a Reference Service provided by Evoenergy to the Outgoing User;
  - (ii) where the delivery point is to be added to the Volume Customer List, the MHQ required at that delivery point is less than or equal to 6m<sup>3</sup>/Hour;
  - (iii) where the delivery point is to be added to the Demand Customer List, the User has prior to initiating the transfer of the delivery point under the Retail Market Procedures:
    - (A) advised Evoenergy of the MIRN of that delivery point and the date on which the proposed transfer will occur; and

- (B) obtained Evoenergy's written confirmation that the delivery point is subject to a Reference Service provided by Evoenergy to the Outgoing User.
- (b) Evoenergy may waive any one or more of the requirements set out in clause 9.2(a), in which case Evoenergy must add the delivery point to the Customer List on the satisfaction of those requirements which have not been waived.
- (c) Evoenergy must use reasonable endeavours to provide the written confirmation required under clause 9.2(a)(iii)(B) within 2 Business Days of receipt of advice pursuant to clause 9.2(a)(iii)(A).
- (d) Where a delivery point is added as a Delivery Point to the User's Customer List pursuant to clause 9.2(a) then unless otherwise agreed by Evoenergy:
  - (i) the assigned Tariff Category, and the Assignment Date will be the same as the Tariff Category and Assignment Date for that Delivery Point under the Reference Service previously provided to the Outgoing User;
  - (ii) if the Delivery Point is a Demand Customer Delivery Point, as at the date of the transfer of the Delivery Point, the MDQ, MHQ, Load Shedding Priority or Load Shedding Priorities, Chargeable Demand, Demand Reset Date and ELMS Data for that Delivery Point will be the same as applied to that Delivery Point under the Reference Service previously provided to the Outgoing User; and
  - (iii) any subsequent changes to the MDQ, MHQ, Load Shedding Priority, Chargeable Demand, Demand Reset Date and ELMS Data for that Delivery Point will be made in accordance with the terms of this Agreement.

### **9.3 Addition of new delivery points**

Where requested by the User, Evoenergy must agree to add a new delivery point as a Delivery Point in the relevant Customer List if:

- (a) the User complies with the provisions of the Access Arrangement relating to Requests, including payment of the costs of processing that Request as set out in the Access Arrangement;
- (b) Evoenergy has sufficient capacity available in the Network to provide the Service to the delivery point;
- (c) Evoenergy has sufficient information to assign the delivery point to a Tariff Category and if applicable under the Access Arrangement, the User and Evoenergy agree on the Tariff Category;
- (d) the User accepts Evoenergy's offer to provide the Service to the delivery point;
- (e) the User has provided to Evoenergy all of the details required to enable Evoenergy to complete the Customer List and any ELMS data required under clause 21.6 for the delivery point;

- (f) the delivery point is served by Network facilities having a maximum allowable operating pressure of:
  - (i) less than or equal to 1,050 kPa, where the delivery point is reasonably expected to consume more than or equal to 10TJ per annum; or
  - (ii) less than or equal to 500 kPa, where the delivery point is reasonably expected to consume less than 10 TJ per annum;
- (g) where the delivery point is to be established under an NGR Part 12A Connection Contract:
  - (i) a delivery station has been satisfactorily installed and the counterparty's obligations under that contract have been met to Evoenergy's reasonable satisfaction;
  - (ii) the User is either a Customer at the delivery point or an Authorised Retailer or an Exempt Seller who has a contract for the sale of gas at the delivery point with that Customer;
  - (iii) Evoenergy and the User agree on the MDQ and (where applicable) the MHQ, for the purposes of the Service to be provided under this Agreement; and
  - (iv) the delivery station installed for the delivery point is technically capable of servicing that agreed MHQ and (where applicable) MDQ to Evoenergy's reasonable satisfaction; and
- (h) where clause 9.3(g) does not apply and where the delivery point requires connection to Network facilities:
  - (i) in Evoenergy's reasonable opinion, it is technically and economically feasible to connect the delivery point to those Network facilities (in which case, such connection will be subject to such charges and conditions as determined by Evoenergy acting reasonably); and
  - (ii) Evoenergy and the User agree on the requirements (if any) for the installation of a Delivery Station, the connection charges (or other capital contribution) and any other charges payable in respect of the delivery point, the MHQ and (where applicable) the MDQ.

#### 9.4 Energisation under National Energy Retail Law

- (a) For the purposes of this clause 9.4:
  - (i) **Financially Responsible Retailer** for the premises means the Authorised Retailer who is the FRO for the premises, and

- (ii) **Local Area Retailer** for premises means the Authorised Retailer nominated as the local area retailer for the premises (or for the geographical area in which the premises are located) under the NERL.
- (b) If the User:
- (i) is the Financially Responsible Retailer for a Small Customer; or
  - (ii) is the Local Area Retailer (and there is no Financially Responsible Retailer) for a Small Customer,
- for premises with an existing connection to the Network at a delivery point:
- (iii) from which Gas is being withdrawn; and
  - (iv) which is not already a Delivery Point under this Agreement or under a current service agreement with any other Network User,
- then that delivery point will be taken as added to the Volume Customer List under this Agreement upon and from the commencement of the withdrawal of Gas from that delivery point.
- (c) If the User is the Financially Responsible Retailer entitled under section 64 of the National Energy Retail Law to charge a Large Customer situated at premises of the kind referred to in clauses 9.4(b)(iii) and 9.4(b)(iv)), then the User must request that Evoenergy add the delivery point for those premises to the relevant Customer List and the provisions of clause 9.3 will apply to that request.
- (d) Pending any addition of a delivery point referred to in clause 9.4(c) to a Customer List in accordance with clause 9.3 or if Evoenergy refuses to add a delivery point to a Customer List in accordance with clause 9.3:
- (i) the User will not be entitled to the provision of any Service under this Agreement in respect of that delivery point; and
  - (ii) for any Gas that is withdrawn at the delivery point Evoenergy may assign the delivery point to a Tariff Category that is reasonable having regard to the characteristics and capacity of the delivery station and Network facilities servicing the delivery point and the quantity of Gas being withdrawn and charge the User for the withdrawal of that gas in accordance with that Tariff Category.

## 9.5 Charges Payable for Additional Delivery Points

Where the User wishes to add a delivery point to the Customer List under this clause 9, Evoenergy may, in addition to any other Charges payable under this Agreement, require the payment of a surcharge in accordance with Rule 83 of the National Gas Rules.

## 10. Deletion of Delivery Points from Customer List

- (a) Where the supply of gas to a Delivery Point is disconnected under this Agreement, under a Customer Connection Contract or pursuant to Law, then the Delivery Point will be deleted from the Customer List from the date specified in clause 10(b) subject to the following:
- (i) Evoenergy's obligations to provide the relevant Services for that Delivery Point and the User's obligation to pay Charges in respect of those Services will cease with effect from the date it is deleted from the Customer List (but without extinguishing or otherwise affecting any rights or obligations, including any indemnities, in respect of Services provided prior to the date of deletion or the Charges payable for those Services); and
  - (ii) subject to the requirements of Gas Law, Evoenergy will be entitled to take all steps necessary to facilitate the User remaining registered as the FRO for that Delivery Point and the User must provide all assistance and co-operation reasonably required by Evoenergy, until such time as:
    - (A) another Network User enters into a service agreement with Evoenergy for that Delivery Point; or
    - (B) the Delivery Point is transferred to another Network User in accordance with the Retail Market Procedures;
  - (iii) the User will still be entitled to ask for abolishment under clause 13.6 despite the removal of the Delivery Point from the Customer List; and
  - (iv) notwithstanding the removal of the Delivery Point from the Customer List, the Parties will co-operate and the User will continue to use reasonable endeavours to assist Evoenergy to obtain access to each Delivery Station and to the Measuring Equipment.
- (b) A Delivery Point will be deleted from the Customer List with effect from:
- (i) in the case of a Volume Customer Delivery Point, the date of disconnection; and
  - (ii) in the case of a Demand Customer Delivery Point, the date of disconnection unless the User elects the option under paragraph 13.6(c)(iii)(A) when accepting the offer made under clause 13.6(b)(ii).
- (c) If Evoenergy receives notification from AEMO that a Delivery Point has been transferred to another Network User in accordance with the Retail Market Procedures, Evoenergy must delete that Delivery Point from the Customer List with effect from the date on which the Delivery Point is added to the other Network User's Service Agreement.
- (d) Where a Delivery Point is abolished at the request of a User (including under clause 13.6) or pursuant to the Law, the Delivery Point will be deleted from the relevant Customer List with

effect from the date of abolishment, and clauses 10(a)(i) and 10(e) will then apply to that Delivery Point.

- (e) From the time a Delivery Point is deleted from a Customer List in accordance with this clause 10:
  - (i) the User's entitlement to information concerning that Delivery Point will cease, other than historical information relating to any period during which the User was the FRO for the Delivery Point;
  - (ii) Evoenergy will have no further obligations in respect of that Delivery Point under this Agreement; and
  - (iii) the User will not be liable for charges for Services delivered to that Delivery Point from the date of deletion (but the Parties' rights and obligations, including any indemnities, in respect of Services provided prior to the date of deletion or the charges payable for those Services will continue and remain unaffected).

## **11. Change of Receipt Point or Delivery Point**

- (a) The User may change a Relevant Receipt Point for a Delivery Point or a Delivery Point with Evoenergy's prior written consent, which shall only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial and technical conditions. An example of a reasonable ground for withholding consent is where Evoenergy would not receive at least the same amount of revenue relative to the amount it would have received before the change.
- (b) Evoenergy must reply to a request from the User to change a Relevant Receipt Point for a Delivery Point or a Delivery Point within 14 Business Days of receiving the User's request accompanied by all information reasonably necessary to enable Evoenergy to consider the request. If at the time the request is made, the User informs Evoenergy in writing that due to hardship, the User requires an urgent reply to its request, Evoenergy will use reasonable endeavours to respond to the request within 2 Business Days of receiving the request.

## **12. Receipt Points and Receipt Stations**

### **12.1 Receipt Station to be at each Receipt Point**

The User must ensure that, prior to establishing, taking Gas at or using any Receipt Point, there is a Receipt Station at the Receipt Point that meets the requirements of the Operational Schedule.

## **12.2 Ownership of Receipt Station Components at Receipt Point**

The Parties acknowledge that the ownership of the Receipt Station components will vary as between Receipt Points and such components may be owned by Evoenergy, the User or a third party.

## **12.3 Evoenergy may operate the Flow and Pressure Control System**

Notwithstanding anything in this Agreement, the User must procure that Evoenergy may on giving reasonable notice to the User:

- (a) operate at the cost (such costs to be reasonable) of the User the Flow and Pressure Control System of any Receipt Station which is not owned by Evoenergy; and/or
- (b) modify the extent of the flow and pressure control requirements listed in the Operational Schedule applicable to any existing Receipt Stations and require the User to undertake such work as, in the reasonable opinion of Evoenergy, is necessary to ensure that all Receipt Stations comply with such modified requirements.

## **12.4 Alterations and Additional Equipment**

- (a) Evoenergy may (acting reasonably) require alterations to equipment, movement of equipment or the installation of additional equipment at a Receipt Station including alterations to equipment or installation of additional equipment to achieve upgraded measurement performance, or to accommodate changes in Gas demand characteristics.
- (b) Where Evoenergy owns any Receipt Station components which are to be replaced or altered under clause 12.4(a), Evoenergy must undertake the work itself at Evoenergy's expense.
- (c) Where Evoenergy does not own the components, Evoenergy must notify the User of the alterations required under clause 12.4(a) and the User must promptly carry out such works or the User must procure the owner of the components to carry out such works and, if the User (or, if applicable, the owner of the components) does not complete the works within a reasonable period specified by Evoenergy, Evoenergy may carry out such alterations or install such equipment at the reasonable cost of the User.

## **12.5 Pressure at Receipt Point**

Evoenergy is not obliged to provide a Service if the pressure at which Gas is received at a Receipt Point is not within the range of the minimum and maximum pressure specifications for that Receipt Point, applicable under the Access Arrangement, and this is such as to negatively affect the ability of a prudent service provider acting reasonably to provide a Service.

## **13. Delivery Points and Delivery Stations**

### **13.1 Network connections under Part 12A National Gas Rules**

This clause 13 applies to all delivery points on the Network unless a NGR Part 12A Connection Contract provides otherwise, in which case this clause will apply subject to the terms of that contract.

### **13.2 Requirements for a Delivery Station**

- (a) The Parties acknowledge and agree that, prior to the Commencement Date for the Service to a Delivery Point, there must be a Delivery Station that has been commissioned and is in physical operation at the Delivery Point.
- (b) Except to the extent to which Evoenergy has responsibility for Delivery Station components under this Agreement, the User must ensure that the requirements of this clause 13 are met for each Delivery Station.
- (c) Each Delivery Station must be located as close to the Network as practicable, and designed, maintained, tested and calibrated in accordance with good engineering practice and industry standards, and in accordance with specifications approved by Evoenergy prior to installation.
- (d) Delivery Stations which were in physical operation prior to the date of this Agreement must comply with Evoenergy's specifications for Delivery Stations, as applicable at the time the relevant Delivery Station was commissioned.
- (e) The User must not take or permit any person to take Gas through a Delivery Station which was not in physical operation as at the date of this Agreement until the Delivery Station has been purged and commissioned by or to the satisfaction of Evoenergy.

### **13.3 Responsibility for Delivery Station Components**

Subject to clause 14 (in relation to Basic Metering Equipment), Evoenergy and the User are responsible for Delivery Station components (and must comply with their respective obligations in relation to the design, ownership, operation and maintenance of them) in accordance with the ACT Gas Network Boundary Code and ACT Gas Service and Installation Rules Code, except to the extent they expressly agree otherwise in writing.

### **13.4 Alterations and Additional Equipment at existing Delivery Station**

- (a) In respect of Delivery Station components that the User has responsibility for under this Agreement, the User must (at its own expense) alter equipment, move equipment or install additional equipment at that Delivery Station, where reasonably requested in writing by Evoenergy for reasons that may include, but are not limited to, alterations to equipment or installation of additional equipment to achieve upgraded measurement performance.

- (b) The User must carry out the alterations or installations referred to in clause 13.4(a) within such reasonable period of time specified by Evoenergy.
- (c) If the User does not carry out the alterations or installations within the period of time specified by Evoenergy pursuant to clause 13.4(b), Evoenergy or its authorised contractors may carry out the alterations or installations at the cost of the User, provided such cost is reasonable.
- (d) In respect of Delivery Station components that Evoenergy owns or otherwise has responsibility for, if:
  - (i) Evoenergy, acting reasonably, considers that it is necessary to alter equipment, move equipment or install additional equipment; or
  - (ii) the User requires alterations or additions to be made to a Delivery Station and Evoenergy agrees to make such alterations or additions (such agreement not to be unreasonably withheld if the alteration or addition is necessary and reasonable for the continued safe operation of the Network),  
  
Evoenergy must alter, move or install these components.
- (e) Evoenergy will bear the cost of any works required under clause 13.4(d)(i), except where:
  - (i) the Delivery Station components are to be altered, moved or installed for safety or operational reasons resulting from the acts or omissions of the User or the Customer, in which case the User must bear the cost; or
  - (ii) the works fall within clauses 14.2 or 14.3, and the User is required to bear the cost under the applicable clause.
- (f) Any works required under clause 13.4(d)(ii) will be carried out at the cost of the User.

### **13.5 Additional Delivery Stations at Delivery Points**

- (a) Subject to clause 13.5(c), a delivery point will contain only one Delivery Station unless Evoenergy agrees to install an additional Delivery Station in accordance with clause 13.5(b).
- (b) Evoenergy may at the request of the User agree to install an additional Delivery Station at a Demand Customer Delivery Point and if required by Evoenergy, the User must pay Evoenergy's reasonable charges (as notified by Evoenergy).
- (c) If a Demand Customer Delivery Point contained more than one Delivery Station prior to the Commencement Date, then Evoenergy must continue to transport Gas to them.

### **13.6 Disconnection and abolishment of Delivery Points**

- (a) Evoenergy must, at the request of the User:
  - (i) disconnect supply of Gas to a Volume Customer Delivery Point; or

- (ii) abolish a Volume Customer Delivery Point,

by such means as Evoenergy reasonably determines. Evoenergy must use reasonable endeavours to disconnect supply or abolish the Delivery Point promptly or, if a later date is nominated by the User when making a request, must use reasonable endeavours to disconnect supply or abolish the Delivery Point in accordance with that request.

- (b) Where the User wishes to have a Demand Customer Delivery Point abolished, the following provisions apply:

- (i) the User may, at any time, request Evoenergy to abolish a Demand Customer Delivery Point;

- (ii) as soon as practicable, and in any event within 30 Business Days of receiving the request Evoenergy will provide the User with an offer to abolish the Delivery Point, including a statement of the Ancillary Charge for performing the abolishment and a timeframe for performing the works (**Abolishment Offer**);

- (iii) if the User accepts the Abolishment Offer, Evoenergy must abolish the Delivery Point in accordance with the Abolishment Offer; and

- (iv) where the Abolishment Offer does not specify a date for performing the work, Evoenergy must use reasonable endeavours to abolish the Delivery Point promptly after the User accepts the Abolishment Offer or, if a later date is nominated by the User when making the request, must use reasonable endeavours to abolish the Delivery Point in accordance with that request.

- (c) Where the User wishes to have a Demand Customer Delivery Point disconnected, the following provisions apply:

- (i) the User may, at any time, request Evoenergy to disconnect the supply of Gas to a Demand Customer Delivery Point; and

- (ii) as soon as practicable, and in any event within 15 Business Days of receiving the request Evoenergy will provide the User with two options for the disconnection of the Delivery Point, including a statement of the Ancillary Charge of performing the disconnection and a timeframe for performing the works (**Disconnection Offer**);

- (iii) the options to be included by Evoenergy in the Disconnection Offer are as follows:

- (A) "Option A" - the Delivery Point will be disconnected, the Delivery Point will remain on the Customer List and the Ancillary Charge will be payable for reconnection (provided that Delivery Station components and pipework remain at the Delivery Point and can be re-energised without alteration or replacement), and

- (B) "Option B" - the Delivery Point will be disconnected, the Delivery Point will be removed from the Customer List from the date of disconnection, reconnection will require a new Request for Service and Evoenergy will be entitled to recover its costs of performing the reconnection from the Network User who is the FRO for the Delivery Point when reconnection is requested.
- (iv) if the User accepts the Disconnection Offer, Evoenergy must disconnect the Delivery Point in accordance with that offer; and
- (v) where the Disconnection Offer does not specify a date for performing the work, Evoenergy must use reasonable endeavours to disconnect the Delivery Point promptly after the User accepts the Disconnection Offer or, if a later date is nominated by the User when making the request, must use reasonable endeavours to abolish the Delivery Point in accordance with that request.
- (d) Evoenergy will not be in breach of clause 13.6(a), clause 13.6(b)(iii) or clause 13.6(c)(iv) where, despite using reasonable endeavours, Evoenergy is or would be unable to obtain clear and safe access to the Delivery Station to perform the work required for disconnection or abolishment, including due to a Customer failing to comply with its obligations under the Customer Connection Contract in force at the relevant Delivery Point;
- (e) The User acknowledges that a new Request and a new connection and applicable charges will be required for the reconnection or re-establishment of a Delivery Point where:
  - (i) the Delivery Point has been abolished; or
  - (ii) for a Demand Customer Delivery Point, the Delivery Point has been disconnected and the Delivery Point has been removed from the Customer List pursuant to an Offer made under clause 13.6(c)(iii)(B).
- (f) The User must:
  - (i) prior to making a request under clause 13.6(a), clause 13.6(b) or clause 13.6(c), have complied with all obligations placed on the User under Law relating to arranging for the disconnection of the premises served by a Delivery Point or the abolishment of a Delivery Point (as applicable);
  - (ii) do such things as are reasonably in its power to provide Evoenergy with information to enable Evoenergy to determine the appropriate method of disconnection or abolishment, including the reasons for disconnection or abolishment and to access the site and perform the work; and
  - (iii) for Volume Customer Delivery Points, pay the applicable Ancillary Charge and for Demand Customer Delivery Points, pay the charge set out in the Abolishment Offer accepted by the User under clause 13.6(b)(iii) or the Disconnection Offer accepted by the User under clause 13.6(c)(iv).

- (g) If reasonably requested by Evoenergy, a representative of the User must be present when Evoenergy disconnects the supply of Gas to, or abolishes, a Large Customer Delivery Point at the request of the User. A representative of the User is not required to be present where the User provides evidence that the Customer at the Delivery Point has requested, or consented to, the disconnection or abolishment. A User will be deemed to have complied with this clause 13.6(g) where it arranges for a police escort or made similar security arrangements reasonably acceptable to Evoenergy. On request by the User, Evoenergy will provide the User with details of why Evoenergy has requested the presence of a representative of the User under this clause.

### **13.7 Ownership of Network**

- (a) The User does not acquire any right to, title to, or interest in the Network or any part thereof.
- (b) Evoenergy does not dedicate any particular portion of facilities forming part of the Network to the Services provided to the User.

## **14. Measuring Equipment**

### **14.1 Provision of Basic Metering Equipment**

Evoenergy must provide Basic Metering Equipment at the first Delivery Station at each Delivery Point.

### **14.2 Basic Metering Equipment Upgrade at existing Delivery Station**

- (a) Evoenergy must upgrade Basic Metering Equipment at a Delivery Station if it requires upgrading in order to accept the MDQ and/or the MHQ (as the case may be) for that Delivery Point.
- (b) If required by Evoenergy, reasonable costs incurred by Evoenergy for upgrading the Basic Metering Equipment must be borne by the User. Where the User is not the Customer at the Delivery Point, Evoenergy will, on request of the User, provide reasonable information to assist the User in recovering those costs from the Customer at the Delivery Point.

### **14.3 Basic Metering Equipment Downgrade at existing Delivery Station**

- (a) Evoenergy may, acting reasonably, downgrade Basic Metering Equipment at a Delivery Point at its own discretion. Prior to exercising its discretion under this clause 14.3(a), Evoenergy must consult with the User to determine whether the Customer intends to increase Load and/or change their pattern of usage such that a downgrade is no longer required.
- (b) Where Evoenergy downgrades Basic Metering Equipment as a result of a change in Load or pattern of usage by the Customer, if Evoenergy requires the User to pay the reasonable costs of such a downgrade, it must advise the User in writing of such costs prior to the downgrade and the User must pay the full costs of such a downgrade.

#### **14.4 Maintenance of Basic Metering Equipment**

Where Evoenergy is responsible for maintenance of the Basic Metering Equipment under this Agreement, Evoenergy must carry out necessary repairs of the Basic Metering Equipment within a reasonable time of:

- (a) becoming aware of the need to do so; and
- (b) securing access to the Delivery Station.

#### **14.5 Safe Access to Measuring Equipment**

- (a) The User must use reasonable endeavours to cause the Customer at the Delivery Point to ensure that:
  - (i) any area surrounding the Measuring Equipment (including any enclosure or building surrounding the Measuring Equipment) is safe (including for access to the Measuring Equipment); and
  - (ii) no activities occur involving, or in the vicinity of, the Measuring Equipment that cause such equipment to become non-compliant with applicable Law, standards (including Evoenergy's standards, policies and procedures and Australian standards) and applicable gas-fitting rules.
- (b) Subject to clause 14.5(c), if any area surrounding the Measuring Equipment (including any enclosure or building surrounding the Measuring Equipment) becomes unsuitable for the safe and continuous operation (including access to the Measuring Equipment) of the Network, then Evoenergy, acting reasonably, may alter Measuring Equipment, move Measuring Equipment or install additional Measuring Equipment for the purposes of the safe and continuous operation of the Network, at the User's cost (subject to clause 14.5(e)). An area will be considered unsuitable if it cannot be accessed without risk of personal injury or the state of the area is such that it is reasonably foreseeable that Measuring Equipment will sustain damage.
- (c) Except where immediate access is required for safety reasons or in an emergency, Evoenergy will consult with the User and provide the User with a reasonable period of time within which to remedy the matters before taking action under clause 14.5(b).
- (d) If Evoenergy takes action under clause 14.5(b) and recovers its costs from the User, Evoenergy will on request from the User provide information documenting the reasons for the actions taken by Evoenergy, to assist the User to seek recovery of those costs from the Customer.
- (e) Evoenergy cannot recover its costs from the User under clause 14.5(b) where the area surrounding the Measuring Equipment has become unsuitable due to Evoenergy's wilful or negligent acts or omissions.

#### **14.6 Entry and access to Delivery Points**

Evoenergy and the User must cooperate, and the User must provide reasonable assistance to Evoenergy to procure, that Evoenergy may, at all reasonable times, and without giving prior notice to the User or the Customer, enter and have access to any Delivery Point:

- (a) to obtain access to the Delivery Station (including any Measuring Equipment);
- (b) for any purpose associated with this Agreement; or
- (c) for the purpose of exercising any right or obligation conferred on Evoenergy by law,

free of any charge or hindrance from any person or other obstruction. If requested by Evoenergy, the User will provide Evoenergy with any Customer details held by the User.

Evoenergy will participate in reasonable site inductions or safety training required by the User or the Customer at a Delivery Point, provided that the User must reimburse all of Evoenergy's costs (including internal costs) associated with participation in such induction or training, calculated at the hourly charge rate specified in the Reference Tariff Schedule (based on a minimum of two Hours of work). On request of the User, Evoenergy will provide an explanation of the calculation of any charges for attendance at such induction or training.

#### **14.7 Consequences of no access**

If Evoenergy is unable to safely access a Delivery Point for any of the purposes of clause 14.6, then Evoenergy may at its option do any or all of the following:

- (a) estimate the Quantity of Gas delivered to that Delivery Point and render an invoice based on such estimate in the manner required by Law; and/or
- (b) without limiting Evoenergy's rights to curtailment, reduction or interruption of the Services in accordance with clauses 20 or 21, after providing the User with 6 Business Days' notice, cease providing the Service in respect of such Delivery Point; and/or
- (c) where access is required for safety reasons, after giving the User 1 Business Day's notice replicate at a location accessible to Evoenergy, and (subject to clause 14.7(e)) at the User's reasonable cost, the Measuring Equipment at the Delivery Point; and/or
- (d) where access is required other than under clause 14.7(c), and Evoenergy reasonably considers it necessary to do so, Evoenergy may replicate at a location accessible to Evoenergy, and (subject to clause 14.7(e)) at the User's reasonable cost, the Measuring Equipment at the Delivery Point, provided that prior to doing so Evoenergy engages with the User to identify what other options may be available to provide Evoenergy with safe access to the Delivery Point.
- (e) Evoenergy cannot recover its costs of replicating the Measuring Equipment from the User under clauses 14.7(c) or 14.7(d) where Evoenergy is unable to safely access the Delivery Point due to Evoenergy's wilful or negligent acts or omissions.

#### **14.8 Presence at tests**

Subject to clause 14.6, each Party may have a representative present during the erection or alteration of Receipt Stations or Delivery Stations, and at any reading, inspection, testing, calibration, repairing or maintenance of Measuring Equipment and if the User is not the person who consumes Gas at the Delivery Point, a representative of that person may also be present during the testing or measurement of the Measuring Equipment at that Delivery Point.

#### **14.9 No tampering with Measuring Equipment**

- (a) The User must not tamper with, adjust, disconnect, by-pass, interfere with or otherwise damage or render inoperable or inaccurate the Measuring Equipment or take or attempt to take Gas from any part of the Network before it passes the Measuring Equipment at the Delivery Point.
- (b) The User must use its best endeavours to ensure that no other person (except for Evoenergy or Evoenergy's authorised contractors) does or attempts to do anything described in clause 14.9(a).
- (c) Clause 14.9(a) does not prevent the User from performing:
  - (i) alterations or additions in accordance with clause 13.4(a); or
  - (ii) maintenance of equipment in accordance with the ACT Gas Network Boundary Code and ACT Gas Service and Installation Rules Code as they relate to Delivery Station Components,

provided that such actions do not otherwise damage or render inoperable or inaccurate any other part of the Measuring Equipment.

#### **14.10 User to notify Evoenergy of tampering or inaccuracy**

The User must notify Evoenergy promptly upon becoming aware of any circumstances which might reasonably be expected to affect the accuracy or security of the Measuring Equipment. If the User has not already notified Evoenergy, upon becoming aware of any such circumstances, Evoenergy will promptly notify the User.

#### **14.11 Right to alter Measuring Equipment**

Evoenergy has the right at its discretion, acting reasonably, and at the User's cost:

- (a) to install flow control mechanisms on the Measuring Equipment at any Delivery Point, allowing Evoenergy to control the amount of Gas withdrawn by the User at that Delivery Point; and
- (b) alter or make additions to the Measuring Equipment installed at any Delivery Point,

where this is required by Evoenergy for the safe and reliable operation of the Network, for the protection of the Network or to ensure the User's compliance with the provisions of this Agreement. Where the safe and reliable operation or the protection of the Network does not necessitate immediate action, Evoenergy will notify the User of any issue coming within the scope of this clause 14 and outline its concern and,

where the issue relates to the User's compliance with the provisions of this Agreement, state a reasonable period of time within which the User may rectify the issue before Evoenergy will take action at the User's cost.

## **15. Meter reading measurement and data**

### **15.1 Quantity of Gas delivered at a Delivery Point**

The Parties agree that the Quantity of Gas delivered at a Delivery Point is the Quantity of Gas measured by each Delivery Station in accordance with clause 15.2 or estimated by Evoenergy under clauses 14.7(a) or 15.3.

### **15.2 Quantity of Gas delivered at a Delivery Station**

Subject to clause 15.3 the Quantity of Gas Delivered at a Delivery Station is:

- (a) if the Delivery Station is equipped with Daily Meter Reading Facilities and Communications Facilities and with on-site Heating Value measurement, for each Day the product of the Heating Value of Gas for that Day and the Volume of Gas (as measured at the Delivery Station on that Day);
- (b) if the Delivery Station is equipped with Daily Meter Reading Facilities and Communications Facilities but not with on-site Heating Value measurement, for each Day the product of the Declared Heating Value of Gas for that Day and the Volume of Gas (as measured at the Delivery Station on that Day); or
- (c) if the Delivery Station is not equipped with Daily Meter Reading Facilities and Communications Facilities, the product of the Volume of Gas (measured at the Delivery Station for the period between meter readings) and the average of the Declared Heating Values of Gas for all Days in the period between meter readings, or as otherwise agreed.

### **15.3 Quantity of Gas if Measuring Equipment fails**

- (a) If the Measuring Equipment at a Delivery Point or Receipt Point fails to operate or register accurately (or to transmit data accurately or correctly) for any period of time, then the Quantity of Gas delivered to that Delivery Point or Receipt Point for that period will be the amount estimated by Evoenergy in accordance with clause 15.3(b), unless otherwise provided for in the Retail Market Procedures or otherwise agreed between the Parties.
- (b) When estimating a Quantity of Gas for the purposes of clause 15.4(a), the amount will be determined by Evoenergy:
  - (i) by using the registration of any installed check meter which is accurately registering or, if that is not possible, then:

- (ii) if the percentage of error can be determined by calibration, tests or mathematical calculation, by varying the Quantity recorded during the period since the Measuring Equipment was previously tested by one half of the error; or
- (iii) if neither of the options in clauses 15.3(b)(i) or 15.3(b)(ii) are possible, then by having regard to Gas consumption patterns for that Delivery Point.

#### **15.4 Meter reading and data**

- (a) Evoenergy must:
  - (i) read or where permitted under this Agreement or applicable Law, estimate the meter reading at the relevant Delivery Points; and
  - (ii) provide on-site data and communication equipment where economically and technically feasible, at the Delivery Point.
- (b) Where Evoenergy provides Daily Meter Reading Facilities but does not provide Communications Facilities, then the Quantities passing through that Measuring Equipment must be recorded by Evoenergy Daily and where Evoenergy also provides Communications Facilities, must be telemetered by Evoenergy Daily.
- (c) Subject to clause 15.4(d), where Evoenergy does not provide Daily Meter Reading Facilities, Evoenergy must use reasonable endeavours to read the Measuring Equipment monthly in accordance with the meter reading cycle adopted by Evoenergy for the locality and class of the Delivery Station.
- (d) Where the Quantity of Gas delivered to the Delivery Point is expected to be less than 1 TJ in any 12 month period, Evoenergy must use reasonable endeavours to read the Measuring Equipment as required by the Retail Market Procedures.
- (e) At any time, the User may request a special meter read of the Measuring Equipment outside the meter reading cycle adopted by Evoenergy for the locality and class of the Delivery Station pursuant to clause 15.4(c), or the date of a reading of a meter pursuant to clause 15.4(d). The User agrees to pay the relevant Ancillary Charge in relation to such request.
- (f) Except where the Retail Market Procedures specify more stringent requirements, Evoenergy must use reasonable endeavours to advise the User of the Quantity of Gas taken at a Delivery Point as follows:
  - (i) where there are no Daily Meter Reading Facilities or Communications Facilities available, within 2 Business Days of validated monthly meter data being available to Evoenergy, the date of a reading of a meter pursuant to clause 15.4(d), or the date of a special meter read pursuant to clause 15.4(e) (or such further period as provided for under Law); and
  - (ii) where Daily Meter Reading Facilities and Communications Facilities are available, within 1 Business Day of the meter data being available to Evoenergy,

in such format as Evoenergy from time to time nominates after giving reasonable notice of any change in format. Evoenergy will take into consideration all reasonable concerns raised by a User regarding changes to the format, if these are received by Evoenergy within two business days following the User's receipt of a notice advising of a change of format.

- (g) If the User requests more immediate or real time access to meter data at a Delivery Point than that provided under clause 15.4(e), the User may with Evoenergy's consent obtain that access:
  - (i) directly from the Measuring Equipment by connection established at the cost of the User; and
  - (ii) using equipment, established by and at the cost of the User.
- (h) Evoenergy will provide its consent to access under clause 15.4(g) if the connections and equipment referred to in that clause:
  - (i) are made in accordance with the manufacturer's specification for the Measuring Equipment and all applicable laws, regulations and standards; and
  - (ii) do not interfere with or disrupt the operation of the Measuring Equipment owned and operated by Evoenergy or corrupt any meter data.

## **16. Delivery Point served by more than one User**

- (a) At any time, Gas may be transported and delivered to a Volume Customer Delivery Point on behalf of one Network User only.
- (b) Where Gas is delivered to a Demand Customer Delivery Point for more than one Network User, the User and the other relevant Network Users must, prior to the Commencement Date for the Service to that Delivery Point, establish allocation methodologies and notification processes reasonably acceptable to Evoenergy.
- (c) If no such methodologies or processes are established in accordance with clause 16(b) Evoenergy may, at its option, commence the Service and adopt a reasonable methodology such as pro-rating based on the MDQ.

## **17. Charges**

### **17.1 Charges**

During the term of this Agreement, the User must pay the following Charges in connection with the provision of the Services to each Delivery Point (and in relation to delivery of Gas withdrawn from a delivery point referred to in clause 9.4):

- (a) the applicable Reference Tariffs (including as may be subject to a Minimum Charge);

- (b) any applicable Ancillary Charge;
- (c) any other amounts payable by the User under the terms of this Agreement; and
- (d) any charges payable from time to time under any NGR Part 12A Connection Contract or connection application for a Delivery Point or under any Customer Connection Contract in force at a Delivery Point, such payment to be made for and on behalf of any Customer who is a party to any such agreement (unless paid directly to Evoenergy by a Customer in accordance with Rule 119O of the National Gas Rules).

### **17.2 Charges based on Access Arrangement**

The User acknowledges that:

- (a) the Charges payable under clause 17.1(a) to 17.1(c) have been calculated in accordance with and on the basis of the Access Arrangement as amended from time to time; and
- (b) the Charges payable under clause 17.1(d) are payable in accordance with the NERL and Part 12A of the National Gas Rules.

### **17.3 Provision of Basic Metering Equipment Charge**

Where a Delivery Point is or becomes served under more than one Service Agreement, the Provision of Basic Metering Equipment Charge will be allocated by Evoenergy among those Service Agreements in proportion to the MDQs or MHQs specified in each Service Agreement.

### **17.4 Calculation of invoiced instalments of periodic charges**

Instalments of any Charges for a Delivery Point which are expressed with respect to time (e.g. monthly or annual charges) to be specified in an invoice issued in accordance with clause 18 must be calculated for the relevant Billing Period on a Daily pro rata basis based on the number of days in the period of time over which the Charges for the Delivery Point relate.

### **17.5 Theft Of Gas**

- (a) If, due to theft of Gas, Evoenergy has invoiced a User with incorrect Charges in respect of a Delivery Point, Evoenergy may:
  - (i) reasonably determine what should have been the correct Charges in respect of that Delivery Point; and
  - (ii) unless the User can demonstrate that Evoenergy has failed to take reasonable steps to prevent or mitigate that theft, invoice that User for the difference between what was invoiced for that Delivery Point and the amount specified clause 17.5(a)(i).
- (b) The User must pay the amount of any difference referred to in clause 17.5(a)(ii) in accordance with clause 18.

- (c) Upon request by the User, Evoenergy must provide the User with a copy of Evoenergy's calculation of the amount specified in clause 17.5(a)(i).

## **18. Invoicing and payments**

### **18.1 Invoicing and Payment under Part 21 NGR where the User is the Authorised Retailer for Customers at a Delivery Point**

Where the User is the Authorised Retailer for a Customer or Customers at one or more Delivery Points:

- (a) all Charges for those Delivery Points will be invoiced and paid in accordance with:
  - (i) the provisions set out in Divisions 2 and 3 of Part 21 of the National Gas Rules, which will be deemed to be incorporated into this Agreement; and
  - (ii) clauses 18.5, 18.9 - 18.13, to the extent that they are not inconsistent with Divisions 2 and 3 of Part 21 of the National Gas Rules; and
- (b) the rest of this clause 18 will not apply in respect of the Delivery Points.

### **18.2 Invoicing and Payment where clause 18.1 does not apply**

Where the User is not the Authorised Retailer for a Customer or Customers at one or more Delivery Points (including where the User is an Exempt Seller), then this clause 18 (other than clause 18.1) will apply in respect of all Charges for those Delivery Points.

### **18.3 Evoenergy to issue invoice**

- (a) Evoenergy will render invoices at regular intervals but not less frequently than monthly.
- (b) Each invoice will specify the amounts due for all Charges payable under this Agreement in the most recently completed Billing Period. Where relevant, such amounts will be calculated using the meter data or estimated meter data from all relevant Delivery Points.
- (c) Any adjustments or outstanding amounts in respect of any previous Billing Period must be included in the invoice.
- (d) If the User requests, Evoenergy may send a copy of the invoice to the User by electronic mail on the date the invoice is generated.

### **18.4 Due Date for payment**

- (a) The User must pay the aggregate amount stated in each invoice within 10 Business Days of the date of the invoice (Due Date).

- (b) The User must nominate in writing the recipient of invoices if different to the party specified in Annexure 1.

#### **18.5 Method of Payment**

- (a) Unless otherwise agreed by Evoenergy, payment of invoices must be made by electronic funds transfer to an account nominated by Evoenergy.
- (b) Where payment is made by electronic funds transfer, the funds must be immediately available and payment will be deemed to be made only when the funds are credited to Evoenergy's account.

#### **18.6 Interest on overdue payments**

- (a) If the User fails to pay an invoice by the Due Date, the User must, if required by Evoenergy, pay Evoenergy interest on any amount outstanding.
- (b) Interest will be calculated from the Due Date to the actual date of payment (both inclusive) at an annual percentage rate equal to the aggregate of:
  - (i) the corporate overdraft reference rate (monthly charging cycle) applied by the Commonwealth Bank of Australia (**Bank**) as at the Due Date (or if the Bank ceases to quote such a rate, then the rate which in the opinion of the Bank is equivalent to such rate in respect of similar overdraft accommodation) expressed as a percentage; plus
  - (ii) 2 per cent per annum.

#### **18.7 Disputed payments**

If the User disputes part or all of an invoice given by Evoenergy to the User under clause 18.3:

- (a) the User must, within 10 days after receipt of the invoice, notify Evoenergy in writing specifying the amount in dispute and the reasons for the dispute;
- (b) the Parties must comply with the dispute resolution process set out in clause 30; and
- (c) the User must pay the full aggregate amount of the invoice (except any amount which is manifestly wrong) in accordance with clause 18.5 and if the User fails to do so, Evoenergy may require the User to pay interest on the amount outstanding (excluding any amount which is manifestly wrong) in accordance with clause 18.6.

#### **18.8 Payment on resolution of dispute**

If as a result of resolution of a dispute referred to in clause 18.7 Evoenergy is obliged to pay an amount to the User, then Evoenergy must credit the amount payable by it in the next invoice. If the User so requires, Evoenergy must pay interest on the amount payable from the date of payment by the User to the date of payment by Evoenergy (both inclusive), calculated in accordance with clause 18.6.

## **18.9 Overcharging and undercharging**

- (a) Where Evoenergy has:
  - (i) undercharged or not charged a User, the User is not obliged to pay the correct amount pursuant to clause 18.9(b) to the extent the User is precluded by law from recovering those charges from its customers provided that the User has complied with the requirements of all applicable Law and any relevant contracts and has used reasonable endeavours to recover the relevant charges in accordance with its rights at law or under a relevant contract;
  - (ii) overcharged a User, the User may seek to recover the correct amount to the extent permitted by law and pass those charges through to its customers.
- (b) If the User has been overcharged or undercharged under this Agreement and the User has paid an invoice containing the overcharge or the undercharge, then the Parties must agree on the correct amount payable and either:
  - (i) Evoenergy will credit or debit that difference to the User in the next invoice as appropriate; or
  - (ii) within 5 Business Days of the Parties agreeing on the correct amount payable, Evoenergy will refund the User or the User must pay the difference as appropriate.
- (c) If the Party to whom the amount is owed so requires, the amount will include interest in accordance with clause 18.6 from the date of payment by the User or the date of invoice by Evoenergy (whichever is applicable), to the date of payment or refund under this clause 18.9 (whichever is applicable) (both inclusive).
- (d) A Party may not claim from the other Party any amount overcharged or undercharged if more than 2 years have elapsed since the date of the relevant invoice.

## **18.10 User to provide information**

If information necessary for billing purposes is in the control of the User, the User must on request from Evoenergy furnish that information to Evoenergy within 3 Business Days after the end of the relevant Billing Period. If the User fails to furnish the information, Evoenergy is entitled to render an invoice based on Evoenergy's reasonable estimate.

## **18.11 Justification of calculations**

Each Party is entitled to require the other Party to provide sufficient evidence to establish the accuracy of any statement, charge or computation made by the other Party under this Agreement. Neither Party is obliged to provide any evidence where doing so would be in breach of any confidentiality undertakings or obligations to third parties.

#### **18.12 Calculation of Charges for broken periods**

If a Charge is calculated on a monthly basis, and the first or last month is not a full Calendar Month, the charge will be calculated on a pro-rata Daily basis. The amount will be calculated by dividing the number of Days during which the Service has been provided by the total number of Days in that Calendar Month.

#### **18.13 Payment free of deduction or withholding**

The User must pay amounts payable under this Agreement free and clear of any deductions or withholding except if required by law to deduct or withhold.

### **19. Goods and Services Tax**

#### **19.1 Definitions**

For the purposes of this clause 19, terms defined in the GST law have the same meaning when used in this clause 19.

#### **19.2 GST exclusive consideration**

Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this Agreement are exclusive of GST (if any). If GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Agreement, the amounts payable or the value of the consideration provided for that supply (or deemed supply) (**Payment**) shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.

#### **19.3 Reimbursements**

Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred by that Party, then such amount will be reduced by the amount of any input tax credit available to that Party and, if a taxable supply, will be increased by an amount equal to the GST payable in relation to that supply.

#### **19.4 Payment of amount of GST**

Subject to the issue of a tax invoice in accordance with clause 19.5, any additional amount payable pursuant to clauses 19.2 or 19.3 must be paid at the time any payment to which it relates is payable. Where an additional amount payable is not referable to an actual payment, then it will be payable within 10 days of a tax invoice being issued by the Party making the supply.

## **19.5 Tax Invoice**

Where in relation to this Agreement a Party makes a taxable supply, that Party will provide a tax invoice in respect of that supply before the additional amount payable in respect of that supply becomes due.

## **19.6 Adjustments**

If the GST payable in relation to a supply made under or in accordance with this Agreement varies from the additional amount paid by the Party acquiring that supply (**Recipient**) under clause 19.2, then the Party making that supply (**Supplier**) will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 19.6 is deemed to be a payment, credit or refund of the additional amount payable under clause 19.2. Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

## **19.7 ABN and GST Warranty**

Each Party warrants that it is GST registered and has a valid Australian Business Number.

## **20. Suspension of Service**

### **20.1 Suspension or disconnection of supply by Evoenergy**

- (a) Evoenergy may suspend the delivery of Gas to any Delivery Point and is not obliged to provide the Service where:
  - (i) Evoenergy considers that a Delivery Point or the Network poses an immediate threat of injury or material damage to any person, property or the Network, including where Evoenergy has not received sufficient Gas at a Relevant Receipt Point to meet Gas withdrawals from the part of the Network servicing that Delivery Point;
  - (ii) AEMO has instructed Evoenergy to suspend the delivery of Gas to the Delivery Point; or
  - (iii) the User is not a registered participant in its registrable capacity as a “User” or “Self-contracting User” under Rule 135AE of the NGR or the User is not an Exempt Seller under the NERL.
- (b) Evoenergy is entitled to charge the User for costs reasonably incurred by Evoenergy for suspending the delivery of Gas in the circumstances set out in clauses 20.1(a)(ii) and 20.1(a)(iii).
- (c) If requested by Evoenergy, a representative of the User must be present when Evoenergy stops or suspends the delivery of Gas to the Delivery Point.

## **20.2 User's continuing obligation to pay Charges**

The User acknowledges that suspension of delivery of Gas under this clause 20 does not reduce the User's obligation to pay Charges under this Agreement.

## **21. Interruptions and curtailments**

### **21.1 Application**

This clause 21 applies to the User irrespective of any Receipt Point where Gas is received by Evoenergy or the User's contractual obligations or physical arrangements at or upstream of any Receipt Point.

### **21.2 Scheduled Interruptions**

- (a) Evoenergy may, without being in breach of this Agreement, effect any repairs, testing, maintenance, replacement, upgrading or any other works related to the Network which are reasonably required.
- (b) Evoenergy may interrupt or reduce the Services during the work referred to in clause 21.2(a) to the extent necessary to enable that work to proceed.
- (c) If Evoenergy intends to interrupt or reduce the Services in accordance with clause 21.2(b), Evoenergy will:
  - (i) notify the User;
  - (ii) use reasonable endeavours to agree with the User the timing of the intended interruption or reduction; and
  - (iii) use best endeavours to minimise the period during which the Services are interrupted or reduced.
- (d) If Evoenergy notifies the User that it intends to interrupt or reduce the Services in accordance with clause 21.2(b), the User will use best endeavours to ensure that there is a cessation or reduction of:
  - (i) the delivery of Gas to any Receipt Points nominated by Evoenergy; or
  - (ii) the taking of Gas at any Delivery Points or class of Delivery Points nominated by Evoenergy,in accordance with the directions of Evoenergy.

### **21.3 Emergency Interruptions**

- (a) Evoenergy may, without being in breach of this Agreement, interrupt or reduce the Services (including by suspending or interrupting supply to any Delivery Points, ceasing to accept Gas at any Receipt Point, or any other measure) in cases of emergency or risk of injury or damage to any person or property (including the Network) for such period as Evoenergy reasonably believes is necessary.
- (b) Evoenergy must, as soon as reasonably practicable, make information about an emergency interruption or reduction of Services available in accordance with the Law.

### **21.4 Load Shedding**

- (a) If at any time for any reason there is, or Evoenergy reasonably believes or anticipates that there may be, a failure of supply or shortfall in supply in or to any part of the Network, Evoenergy is entitled to curtail or interrupt the receipt, transportation or delivery of Gas and to implement Load Shedding.
- (b) The User acknowledges that Evoenergy will determine whether to request a reduction or cessation of Load in accordance with the Load Shedding principles set out in the Operational Schedule.
- (c) If Evoenergy notifies (including, for the purposes of this clause 21.4, notice given verbally) the User that:
  - (i) there has been a failure of sufficient supply in or to any part of the Network; or
  - (ii) that it has reasonable grounds to believe or anticipate that there may be a failure of sufficient supply in or to any part of the Network,the User will, if requested by Evoenergy, use best endeavours to ensure that there is a cessation or reduction of Load at the User's Delivery Points in the affected Network Section in accordance with the directions of Evoenergy.
- (d) At the same time as or following notification to the User under clause 21.4(c), Evoenergy will determine the Load Shedding Priority up to which Load must be reduced or cease and notify the User as soon as practicable of the Load Shedding Priority and Load Types that must be reduced or cease (at the direction of Evoenergy).
- (e) Evoenergy may at any time change the Load Shedding Priority up to which Load must be reduced or cease and notify the User as soon as practicable of any such change.
- (f) The User acknowledges and agrees that immediately after notifying the User of the applicable Load Shedding Priority in accordance with clauses 21.4(d) or 21.4(e), Evoenergy is entitled to contact Customers at Delivery Points with relevant Load Types and direct those Customers to cease or reduce their consumption of Gas in accordance with the directions of Evoenergy.

- (g) Evoenergy may instruct those Customers whose ELMS Data shows Load Types at Load Shedding Priorities up to and including the Load Shedding Priority nominated by Evoenergy under clause 21.4(d) or 21.4(e) to cease withdrawing, taking or using Gas for each of those Load Types or reduce Loads to a lesser Quantity of Gas specified by Evoenergy.
- (h) The User must use best endeavours to ensure that each of its Customers complies with any direction given to it by the User or Evoenergy to cease or reduce Load under this clause 21.4.
- (i) Unless otherwise directed by Evoenergy, the User must comply with, and must use best endeavours to ensure that each of its Customer complies with, any Curtailment Plan provided to Evoenergy.
- (j) If a Customer fails to comply with any instruction it receives from Evoenergy or User under this clause 21.4 and 0 Evoenergy may physically curtail, suspend, reduce or interrupt Gas supply to that Customer using whatever means at its disposal.

## **21.5 Load Shedding Priority**

The Parties agree that for each Demand Customer Delivery Point for which no ELMS Data has been provided Evoenergy, acting reasonably, is entitled to curtail delivery of Gas to that Delivery Point or request that a User or Customer cease withdrawing, taking or using Gas at that Delivery Point at any level or to any Quantity it deems appropriate in its discretion and without taking into account the Load available to be reduced or ceased at any Load Shedding Priority at any other Delivery Point.

## **21.6 Provision of ELMS Data**

- (a) The User must provide ELMS Data for each Demand Customer Delivery Point and must ensure that Data is updated to reflect any relevant changes.
- (b) If the User is required to provide ELMS Data for a Delivery Point and has not done so, Evoenergy may (acting reasonably) determine a Load Type or Load Types for that Delivery Point or any Quantity of Gas at that Delivery Point.
- (c) The User may request a copy of its ELMS Data for the User's Delivery Points under this Agreement at any time. Any such request must be in writing.
- (d) Subject to Evoenergy's obligations to keep ELMS Data confidential and Evoenergy's obligations under Privacy Laws, Evoenergy must provide the User with a copy of ELMS Data it has in respect of the User's Delivery Points (or if it does not have ELMS Data for those Delivery Points, notify the User accordingly) within a reasonable time of receiving the User's request pursuant to clause 21.6(c). If ELMS Data is confidential to, or private information of, a third party (including another Network User) and Evoenergy is not able to confirm that it has written consent to disclose that ELMS Data, Evoenergy is not obliged to disclose that ELMS Data to the User, but must notify the User that it is unable to disclose that information.

- (e) The User may ask Evoenergy to update the ELMS Data for Delivery Points under this Agreement at any time. Evoenergy is obliged to make such a change only if the User provides evidence to Evoenergy's reasonable satisfaction justifying any changes requested.
- (f) Evoenergy may ask the User to:
  - (i) confirm and/or update the ELMS Data for the User's Delivery Points at any time; and
  - (ii) provide evidence to Evoenergy's reasonable satisfaction justifying the ELMS Data provided.
- (g) The User must comply with a request from Evoenergy pursuant to clause 21.6(f) within 20 Business Days of receiving that request.
- (h) The User warrants that all ELMS Data it provides to Evoenergy is accurate and complete. The User must advise Evoenergy as soon as practicable after becoming aware that any ELMS Data it has provided to Evoenergy is no longer accurate or complete, and must provide updated information accordingly.
- (i) If, in the course of implementing Load Shedding, or a simulation of Load Shedding, Evoenergy determines that contact information contained in the ELMS Data for a Delivery Point is inaccurate, Evoenergy may update the ELMS Data for that Delivery Point in accordance with information provided by a Customer. Evoenergy may (but is not obliged to) request the User to confirm that ELMS Data in accordance with clause 21.6(f).
- (j) The User acknowledges that the Tariff Class for a Delivery Point has in part been determined according to its Load Type. If the User:
  - (i) fails to comply with its obligations under clause 21.6(g); or
  - (ii) Evoenergy reasonably believes that ELMS Data provided by the User is incomplete or inaccurate,

Evoenergy may alter the Tariff Class assigned to a Delivery Point, in accordance with the Access Arrangement.

## **21.7 Reduction of Demand Charge for delivery of less than MDQ**

If Evoenergy is unable to deliver the MDQ to a Demand Customer Delivery Point for any period in excess of one Day as the result of:

- (a) an event occurring wholly within the Network (and not due to any event, action or circumstance upstream of a Receipt Point); and
- (b) either:
  - (i) Evoenergy carrying out work pursuant to clauses 21.2 or 21.3; or

- (ii) curtailment or interruption of supply under clause 21.4 arising from circumstances solely within Evoenergy's control,

the Demand Charge for that Delivery Point will be reduced during the period of reduced service so that the Demand Charge in that period is calculated by reference to the actual amount withdrawn at the Delivery Point each Day during that period, rather than by reference to the Chargeable Demand specified in Customer List.

## **22. Force Majeure**

### **22.1 Definition**

- (a) In this clause 22, and subject to clause 22.1(b), Force Majeure Event means any event, circumstance or cause not within the control of a Party and which by the exercise of due diligence that Party is not reasonably able to prevent or overcome, including (without limitation):
  - (i) acts of God including, without limitation, earthquakes, floods, washouts, landslides, lightning and storms;
  - (ii) strikes, lockouts, bans, slowdowns or other industrial disturbances;
  - (iii) acts of enemy, wars, invasions, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
  - (iv) fire or explosion;
  - (v) epidemic or quarantine;
  - (vi) order of any court or tribunal or the order, act, or omission or failure to act of any government or governmental authority having jurisdiction, or failure to obtain any necessary governmental consent or approval;
  - (vii) equipment breakdown, breakages or accident to machinery, the Network or Pipelines, the necessity for making repairs and/or alterations in machinery, the Network or Pipelines (other than routine maintenance for which notice has not been given), freezing of wells or failure of reserves; or
  - (viii) native title claims.
- (b) It is acknowledged by the Parties that:
  - (i) lack of funds by any Party;
  - (ii) changes in market conditions for transportation and/or the purchase and sale of Gas (except where these affect the operation of the Network);
  - (iii) the inability of any Party to obtain a supply of Gas; or

- (iv) if the User is not the person consuming Gas at the Delivery Point, the inability of that person to take Gas due to any event or circumstance within the control of that person,

will under no circumstances constitute or cause a Force Majeure Event.

- (c) The User is responsible for establishing that a person's inability to take Gas as mentioned in clause 22.1(b)(iv) arises from an event or circumstance which is not within that person's control.

## **22.2 Consequences of Force Majeure**

Subject to clauses 22.4, 22.5 and 22.6, if by reason of a Force Majeure Event a Party (**Affected Party**) is affected in the performance of any obligation or clause under this Agreement:

- (a) that Party will be excused during the time, and to the extent that, such performance is so affected; and
- (b) that Party will not, to that extent, be liable to the other Party for any Loss of any kind arising out of, or in any way connected with, that non-performance.

## **22.3 Notification and Diligence**

Upon the occurrence of a Force Majeure Event, the Affected Party must:

- (a) as soon as possible notify the other Party in writing, giving:
  - (i) full particulars of the Force Majeure Event;
  - (ii) the date of commencement of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations; and
  - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event and the effects of the Force Majeure Event;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event and the effects of the Force Majeure Event as expeditiously as possible. However, nothing in this clause 22 will require a Party to settle a strike, lockout, ban, slowdown or other industrial disturbance, civil disobedience or native title claim against its judgment, and it is acknowledged that settlement of any such disturbance is entirely within the discretion of the Party affected;
- (c) resume performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
- (d) notify the other Party in writing when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and

- (e) notify the other Party in writing when resumption of performance has occurred.

#### **22.4 Liability Not Relieved**

A Force Majeure Event which affects a Party's performance under this Agreement will not relieve that Party of liability in the event, and to the extent, that its negligence caused or contributed to its failure to perform under this Agreement. A Party will not be relieved from a breach of an obligation or liability to the extent that it arises from the failure of that Party to comply with clause 22.3(b) and/or clause 22.3(c).

#### **22.5 Demand Charge for delivery of less than MDQ**

If a Force Majeure Event affecting Evoenergy occurs and prevents Evoenergy from performing its obligations under this Agreement in respect of a Demand Customer Delivery Point, the Demand Charge for any Delivery Point to which Evoenergy was unable to deliver Gas to the MDQ for that Delivery Point will, for any period during which Evoenergy is unable to deliver Gas to the MDQ, be calculated by reference to the actual amount withdrawn each Day at that Delivery Point.

#### **22.6 Force Majeure does not affect obligations to pay**

Subject to clause 22.5 and clause 22.7, the occurrence of a Force Majeure Event does not relieve the User from any obligation to pay any amounts owing by the User to Evoenergy pursuant to this Agreement.

#### **22.7 Prolonged Force Majeure**

Evoenergy and the User must consult in good faith to decide what action should be taken to carry out the intentions of this Agreement if, as a result of a Force Majeure Event, a Party is affected in the performance of any obligation or clause under this Agreement for a period of 12 Calendar Months. If after a further 1 Calendar Month the Parties are unable to agree upon a means to resolve or otherwise overcome the relevant impact of the Force Majeure Event, then:

- (a) if the Force Majeure Event wholly prevents the performance of this Agreement, either Party may terminate this Agreement by giving to the other Party not less than 30 Days' prior notice to that effect; or
- (b) if the Force Majeure Event prevents delivery of Gas to some but not all of the Delivery Points, either Party may elect to have those Delivery Points deleted from the Customer List by giving to the other Party not less than 3 Business Days' notice, and Evoenergy must delete those Delivery Points accordingly,

and thereafter neither Party will be under any further obligation to the other in respect of this Agreement or the deleted Delivery Points as the case may be, but each Party will remain responsible for the performance of obligations under this Agreement arising prior to the date of termination, and after that date for the performance of obligations in respect of any Delivery Points which are not deleted.

## **23. Termination or cessation**

### **23.1 Grounds for termination or cessation of Services**

Without limiting clause 23.2, 23.3 or 22.7, if a Party (the **First Party**):

- (a) materially defaults in the performance of any of the material covenants or obligations imposed upon it by this Agreement (other than the User's obligation to pay) and, where the default is capable of remedy, fails to remedy the default within 20 Business Days from the receipt of notice from the other Party requiring it to remedy the default;
- (b) suffers a resolution passed or an order is made by the Court for its winding up except for the purposes of a solvent reconstruction or amalgamation;
- (c) is placed in liquidation or is placed under external administration; or
- (d) makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors,

then the other Party may by notice in writing, either:

- (e) terminate this Agreement; or
- (f) if the First Party is the User:
  - (i) cease to provide the Services; or
  - (ii) cease to provide the Services to the User to those Delivery Points the subject of the relevant default,

such termination or cessation to take effect 48 Hours after delivery of the notice or after such longer period as specified in the notice.

### **23.2 Right of Evoenergy to terminate**

- (a) Subject to clause 23.2(b), Evoenergy may terminate this Agreement by 30 Days' notice if, as a result of a Change in Law after the date of this Agreement:
  - (i) the Service provided under this Agreement is no longer available to the User under the Access Arrangement as a reference service; or
  - (ii) in the opinion of Evoenergy (acting reasonably), the commercial position of Evoenergy under this Agreement is materially adversely affected.
- (b) Evoenergy may only exercise its right to terminate under clause 23.2(a)(ii) if Evoenergy and the User, negotiating in good faith, have been unable to agree to amend this Agreement, to deal with the impact of the relevant Change in Law.

- (c) In this clause 23.2 Change in Law means:
- (i) the introduction of a new Law; or
  - (ii) an amendment to, or repeal of, an existing Law; or
  - (iii) a new or changed interpretation (which is binding on Evoenergy) of an existing Law resulting from a decision of:
    - (A) a court;
    - (B) a tribunal;
    - (C) an arbitrator;
    - (D) a Government or regulatory department, body, instrumentality, minister, commissioner, officer, agency or other authority; or
    - (E) a person or body which is the successor to the administrative responsibilities of any person or body described in sub-paragraph (D) above.

### **23.3 Failure to pay**

If the User defaults in payment of any moneys payable under this Agreement, excluding payments disputed under clause 18.7, for a period of 5 Business Days after notification of the default then Evoenergy may, at Evoenergy's sole discretion, call on the Security and/or either terminate this Agreement or cease to provide Services to the User under this Agreement in respect of any one or more Delivery Points by notice in writing, such termination or cessation to take effect 48 Hours after delivery of the notice or after such longer period as specified in the notice.

### **23.4 Preservation of rights after termination**

Termination of this Agreement for any reason will not extinguish or otherwise affect any rights of either Party against the other (including under any indemnity) which:

- (a) accrued prior to the time of the termination including, without limitation, Evoenergy's right to payment by the User in respect of amounts owing prior to termination or amounts payable for Services for which no invoice has been rendered at the date of termination or Evoenergy's right to call on the Security; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the termination,

but subject to the Parties' respective rights and obligations under this Agreement as in force prior to its termination.

### **23.5 Preservation of rights after cessation of Services**

- (a) Cessation of Services by Evoenergy for any reason will not extinguish or otherwise affect any rights of either Party against the other (including under any indemnity) which:
  - (i) accrued prior to the time of the cessation including, without limitation, Evoenergy's right to payment by the User in respect of amounts owing prior to the cessation of Services or amounts payable for Services for which no invoice has been rendered at the date of cessation or Evoenergy's right to call on the Security;
  - (ii) continue to accrue after the time of the cessation including, without limitation, Evoenergy's right to payment by the User of any Minimum Charge; or
  - (iii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the cessation.
- (b) Nothing in this Agreement requires Evoenergy to recommence provision of Services once Evoenergy ceases to provide services to any delivery point deleted from the Customer List under clause 22.7, 23.1 or 23.3.

### **23.6 Survival**

Clauses 24.1, 24.2, 25, 26, 28, 29, 30, 31, 32, this clause 23.6 and so much of clause 1 as is necessary to give effect to any of those clauses survive the termination of this Agreement.

## **24. Indemnities**

### **24.1 Application of the indemnities under this clause**

The indemnities under this clause 24 are subject to the limitations of liability that apply under clause 25.

### **24.2 Mutual indemnity**

Each Party (**Indemnifying Party**) must indemnify and hold harmless the other Party and its Associates (each an **Indemnified Party**) from and against any Loss suffered or incurred by any of them in connection with or arising as a result of, any:

- (i) bodily injury or, death or loss of or damage to property caused by any negligent act or omission or wilful misconduct; or
- (ii) breach of this Agreement,

by the Indemnifying Party or any of its Associates, except to the extent the Loss is caused by the negligent act or omission or wilful misconduct of an Indemnified Party.

Each Party is entitled to enforce this clause on behalf of any one or more of its fellow Indemnified Parties, each of whom are entitled to the benefit of this clause.

### **24.3 Indemnity in favour of Evoenergy**

The User must indemnify and hold harmless Evoenergy and its Associates (each an **Evoenergy Indemnified Party**) from and against any Loss suffered or incurred by any of them in connection with, or arising as a result of, any:

- (a) Unauthorised Overrun, or any revocation of an Authorised Overrun by Evoenergy under clause 5.6;
- (b) delivery of Gas on behalf of the User at any Receipt Point which does not meet the Specification or pressure requirements for Gas delivered at the Receipt Point under this Agreement;
- (c) acts or omissions of the User, or any Customer or End-Consumer resulting in interruption, curtailment, or suspension of the delivery of Gas at any Receipt Point, through the Network, or at any delivery point on the Network; and
- (d) disconnection or abolishment of any Delivery Point from the Network at the request of the User.

Evoenergy is entitled to enforce this clause on behalf of any one or more of its fellow Evoenergy Indemnified Parties, each of whom are entitled to the benefit of this clause.

## **25. Liability Limitations**

### **25.1 Exclusion of warranties**

All express or implied warranties, representations or covenants which are not contained in this Agreement are excluded to the maximum extent permitted by law. If a statutory guarantee imposed under the *Competition and Consumer Act 2010* (Cth) or any equivalent State or Territory legislation applies in respect of the Services, then Evoenergy's liability to the User under such guarantee is limited, so far as the law permits, (at Evoenergy's option) to:

- (a) the re-supply of the relevant service under this Agreement; or
- (b) an amount equivalent to the payment to have the relevant service re-supplied.

### **25.2 Liability exclusions and limitations**

The liability of a Party (**First Party**) to the other Party and each of its Associates for any Loss (other than for liabilities referred to under clause 24.3) is limited as follows:

- (a) neither Party is liable to the other for any Consequential Loss;
- (b) liability for any other Loss arising out of or in connection with:
  - (i) any act, omission or conduct of the First Party or its Associates; or
  - (ii) this Agreement,

whether in contract, statute, tort (including negligence) or on any other basis in law, equity or otherwise is limited to the extent permitted by law to either:

  - (iii) the Insured Sum for that liability under the First Party's policies of insurance; or
  - (iv) if there is no such Insured Sum for that liability, then to whichever of the following liability limits is first reached:
    - (A) \$500,000 in the aggregate for all claims in a Financial Year by the other Party, its Related Bodies Corporate or their Associates;
    - (B) \$500,000 in the aggregate for all claims by those persons arising out of or in connection with all acts, omissions, or conduct referred to in subparagraph (b)(i) and (ii) above or this Agreement during a Financial Year;
    - (C) in the case of Evoenergy, \$2 million in the aggregate for all claims in a Financial Year by all persons (including those referred to above, all Network Users and all other persons); and
    - (D) in the case of Evoenergy, \$2 million in the aggregate for all claims by all such persons arising out of or in connection with all such acts, omissions, or conduct or this Agreement during a Financial Year.

### 25.3 Insured Sum

For the purposes of clause 25.2(b), the **Insured Sum** for the liability referred to in that clause means:

- (a) the amount recovered by the First Party under an insurance policy in respect of the liability; or
- (b) the amount that would have been so recovered by the First Party in respect of the liability but for:
  - (i) a failure by the First Party to:
    - (A) comply with clause 26; or
    - (B) claim under the relevant insurance, comply with the claim procedures under the relevant insurance, or diligently pursue the claim;

- (ii) the First Party not complying with any provision, obligation or duty owed under or in respect of the relevant insurance (including the pre-contractual duty to disclose); or
- (iii) the operation of any self-insured retention, deductible, excess or co-insurance under the terms of the relevant insurance

but not to the extent that the relevant insurer seeks to deny recovery in respect of the liability on the basis of any of the limitations in clause 25.2(b).

#### **25.4 Carve outs from the above liability exclusions and limitations**

The exclusions and limitations of liability in clause 25.2 do not apply to:

- (a) any liability of the User for:
  - (i) failure to pay Charges or any other amount payable under this Agreement; or
  - (ii) Evoenergy's Loss arising as a result of:
    - (A) the User failing to deliver or procure sufficient Gas at a Receipt Point to meet Gas withdrawals at the Delivery Points as required by clause 6.3; or
    - (B) delivery of Gas by or on behalf of the User into the Network which does not meet the Specification or pressure requirements under this Agreement; or
- (b) Evoenergy's liability for any loss of revenue by the User caused by the delivery to a Delivery Point of Gas which does not meet the Specification, to the extent that the Gas met the Specification when it was injected into the Network and did not meet the Specification on delivery as a result of the negligence or wilful default of Evoenergy.

#### **25.5 Evoenergy's exclusion of liability**

Despite any other provision in this Agreement and to the extent permitted by law, Evoenergy is not liable for any Loss arising, whether under contract, statute, tort (including negligence) or on any other basis in law, equity or otherwise, arising out of or in connection with any:

- (a) Unauthorised Overrun, or any revocation of an Authorised Overrun by Evoenergy under clause 5.6;
- (b) disconnection, abolition or cessation of Gas at a Delivery Station pursuant to clause 13 (where requested by the User) or otherwise in accordance with Law, including disconnection for health and safety reasons;
- (c) curtailment, interruption, load shedding, reduction of supply or suspension of delivery of Gas in accordance with this Agreement; or

- (d) anything which may arise with respect to Gas prior to its receipt by Evoenergy at a Receipt Station (including it not meeting the Specification or the pressure requirements of this Agreement when injected at the Receipt Station) or after its delivery at a Delivery Point or with respect to any Energy produced, supplied or resold at any premises as a result of Gas being delivered by Evoenergy to a Delivery Point (including defects in the supply of Energy),

except to the extent that the negligent act or omission or wilful misconduct of Evoenergy caused that Loss.

## **25.6 Civil Liability Act**

- (a) To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) (and any other equivalent statutory provisions in any other state or territory) is excluded from applying to any right, obligation or liability of either Party under this Agreement whether such a right, obligation or liability is sought to be enforced as a breach of contract, a claim in tort or otherwise in an action for damages.
- (b) All other rights, obligations and liabilities (including those relating to proportionate liability) of each Party are preserved and are as specified in or by this Agreement whether in contract, tort or otherwise in an action for damages.

## **25.7 User's supply arrangements**

The User must include in all its sale and supply arrangements with Customers who are not Small Customers, a provision that limits or excludes the User's liability to those persons, to the extent reasonably practicable, and in particular in relation to transportation of Gas, arising from or in connection with the operation of the Network and any Services provided by Evoenergy (whether under this Agreement or otherwise).

## **26. Insurance**

### **26.1 Evoenergy's Insurance**

- (a) Evoenergy must obtain and maintain, with a reputable insurance company, public liability insurance and such other insurances as may be required to satisfy the requirements of any licence or authorisation needed to operate the Network, covering liability:
  - (i) for bodily injury, death or loss of or damage to property; and
  - (ii) up to any maximum amounts of liability as may be required under any such licence or authorisation, or as otherwise reasonably determined by Evoenergy.
- (b) Whenever reasonably requested by the User, Evoenergy must give the User reasonable evidence (such as a certificate of currency) as to its insurance coverage in place pursuant to clause 26.1(a).

## 26.2 User's Insurance

- (a) Where the User is an Authorised Retailer or Exempt Seller, the User must obtain and maintain, with a reputable insurance company, public liability and such other insurances in respect of any risks a person carrying on a business of retailing gas would prudently insure, including in respect of any liability it may incur under this Agreement. Otherwise, the User must obtain and maintain, with a reputable insurance company, public liability and such other insurances as Evoenergy reasonably specifies, including in respect of any liability it may incur under this Agreement.
- (b) Whenever reasonably requested by Evoenergy, the User must give Evoenergy reasonable evidence (such as a certificate of currency) as to its insurance coverage in place pursuant to clause 26.2(a).
- (c) The User must promptly notify Evoenergy if the User fails to obtain or maintain any insurance required under this Agreement. In this case, Evoenergy may obtain and maintain that insurance on behalf of the User at the cost of the User and the User must provide all reasonable assistance to Evoenergy to allow it to exercise this right.

## 27. Transfer

### 27.1 Evoenergy may transfer

Evoenergy may assign, transfer or novate this Agreement or transfer any or all of its rights under this Agreement without the User's prior written consent. Evoenergy must notify the User in writing of any such assignment, transfer or novation.

### 27.2 No assignment without consent

- (a) The User may assign, transfer or novate this Agreement with Evoenergy's prior written consent, which:
  - (i) must not be withheld where the proposed assignee, transferee or novatee  
**(Proposed Transferee)**
    - (A) is acquiring or receiving a transfer of substantially the whole of the User's business, assets and undertaking;
    - (B) has a level of credit-worthiness no less than that of the User as assessed by Evoenergy acting reasonably (taking into account any information provided, or matters demonstrated, under clause 29.2(c) in relation to the Proposed Transferee); and
    - (C) holds all authorisations and licences required to enable the Proposed Transferee to meet its obligations under this Agreement; and

- (ii) may otherwise be given or withheld by Evoenergy acting reasonably.
- (b) The User must request Evoenergy's consent to any assignment, transfer or novation in writing and any such consent may be given by Evoenergy on terms and conditions reasonably required by Evoenergy. Those terms may include the Proposed Transferee and the User entering into a deed of novation and assignment with Evoenergy on terms and conditions satisfactory to Evoenergy acting reasonably.
- (c) If requested by Evoenergy, the User must, in a timely manner:
  - (i) demonstrate the Proposed Transferee's ability to meet all financial and other obligations under this Agreement; and
  - (ii) provide all information reasonably required by Evoenergy for the purpose of assessing the Proposed Transferee's creditworthiness.
- (d) The information so requested by Evoenergy may include the Proposed Transferee's most recent Financial Report or, where the Proposed Transferee is not required under the Corporations Act 2001 (Cth) to produce a Financial Report, the User must provide an equivalent report in relation to the Proposed Transferee within 30 days of the request.

### **27.3 Transfers of capacity where the Retail Market Procedures do not apply**

- (a) Where there are no relevant Retail Market Procedures governing transfer of capacity, the User may, without Evoenergy's consent, transfer, by way of subcontract, all or any of the User's contracted capacity to another person (the third party) with the following consequences:
  - (i) the User's rights against, and obligations to, Evoenergy under this Agreement are (subject to clause 27.3(a)(ii)) unaffected by the transfer; but
  - (ii) the User must immediately give notice to Evoenergy of:
    - (A) the subcontract and its likely duration;
    - (B) the identity of the third party; and
    - (C) the amount of the contracted capacity transferred.
- (b) The User may, with Evoenergy's consent, transfer all or any of the User's contracted capacity to another party (the third party) as outlined in Rule 105(3) of the National Gas Rules. Evoenergy must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so and where the third party executes a deed of covenant in favour of Evoenergy as set out in clause 27.3(d) below. An example of a reasonable ground would be, if Evoenergy would not receive at least the same amount of revenue after the transfer than it would have received before the transfer was requested.
- (c) Evoenergy must reply to a request from the User for Evoenergy's consent to a transfer or assignment under clause 27.3(b) within 14 Business Days of receiving the request accompanied

by all information reasonably necessary to enable Evoenergy to consider the request. If at the time the request is made, the User informs Evoenergy in writing that due to hardship, the User requires an urgent reply to its request, Evoenergy will use reasonable endeavours to respond to the request within 2 Business Days of receiving the request.

- (d) If Evoenergy receives a request from the User for Evoenergy's consent to a transfer or assignment under clause 27.3(b), Evoenergy may require the User to provide to Evoenergy a Deed of Covenant executed by each of the User and the third party (in a form reasonably required by Evoenergy) in favour of Evoenergy and of each other, under which:
  - (i) the User assigns all of its rights under this Agreement to the third party and the third party accepts that assignment;
  - (ii) the third party agrees to assume all of the User's rights and obligations under this Agreement and to accordingly comply with all of the User's obligations and assume all of the User's liabilities under this Agreement; and
  - (iii) the User agrees to the assumption of those rights and obligations by the third party.
  - (iv) the User consents to Evoenergy providing the third party with the details (including all details contained in the Customer List such as the MDQ and Demand Charge) regarding any Delivery Point.
- (e) Unless otherwise agreed, any transfer made under clause 27.3(b) by the User will be effective only on the first Day of the Calendar Month following execution of any deed of covenant under clause 27.3(d)(iv).

## **28. Security and Financial Standing**

- (a) Where the User is an Authorised Retailer for a Customer or Customers at one or more Delivery Points:
  - (i) the User must provide security for Charges payable or which may become payable under this Agreement for those Delivery Points in accordance with the requirements set out in Division 4 of Part 21 of the National Gas Rules, which will be deemed to be incorporated into this Agreement; and
  - (ii) the rest of this clause 28, with the exception of clauses 28(e), 28(f) and 28(g) below, will not apply to the User in respect of those Delivery Points.

In all other cases, the User must comply with clauses 28(b) to 28(j) below.

- (b) Unless agreed otherwise by Evoenergy acting reasonably, the User must provide Security to Evoenergy for an amount reasonably determined by Evoenergy to be no less than the average total Charges payable by the User to Evoenergy under this Agreement over three consecutive

Billing Periods for each Delivery Point. Evoenergy will be under no obligation to provide Services to any Delivery Point until such Security is provided.

- (c) Evoenergy may review the amount of the Security where reasonably necessary and may require the User to increase (or decrease, as the case may be) the amount of Security where, in Evoenergy's reasonable opinion, the amount of the Security is less (or more) than the amount applicable under clause 28(b).
- (d) Any interest earned on the Security may be retained by Evoenergy and form part of the Security. Nothing in this Agreement is to be taken as imposing any obligation on Evoenergy to maximise or obtain any return on amounts deposited.
- (e) If requested by Evoenergy where reasonably necessary, the User must, in a timely manner:
  - (i) demonstrate its ability to meet all financial and other obligations under this Agreement; and
  - (ii) provide all information reasonably required by Evoenergy for the purpose of assessing the User's credit worthiness.
- (f) The information so requested by Evoenergy may include the User's most recent Financial Report or, where the User is not required under the Corporations Act 2001 (Cth) to produce a Financial Report, the User must create an equivalent report in accordance with the reasonable requirements of Evoenergy within 30 days of the request.
- (g) The User represents and warrants that:
  - (i) any Financial Report provided by it under clause 28(f) was prepared in accordance with the *Corporations Act 2001* (Cth) requirements for Financial Reports for a financial year or (where no such report is required under the *Corporations Act 2001* (Cth)) that any equivalent report provided under that clause gives a true and fair view of the financial position and performance of the User; and
  - (ii) there has been no change in the state of its affairs since the end of the financial year to which the most recent Financial Report (or equivalent report) provided to Evoenergy in accordance with clause 28(f) relates which might have a material adverse effect upon the User's ability to perform any of its obligations under this Agreement or upon the business or operations of the User.
- (h) The User repeats the representation and warranties in clause 28(g) on the Commencement Date for the Service provided to each Delivery Point.
- (i) Evoenergy may release the Security at any time.
- (j) Evoenergy must release the Security within 10 Business Days of the date which is the later of the termination of this Agreement and the date on which all amounts which are owing or payable

or remaining unpaid, whether present, unascertained, immediate, future or contingent, by the User to Evoenergy have been paid in full.

## 29. Confidentiality

- (a) Evoenergy may disclose Confidential Information where permitted to do so by the National Gas Law.
- (b) Subject to clause 29(a), neither Party may disclose Confidential Information under this Agreement without the prior written consent of the other Party except to the extent that the disclosure:
  - (i) is required by applicable laws or by requirements of any government or government agency having jurisdiction over the disclosing Party (**Disclosing Party**);
  - (ii) is to AEMO in relation to carrying out of its functions under any Law;
  - (iii) is required by any securities commission having jurisdiction over the Disclosing Party or a Related Body Corporate of the Disclosing Party, or by the rules of any stock exchange on which are listed the shares in the capital of the Disclosing Party or a Related Body Corporate of the Disclosing Party;
  - (iv) is to the Disclosing Party's employees, directors, consultants, contractors, advisers or agents, or those of a Related Body Corporate of the Disclosing Party;
  - (v) relates to information that is at the time of disclosure lawfully generally available to the public, other than as a result of a breach of this Agreement;
  - (vi) is to a bona fide purchaser of substantially all of the Disclosing Party's assets or, in the case of Evoenergy, of any or all of its Network;
  - (vii) is required by an order of a court of competent jurisdiction;
  - (viii) is to a bank or other financial institution in connection with the Disclosing Party's financial affairs; or
  - (ix) is required to enable the Disclosing Party to comply with its obligations under any law including, but not limited to:
    - (A) the Retail Market Procedures;
    - (B) laws and rules governing the Short Term Trading Market as defined under the National Gas Law; and
    - (C) the Disclosing Party's Gas reticulator's authorisation, Seller's Exemption or Retailer Authorisation.

- (c) The User consents to the disclosure by Evoenergy to third parties of:
- (i) information relating to Quantities of Gas historically delivered to (or estimated to have been delivered to) a Delivery Point;
  - (ii) Load profile and information relating to Load Types and appliances installed at the premises supplied by the Delivery Point;
  - (iii) current Charges applicable to the Service(s) provided to a Delivery Point; and
  - (iv) any other information regarding that Delivery Point, including but not limited to, the MDQ, MHQ, Chargeable Demand And Tariff Class for a Delivery Point,
- where the Customer at the relevant Delivery Point has provided its written consent to Evoenergy (or the User provides any other form of evidence that the Customer consents to such disclosure reasonably acceptable to Evoenergy).
- (d) The User consents to the disclosure by Evoenergy to another Network User of:
- (i) information relating to Quantities of Gas historically delivered to a Delivery Point;
  - (ii) Load profile and information relating to Load Types and appliances installed at the premises supplied by the Delivery Point;
  - (iii) current Charges applicable to the Service(s) provided to a Delivery Point; and
  - (iv) any other information regarding that Delivery Point, including but not limited to, the MDQ, MHQ, Chargeable Demand and Tariff Class for a Delivery Point,
- where the relevant Delivery Point has been or has been requested to be transferred to the other Network User.
- (e) Where Evoenergy offers to add a new Delivery Point or increase the MHQ or MDQ of a Demand Customer Delivery Point or to alter existing facilities at the Delivery Point in response to a Request from the User, the User consents to Evoenergy disclosing the existence and terms of the offer to any Customer at that Delivery Point or other third party authorised by the Customer.
- (f) The User acknowledges and agrees that the aggregated consumption data of a group of Customers (such that the individual consumption of each Customer is not reasonably ascertainable) or a Network Section is not Confidential Information and that Evoenergy may disclose such data to the market at its discretion.
- (g) For the avoidance of doubt, nothing in this clause 29 prevents Evoenergy from disclosing information about the service provided to a Delivery Point to the Customer at that Delivery Point.

## **30. Dispute resolution**

### **30.1 Application**

- (a) The Parties acknowledge and agree that this clause 30 does not, and is not intended to, limit or exclude in any way the provisions in the National Gas Law in relation to dispute resolution.
- (b) The Parties agree that where a Party refers any matter in connection with this Agreement or its performance to be dealt with in accordance with the dispute resolution provisions set out in the National Gas Law:
  - (i) if an access determination is made by the dispute resolution body in respect of the access dispute, the Parties must comply with that access determination;
  - (ii) neither Party can subsequently utilise this clause 30 in respect of the same dispute.

### **30.2 Notification of Dispute**

If a Party claims that there exists:

- (a) any dispute or difference of opinion between the Parties; or
- (b) the absence of agreement by the Parties,

about a matter which arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to any statute (**Dispute**), then that Party must notify the other Party of the Dispute.

### **30.3 Nomination of Representative**

As soon as practicable after a notice is given under clause 30.2, each Party must nominate in writing a representative authorised to settle the Dispute on its behalf.

### **30.4 Good Faith Discussions**

Each Party must enter into discussions in good faith, to resolve the Dispute or to agree on a process to resolve all or part of the Dispute. Unless the Parties otherwise agree, discussions between the Parties' representatives under this clause 30.4 must continue for 10 Business Days after notice of the Dispute was given under clause 30.2.

### **30.5 Mediation**

- (a) If discussions under clause 30.4 fail to resolve the Dispute, within the time specified in that clause, then at any time thereafter either Party may, by written notice to the other, refer the Dispute to mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

- (b) The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation (Guidelines) which are operating at the time the matter is referred to ADC.
- (c) The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) The terms of the Guidelines are hereby deemed incorporated into this Agreement.
- (e) Clause 30 shall survive termination of this Agreement.

### **30.6 Urgent relief**

Nothing in this clause 30 will prevent a Party from seeking urgent declaratory or injunctive relief.

### **30.7 Information confidential**

Any information or documents disclosed by a representative or arising in connection with the discussions or any mediation in relation to the Dispute under this clause 30:

- (a) must be kept confidential; and
- (b) may not be used except as between the Parties to attempt to settle the Dispute.

### **30.8 Without Prejudice Discussions**

Any discussions which take place as contemplated by this clause 30 will be without prejudice to the respective rights and obligations of the Parties in relation to the subject matter of the Dispute.

### **30.9 Continue to perform Agreement**

Notwithstanding the existence of a Dispute, or the undertaking of any Dispute resolution in accordance with this clause 30, each Party must continue to perform its obligations under this Agreement.

## **31. Notices**

### **31.1 Notice in Writing**

A notice, consent or other communication given by one Party to the other under this Agreement must be:

- (a) in writing, signed (physically or by electronic signature) by or on behalf of the Party giving it;
- (b) addressed to the recipient Party and marked to the attention of the person (or control room) specified for the recipient Party in Annexure 1 or as otherwise notified, in writing, to the other Party from time to time; and
- (c) either:

- (i) hand delivered to a representative of the recipient at the recipient Party's address;
- (ii) sent by pre-paid mail or delivered to the recipient Party's address; or
- (iii) sent by email to that Party's email address,

as specified in Annexure 1 or as otherwise notified, in writing, to the other Party from time to time.

### **31.2 Receipt of Notice**

A notice, consent or other communication given in accordance with clause 31.1 is regarded as being given by the sender and received by the addressee:

- (a) if hand delivered:
  - (i) if it is delivered by 5.00 pm on a Business Day- on that Business Day; or
  - (ii) if it is delivered after 5.00 pm on a Business Day or on a day that is not a Business Day - on the next Business Day;
- (b) if sent by prepaid mail, 3 Business Days from and including the date of postage; or
- (c) if sent by email, when the sender receives confirmation on its server that the message has been transmitted, in which case:
  - (i) if it is transmitted by 5.00 pm on a Business Day - on that Business Day; or
  - (ii) if it is transmitted after 5.00 pm on a Business Day, or on a day that is not a Business Day - on the next Business Day.

## **32. General**

### **32.1 Privacy**

- (a) The User must comply at all times with all applicable Privacy Laws in relation to Customer's Personal Information that it:
  - (i) receives from Evoenergy; or
  - (ii) supplies to Evoenergy,

including, in respect of Customer's Personal Information that the User supplies to Evoenergy, taking all reasonable steps to provide required notification statements and obtain required consents in respect of any disclosure or use of Customer's Personal Information.

- (b) Evoenergy must comply at all times with all applicable Privacy Laws in relation to Customer's Personal Information that it:
  - (i) receives from the User; or
  - (ii) supplies to the User.

including, in respect of Customer's Personal Information that Evoenergy supplies to the User, taking all reasonable steps to provide required notification statements and obtain required consents in respect of any disclosure or use of Customer's Personal Information.
- (c) The Parties must take reasonable steps and co-operate with each other (to the extent reasonably required by each other) to enable each of them to comply with Privacy Laws.
- (d) Where a Party so requests, the other Party must use reasonable endeavours to provide the original Party with:
  - (i) information about the policies and procedures it has in place to ensure compliance with applicable Privacy Laws in relation to Customer's Personal Information; and
  - (ii) details of any notifications or consents provided to or obtained from a particular Customer in respect of that Customer's Personal Information.
- (e) A Party must comply with any reasonable request made by the other Party for the purpose of complying with this clause.

### **32.2 Entire Agreement**

This Agreement:

- (a) constitutes the entire agreement between the Parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior clause, warranty, indemnity or representation imposed, given or made by a Party.

### **32.3 Severability**

- (a) The Parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- (b) If, despite the application of clause 32.3(a), a provision of this Agreement is illegal or unenforceable:
  - (i) if the provision would not be illegal or unenforceable if a word or words were omitted without changing the primary intent of the provision, that word or those words are severed; and

- (ii) in any other case, the whole provision is severed,  
and the remainder of this Agreement continues in force.

#### **32.4 Waiver**

A waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

#### **32.5 Relationship between Parties**

This Agreement does not create a relationship of employment, agency or partnership between the Parties.

#### **32.6 Enforceability**

Each Party warrants that it has all necessary power and authority and holds all authorisations required by any law to enter into and perform its obligations under this Agreement and that this Agreement is binding on that Party and enforceable against it in accordance with its terms.

#### **32.7 Further assurances**

Each Party must sign all such documents and do all such things as shall be necessary or desirable to give full effect to this Agreement.

#### **32.8 Inurement**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

#### **32.9 Counterparts**

This Agreement may be executed in counterparts and the counterparts taken together constitute one and the same instrument.

#### **32.10 Governing law and jurisdiction**

This Agreement is governed by the law applicable in the ACT. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the ACT.

#### **32.11 Application of Law**

In circumstances where a Law applicable in one Relevant Region applies a higher standard than the Law which is applicable in the other Relevant Region, the higher standard will apply in both Regions where

Evoenergy after consulting with Users, considers, acting reasonably, that such different standards cannot practically, safely or efficiently be applied to the different Regions. Where such a higher standard is to apply Evoenergy will advise Users by notice in writing.

**Executed** as an agreement.

**Executed** by **Evoenergy** ABN 76 670 568 688 by its duly authorised representative, in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_

\_\_\_\_\_  
Position of Authorised Signatory

**Executed** by **[insert] ACN [insert]** by its duly authorised representative, in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_

\_\_\_\_\_  
Position of Authorised Signatory

## Annexure 1 — Parties and Addresses of Parties for Notices

<b>Evoenergy</b>	
Address	c/- Jemena Asset Management  Level 14, 99 Walker Street, North Sydney, NSW, 2060  PO Box 1220, North Sydney, 2059
Address for notices	As above
Attention	Executive General Manager, Gas Distribution
Phone	61 2 9867 7444
Email	RFS@jemena.com.au
Notices relating to Force Majeure Events, emergencies or Out-Of-Specification Gas	As above, and copied to Jemena Gas Network Control Room at NSWControl@jemena.com.au
<b>User</b>	[#insert full name of User]
ABN	[#insert details]
Address	[insert street address of user]
Address for notices	[insert address for notices – street address and/or PO Box]
Attention	
Phone	[#insert details]
Notices relating to Force Majeure Events, emergencies or Out-Of-Specification Gas	[#insert details]

**Annexure 2 — Gas Specification where there is no specification applicable under Law (clause 9.1(a))**

<b>Parameter</b>	<b>Specification Limit</b>
1 Wobbe Index <sup>1</sup>	Min. 46.0 MJ/m <sup>3</sup> Max 52.0 MJ/m <sup>3</sup>
2 Oxygen <sup>1</sup>	Max. 0.2 mol%
3 Hydrogen Sulphide <sup>1</sup>	Max. 5.7 mg/m <sup>3</sup>
4 Total Sulphur <sup>1,2</sup>	Max. 50 mg/m <sup>3</sup>
5 Water Content <sup>1</sup>	Max. Dew Point 0°C at maximum transmission pressure upstream of receipt point, but in any case no more than 112.0 mg/m <sup>3</sup>
6 Hydrocarbon Dewpoint <sup>1</sup>	Max. 2° at 3,500 kPaG
7 Total Inert Gases <sup>1</sup>	Max. 7.0 mol %
8 Solid Matter and Liquids	Nil Permitted
9 Temperature at Receipt Point	-5°C to 50°C
10 Odorant	Odorant to be of a type approved by Evoenergy. Level of odorant to be 12 milligrams per cubic metre or such other level as Evoenergy may require.

<sup>1</sup> The standard testing clauses for all Gas properties are

Temperature	15°C
Absolute Pressure	101.325 kPa

With the natural gas dry (that is, completely free of water vapour)

<sup>2</sup> Including odorant, or an allowance for odorant in cases where odorant is injected downstream of test points.

## Annexure 3 — Gas Balancing

### 1. Introduction

- (a) This Annexure will govern the Gas Balancing of the Network Sections as specified by clause 6 of the Agreement.

This Annexure provides for the following Gas Balancing mechanism: Gas Balancing with no Operational Balancing Agreement in place: clause 3 of this Annexure.

- (b) Evoenergy and the User must comply with this Annexure and the relevant gas balancing provisions in the Retail Market Procedures.
- (c) Notwithstanding the provisions set out in this Annexure, if an alternative arrangement for Gas Balancing is provided for by AEMO or under an equivalent scheme which Evoenergy is a participant in, and Evoenergy approves the alternative arrangements, then clause 3 of this Annexure will cease to operate and that alternative arrangement will apply.

### 2. Definitions

In this Annexure 3, unless otherwise stated:

- (a) **Confirmed Nomination** has the meaning given to that term in the Retail Market Procedures;
- (b) **Forecast Requirements** has the meaning given to that term in the Retail Market Procedures;
- (c) **Forecast Withdrawal** has the meaning given to that term in the Retail Market Procedures;
- (d) **Input** has the meaning given to that term in clause 3.3(b);
- (e) **Nomination** means the Quantities of Gas required to be delivered at a Delivery Point or a Receipt Point to or for the account of the User for each Day of a specified period.
- (f) **Operational Balancing Agreement** means an agreement between:
  - (i) Evoenergy and transmission pipeline operators to co-operate in the management of the pipeline and network interfaces in relation to imbalances in the Network, or;
  - (ii) Evoenergy and Shippers to co-operate in the management of network imbalances.
- (g) **Operational Balancing Cost** has the meaning given to that term in clause 3.4(b)

- (h) **Shipper** means a person contracted to supply Gas to the Receipt Point for or on behalf of the User or on behalf of the person from which the User purchases Gas at that Receipt Point.
- (i) **User's Daily Imbalance for a Receipt Point** means the Quantity of Gas calculated by subtracting the User's Withdrawal Quantity for a Receipt Point from that User's Input for that Receipt Point; and
- (j) **Withdrawal Quantity of a User at a Receipt Point on a Day** means the total of:
  - (i) Demand Customer Delivery Point Withdrawals, being the total Quantity of Gas withdrawn on the Day at all of the User's Demand Customer Delivery Points, as determined by measurement or as otherwise agreed under the Agreement; and
  - (ii) Volume Customer Delivery Point Withdrawals, being:
    - (A) the total Quantity of Gas withdrawn on the Day at all of the User's Volume Customer Delivery Points which are Non Daily Metered Delivery Points, calculated, and allocated to the User, in accordance with the Network Code, the Retail Market Procedures or the National Gas Law (whichever is applicable). Where there are no applicable regulatory requirements, the Quantity withdrawn will be the Quantity calculated and allocated by Evoenergy for each Network Section in proportion to the Quantities nominated by all Network Users for the Network Section and allocated to the Receipt Point used by the User in supplying Volume Customer Delivery Points in proportion to the User's Forecast Withdrawal requirement for Non Daily Metered Delivery Points (which are Volume Customer Delivery Points) for that Receipt Point; plus
    - (B) the total Quantity of Gas withdrawn on the Day at all of the User's Volume Customer Delivery Points which are Daily Metered Delivery Points.

### 3. Gas Balancing With No Operational Balancing Agreement

#### 3.1 Introduction

- (a) Whenever there is no Operational Balancing Agreement in effect, this clause 3 will apply.
- (b) If any of the following circumstances cease to apply, or if Evoenergy reasonably considers it can no longer ensure the continued quality, safety, reliability and security of supply of Gas, Evoenergy will notify the User of the actions that it reasonably considers necessary to take account of the changed circumstances and to ensure the continued quality, safety, reliability and security of supply of Gas and Evoenergy and User will comply with such notice:
  - (i) there will only be one pressure controlled Receipt Point, all other Receipt Points will be flow controlled;

- (ii) the operator of a pipeline for flow controlled Receipt Points will aim to input a Quantity of Gas each Day at each Receipt Point equal to the Confirmed Nominations of Network Users served by it through that Receipt Point;
- (iii) the Receipt Point at Watson from the Moomba Sydney Pipeline is pressure controlled;
- (iv) Replacement Gas is supplied by Evoenergy; or
- (v) Evoenergy enters into an Operational Balancing Agreement.

### **3.2 Daily Forecasts and Nominations**

- (a) The parties acknowledge that as at 1 July 2021, the requirements for Nominations are set out in section 8.6 of the Retail Market Procedures.:
- (b) The User must make Nominations of its Forecast Withdrawals in good faith so that the Forecast Withdrawals for all Receipt Points serving the Network is the aggregate amount which the User intends to withdraw from the Network on the Day under all transportation agreements and the Forecast Requirements take into account Evoenergy's Guidance to Users on the Network Minimum Quantity Requirements (described in Annexure 4).

### **3.3 User's Input**

- (a) Subject to clause 3.3(d), Evoenergy carries out Gas Balancing between the Receipt Point at which Gas intended for a Delivery Point first enters the Network, and that Delivery Point.
- (b) Subject to clause 3.3(d), Evoenergy must determine the User's Input as follows:
  - (i) where there is only one Network User at a Receipt Point the User's Input will be the metered Quantity at the Receipt Point (net of Replacement Gas purchased by Evoenergy at that Receipt Point); and
  - (ii) where there are two or more Network Users at a Receipt Point, then the total Quantity metered at that Receipt Point on the Day (net of Replacement Gas purchased by Evoenergy at that Receipt Point) will be allocated among those Network Users in proportion to their Confirmed Nominations for the Day and that allocation will be the User's Input.
- (c) Evoenergy has the discretion, acting reasonably, to adjust the User's Input, as determined in accordance with clauses 3.3(b), for the User or for any Network User in order to take account of:
  - (i) any Quantity of Gas that the User receives from any other Network User as agreed to by Evoenergy (acting reasonably); or

- (ii) any Quantity of Gas that the User transfers to any other Network User as agreed to by Evoenergy (acting reasonably).
- (d) Evoenergy will use reasonable endeavours to implement changes to its systems and processes such that, for the purposes of this clause 3, Gas Balancing is carried out across all Receipt Points. Once those changes are implemented:
  - (i) Evoenergy will provide written notice to Network Users of the change, and
  - (ii) From the first day of the Month following that notification, the User's Input and the User's Daily Imbalance will be determined across all Receipt Points at which that Network User receives Gas.

### **3.4 Gas Balancing**

- (a) For the avoidance of doubt, the User is responsible for ensuring that the aggregate Quantity of Gas delivered by or for the account of the User, through the Receipt Point(s) for the Network, is equal to:
  - (i) the aggregate quantity of gas delivered to or for the account of the User to Delivery Points within the Network; plus
  - (ii) any change in linepack in the Network allocated to the User by Evoenergy or other share of aggregate needs for the Network to ensure safe and reliable supply.
- (b) On any Day where the total Quantity metered at the Watson Receipt Point ( net of Replacement Gas purchased by Evoenergy at that Receipt Point) (Total Watson Quantity) exceeds the aggregate of all Network Users' Confirmed Nominations at the Watson Receipt Point for that Day (Total Watson Nominations), Evoenergy will purchase a Quantity of operational balancing gas equal to the difference between the Total Watson Quantity and the Total Watson Nominations. The cost of purchasing the operational balancing gas is the Operational Balancing Cost.
- (c) Each Network User with a negative User's Daily Imbalance will be allocated a portion of the Operational Balancing Cost in proportion to their contribution to the operational balancing gas.
- (d) When determining an allocation of the total change in linepack for the Network between the User and other Network Users, Evoenergy will seek to apply a methodology which reflects the linepack requirements of the services which were provided to the User. If Evoenergy considers that a more direct method of allocation is not available, Evoenergy may pro rata total change in linepack based on each Network Users' typical aggregate capacity entitlement for all network services.
- (e) Evoenergy shall be entitled to publish (and disclose to the public) the User's Daily Imbalance by Receipt Point at Evoenergy's sole discretion, acting reasonably.
- (f) On an annual basis Evoenergy will arrange for a third party to undertake a review of amounts charged to Network Users as their proportion of Operational Balancing Costs, and will provide

the results of that review to Network Users who paid an amount in respect of Operational Balancing Costs.

- (g) Evoenergy will prepare and maintain on its website a worked example of the manner in which Operational Balancing Costs are determined and allocated among individual Network Users.

## Annexure 4 — Gas Pressure at Receipt Points and Guidance to Users on the Network Minimum Quantity Requirements

**Table 4.1 Gas Pressure at Receipt Points**

<b>Receipt Point</b>	<b>Min. Delivery Pressure at outlet of Custody Transfer Station (kPa)</b>	<b>Max. Delivery Pressure at outlet of Custody Transfer Station(kPa)</b>	<b>Areas of Network downstream of Receipt Point</b>
Watson	2,400 kPa	6,895 kPa	The Network except Bungendore
Hoskinstown	8,000 kPa	14,895 kPa	The Network

The minimum and maximum receipt pressures shown are based on a typical combination of supply from Watson and Hoskinstown during a winter peak period. Any significant change to the load, or share of load, supplied through each Receipt Point may require a revision to the pressures specified above.

Evoenergy will notify Users of any updates to Table 4.1 and publish an updated Table 4.1 on its website.

**Table 4.2 Guidance to Users on the Network Minimum Quantity Requirements**

<b>Where the aggregate needs for the Network on any Day is:</b>	<b>Minimum Quantity of Gas which may be required through Hoskinstown on that Day (as at 30.06.15):</b>
40TJ	5TJ over the Day
50TJ	10TJ over the Day
60TJ	16TJ over the Day
70TJ	28TJ over the Day

To ensure the continued quality, safety, reliability and security of supply of Gas through the Network when the Watson Receipt Point is operating at a minimum pressure of 2,400kPa during autumn and winter, guidance is provided to Network Users in Table 4.2 on the minimum Quantity of Gas which should be delivered by all Network Users through the Hoskinstown Receipt Point.

Evoenergy may notify Users of updates to the Table 4.2, and may publish the updated Table 4.2 on its website.

## **Annexure 5 – Additional terms and conditions applicable where Gas or Energy is used by one or more End Consumers**

Where any Gas delivered to a Delivery Point under this Agreement is used in connection with the supply of Energy to, or the consumption of Energy by End-Consumers as well as by a Customer, then the User:

- (a) acknowledges that Evoenergy makes no warranty or representation in relation to the suitability or reliability of the Gas for use in any cogeneration facilities or other facilities used to convert natural gas into any other forms of Energy;
- (b) acknowledges and agrees that Gas delivery to the Delivery Point may be suspended, interrupted or curtailed from time to time in accordance with this Agreement and warrants and represents to Evoenergy that the User has informed its Customer:
  - (i) that Gas delivery to the Delivery Point can be so suspended, interrupted or curtailed from time to time and that Evoenergy disclaims any duty of care to the Customer or to any End-Consumer in relation to such suspension, interruption or curtailment;
  - (ii) that the standard Load Shedding provisions in this Agreement will be applied to the Delivery Point; and
  - (iii) that the Customer should familiarise and satisfy itself with risks associated with Gas supply;
- (c) acknowledges and agrees that the User must ensure that all necessary approvals and authorisations are obtained and all statutory obligations, laws and other legal requirements are satisfied with respect to any Energy production, distribution, supply or resale at the premises served by the Delivery Point;
- (d) acknowledges that where any Gas delivered to the Delivery Point is used in connection with the supply of hot water to residential units through a centralised gas fired hot water system, the User is responsible for satisfying all laws and customer expectations concerning the supply of hot water to End-Consumers at the premises;
- (e) agrees that all of the above conditions apply as long as Gas is delivered to the Delivery Point under this Agreement; and
- (f) agrees that any terms or conditions of this annexure that are inconsistent with any other terms or conditions appearing elsewhere in this Agreement will prevail over those other terms and conditions to the extent of any inconsistency.