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# Short Use of System Agreement - Tasmania

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Between

**TAS GAS NETWORKS**

ABN: 91 104 499 569

And

**NETWORK USER**

ABN: [Add number here]

Date of Agreement:

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*“Safety by choice - not by chance”*



## SUOSA - Short Use of System Agreement

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**THIS AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_ 200\_

**BETWEEN** **TAS GAS NETWORKS** (ABN 91 104 499 569)

**AND** **[Insert legal name of Network User]** (ABN \_\_\_\_\_ )  
**(NETWORK USER)**

### BACKGROUND

- A.** Tas Gas will construct and operate the Network providing gas distribution services to End Consumers.
- B.** The Network User wishes Tas Gas to make the Network available for the acceptance of Gas from the Network User and the distribution of that Gas to End Consumers.
- C.** Once the Network has been commissioned and Tas Gas has been granted licences to construct and operate the Network, Tas Gas agrees to accept Gas from the Network User and distribute Gas on behalf of the Network User to End Consumers across the Network on the terms and conditions set out in this Agreement.

### WITNESSES AS FOLLOWS:

#### 1. INTERPRETATION

In this deed unless the context indicates otherwise:

##### 1.1 Definitions:

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

**CPI Index** means the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities, as published by the Australian Bureau of Statistics or, if the index ceases to be published, such alternative index as is nominated by Tas Gas and agreed by the Network User acting reasonably.

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

**End Consumer** means a person that is, at the relevant time, party to a subsisting Gas Distribution Services Agreement and is named as the "End-Consumer" in that agreement;

**Expiry Date** means the expiry date determined under clause 3.2;

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

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

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

- (a) Acts of God;
  - (b) strikes, lockouts, or other industrial disturbances;
  - (c) acts of a public enemy, declared or undeclared war, threats of war, terrorist acts, blockades, revolution, riots, insurrection, civil commotion, public demonstrations, sabotage, acts of vandalism, epidemics or disease;
  - (d) acts of animals, lightning, fire, storms, floods, earthquakes, landslides, washouts, landslips, accumulation of snow or ice, lack of water arising from weather or environmental restrictions, geomagnetically induced currents;
  - (e) lack of adequate fuel resources, accidental collisions, explosions, acts of aircraft, motor vehicles or trains, faults or failures of any plant, apparatus or equipment;
  - (f) the coming into force or expiry of any statute or exercise of a statutory power of decision; and
  - (g) the partial or entire failure of supply or availability of gas to the Network, or partial or entire failure of the Network,
- provided that lack of funds will not be considered a Force Majeure event;

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

**Gas Act** means the Gas Act 2000;

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**Gas Distribution Services Agreement** means an agreement between Tas Gas and an End Consumer under which Tas Gas provides Gas distribution services to that End Consumer at nominated points of connection at nominated sites;

**Gas Retail Code** means the "Gas Retail Code" promulgated under the Gas Act, as amended or replaced from time to time;

**Gas Specification** means the Australian Specification for Reticulated Natural Gas AS4564: 2003, as amended or replaced from time to time;

**Metering Equipment** means equipment for the purpose of measuring the quantity of Gas conveyed through the Network to a point of connection with an End Consumer;

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

**Network User** means the party specified as the Network User in Schedule 1;

**Non-Specification Gas** means gas which does not meet the Gas Specification;

**Tas Gas** means Tas Gas Networks and its successors and assigns;

**Receipt Points** means the points specified in Schedule 1 where Gas enters into the Network from the Transmission System;

**Reconciliation Code** means the code established under the Gas Act to assist the development of a competitive gas market by providing a uniform process for End-Consumer transfers between competing retailers, and the allocation and reconciliation of gas quantities between users at injection points into a transmission system or distribution network, as amended from time to time;

**Transmission Services Agreement** means an Agreement with the owner or operator of the Transmission System for the transmission of Gas to the Receipt Points;

**Transmission System** means:

- (a) the natural gas transmission system running from Longford in Victoria to Port Latta and Bridgewater in Tasmania, currently operated by Alinta DAO Pty Ltd; or
- (b) other system for the transmission of Gas into the Network;

**Working Day** means a day other than a Saturday, Sunday or public holiday in Tasmania;

**1.2 Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;

**1.3 Headings:** section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;

**1.4 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

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- 1.5 Parties:** references to parties are references to parties to this deed;
- 1.6 Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.7 Plural and Singular:** words importing the singular number include the plural and vice versa;
- 1.8 Schedules:** the schedules to this deed and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this deed;
- 1.9 Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this deed's sections, clauses and schedules; and
- 1.10 Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

## 2. SCOPE OF AGREEMENT

- 2.1 Agreement Applies only to Distribution to End Consumers:** This Agreement applies only to the acceptance and distribution of Gas by Tas Gas to those customers of the Network User who are End Consumers. It does not apply to the acceptance or distribution of Gas by Tas Gas from the Network User in any other respect.

## 3. TERM AND RENEWAL

- 3.1 Term:** This Agreement will begin on the commencement date specified in Schedule 1 and will expire on the Expiry Date (as determined under clause 4.2), unless otherwise terminated earlier in accordance with the provisions of this Agreement.
- 3.2 Expiry Date:** At any time after the fifth anniversary of the commencement date (specified in Schedule 1) either party may give the other party written notice specifying an "Expiry Date" for this Agreement, which date must be at least 90 Working Days after the date on which the notice is given.
- 3.3 New Use of System Agreement: If:**
- 3.3.1** Tas Gas gives notice to the Network User under clause 3.2 ("Expiry Notice") specifying an Expiry Date;
  - 3.3.2** at the time the Network User receives the Expiry Notice it has contractual obligations to supply gas to any End-Consumers that extend beyond the Expiry Date; and
  - 3.3.3** the Network User gives written notice to Tas Gas no later than 30 Working Days prior to the Expiry Date that it wishes to continue to supply those End-Consumers beyond the Expiry Date,

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then the following will apply:

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

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

### 4. ACCEPTANCE AND DISTRIBUTION OF GAS

**4.1 Acceptance of Gas:** Subject to the terms of this Agreement, Tas Gas agrees to accept Gas from the Network User at the Receipt Points, for distribution across the Network to the End Consumers. Tas Gas only agrees to accept Gas for distribution to End Consumers, and not for any other consumers.

**4.2 Distribution of Gas to End Consumers:** Tas Gas will distribute Gas, and provide gas distribution services, to End Consumers (who purchase that Gas from the Network User) in accordance with any relevant Gas Distribution Services Agreement(s). The Network User acknowledges that End Consumers will enter into Gas Distribution Services Agreements with Tas Gas which provide certain obligations and powers for both parties, including in particular in relation to:

**4.2.1** rights of disconnection and interruption of conveyance of gas to an End Consumer;

**4.2.2** the quality of supply, metering and outage management; and

**4.2.3** the supply of information by an End Consumer to Tas Gas.

**4.3 Disconnection Requests:** The Network User may, at any time, provide a written request to Tas Gas to disconnect an End Consumer being supplied by the Network User where such request is permitted by the Gas Retail Code (and the Network User has complied with all of the relevant requirements of the Gas Retail Code). On receipt of such request, and provided that disconnection will not cause Tas Gas to be in breach of its Gas Distribution Services Agreement with the relevant End Consumer, Tas Gas will disconnect the End Consumer as soon as is reasonably practicable. Where Tas Gas disconnects an End Consumer pursuant to this clause, the Network User must pay to Tas Gas the disconnection charge specified in Schedule 1. The disconnection charge must be paid by the Network User within 10 Working Days of receipt of an invoice from Tas Gas for such disconnection charge.

**4.4 Special Meter Reading Requests:** The Network User may, at any time, provide a written request to Tas Gas to carry out a special meter reading of Tas Gas's Metering Equipment located at or near the point of connection for an End Consumer supplied by the Network User. Such request must be given at least 48 hours prior to the proposed

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meter read. On receipt of such request, Tas Gas will use reasonable endeavours to carry out the special meter read in accordance with the request. If Tas Gas is unable to carry out the special meter read as requested, Tas Gas will notify the Network User. Where Tas Gas carries out a special meter read pursuant to this clause, the Network User must pay to Tas Gas the special meter read charge specified in Schedule 1. The special meter read charge must be paid by the Network User within 10 Working Days of receipt of an invoice from Tas Gas for such special meter read charge.

### 4.5 Tas Gas Compliance with laws and Good Industry Practice:

**4.5.1** Tas Gas will comply with the requirements of all applicable legislation including the Gas Act and any regulations and codes made under the Gas Act, as amended or replaced from time to time. Without limiting the foregoing Tas Gas shall comply with all relevant obligations applying to Tas Gas under the Reconciliation Code.

**4.5.2** Tas Gas will ensure that, in all respects of its business operations relating to the distribution of Gas across the Network it will follow Good Industry Practice (including recognised industry codes of practice).

## 5. SUSPENSION OF AGREEMENT

**5.1 Suspension:** If, at any time during the term of this Agreement, the Network User has not (in response to a request from Tas Gas) promptly:

**5.1.1** provided Tas Gas with written and current evidence that the Network User is the holder of a valid and subsisting licence issued under the Gas Act authorising the Network User to sell gas by retail to the End Consumers; and

**5.1.2** provided Tas Gas with written and current evidence that the Network User is a party to a Transmission Services Agreement; or

**5.1.3** provided Tas Gas with written and current evidence that it is purchasing the Gas at the Receipt Points from another person who is party to a Transmission Services Agreement,

then Tas Gas's obligations under this Agreement shall be suspended until such time as the Network User complies with this clause, provided that where Tas Gas's obligations have been suspended continuously for a period of two months then Tas Gas shall have the right to terminate this Agreement immediately by written notice to the Network User.

## 6. NETWORK USER'S OBLIGATIONS

**6.1 Compliance with Gas laws and Reconciliation Code:** The Network User will comply with the requirements of all applicable legislation including the Gas Act and any regulations and codes made under the Gas Act, as amended or replaced from time to time. Without limiting the foregoing the Network User shall comply with all relevant obligations applying to the Network User under the Reconciliation Code.



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- 6.2 Follow Good Industry Practice:** The Network User will ensure that, in all respects of its business operations relating to the distribution of its Gas across the Network and the sale of such Gas to End Consumers, the Network User follows Good Industry Practice (including recognised industry codes of practice).
- 6.3 Interference with the Network:** The Network User will not interfere with the Network or cause or permit any person, material or device to do so.
- 6.4 Gas Quality:** The Network user shall ensure that all gas delivered for acceptance at a Receipt Point complies with the Gas Specification, and with all other quality and specification requirements of relevant legislation (including, without limitation, the requirements of regulations 9, 10 and 14 of the Gas (Safety) Regulations 2002).
- 6.5 Non-Specification Gas:** The Network User shall not deliver any Non-Specification Gas for acceptance at a Receipt Point without the prior written consent of Tas Gas and all the users of the Network potentially affected by such Non-Specification Gas. The Network User shall give Tas Gas written notice as early as possible prior to delivery, giving particulars of the extent to which the Non-Specification Gas will differ from the Gas Specification and (if known by the Network User at the time of the notice) the expected commencement and duration of the supply of Non-Specification Gas, together with confirmation and evidence that all the users of the Network potentially affected by such Non-Specification Gas have consented. The Network User will indemnify, and keep indemnified, Tas Gas against all reasonable expenses, costs (including legal costs on a solicitor/client basis), losses, liabilities and claims suffered or incurred by Tas Gas arising out of or in connection with any breach by the Network User of its obligations under this clause.
- 6.6 Odourisation:** The Network User will ensure that all Gas delivered for acceptance at a Receipt Point will be odourised to such standard as is reasonably required by Tas Gas (as advised by Tas Gas from time to time). As at the commencement of this Agreement the required standard is Australian Standard D25263, as updated from time to time. If Gas delivered for acceptance at a Receipt Point is unodorised, insufficiently odourised or excessively odourised, the Network User will indemnify the Distributor for all costs, damage, loss or expense suffered as a result thereof including (without limitation) any costs of testing and supplementary odourisation.
- 6.7 Consumers:** The Network User will provide Tas Gas with a list identifying all of the End Consumers supplied by the Network User, and will update the list as and when required to ensure it remains current at all times.

## 7. OWNERSHIP

- 7.1 The Network:** The Network is and will remain the sole property of Tas Gas. No provision of this Agreement nor the provision of any services by Tas Gas in relation to the Network will confer on the Network User or any other person any right of property or other interest in or to any part of the Network.
- 7.2 Gas:**
- 7.2.1** The control and possession of Gas accepted pursuant to this Agreement shall pass from the Network User to Tas Gas at the Receipt Point and shall be held by Tas Gas until Gas is delivered to the End Consumer.

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**7.2.2** Title to Gas accepted pursuant to this Agreement shall at all times remain with the Network User and the Network User hereby warrants to Tas Gas that, at the time of delivery to Tas Gas, the Network User has good title to the Gas, free and clear of all liens, encumbrances and claims of a nature inconsistent with Tas Gas's operation of the Network, provided that Tas Gas shall have the right to co-mingle the Network User's Gas with other Gas in the Network during distribution and to subject the Gas in the network to compression, cleaning and other processes consistent with Tas Gas's operation of the Networks. For the purposes of this the Network User shall, where applicable, include any principal on whose behalf the Network User may be acting as agent, and the Network User is and will be warranting as to that principal's unencumbered title to the Gas.

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

**7.4 UFG:** The Network User:

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

**7.4.2** acknowledges that the Reconciliation Code, to which the Network User is bound, contains principles for the allocation of UFG between the various users of the Network; and

**7.4.3** agrees and accepts that, notwithstanding clause 7.2.2, Tas Gas shall not be liable in any respect for the loss of any of the Network User's Gas which is UFG.

## 8. CHANGES TO THIS AGREEMENT

**8.1 Amendment Rights:** Tas Gas will be entitled to amend any provision of this Agreement by giving the Network User not less than 30 days notice:

**8.1.1** if Tas Gas and the Network User agree to the amendment; or

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

**8.1.3** if the amendment is required to reflect any change in law or any regulatory decision; or

**8.1.4** to reflect relevant amendments made to Tas Gas's most recent issue of the Gas Distribution Services Agreement (or substitute document).

**8.2 Minor Changes:** Tas Gas will be entitled to amend any provision of this Agreement where the amendment has no effect on the contractual undertakings of the parties (for

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example terminology changes to accord with new industry classifications or definitions), by written notice to the Network User.

### 9. LIMITATIONS ON LIABILITY

#### 9.1 Scope of liability:

**9.1.1** Subject to the Trade Practices Act 1974 (Cth) and the express provisions of this Agreement, all warranties, terms and conditions which may be otherwise implied by use, statute or otherwise are, to the extent they may be lawfully be, are excluded.

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

**9.1.3** Tas Gas will not be liable for, or for any loss, damage, expense, cost, claim suffered or incurred as a result of, any:

- (a) failure to accept Gas at any Receipt Point as allowed under this Agreement or any Gas Distribution Services Agreement;
- (b) failure to distribute Gas accepted from the Network User for a reason outside Tas Gas's control; or
- (c) act or omission of any Transmission System Operator.

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

**9.1.5** For the avoidance of doubt and without limiting any other provision of this Agreement, neither party will be liable for:

- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract or loss of goodwill of any person;
- (b) any indirect or consequential loss;
- (c) any loss resulting from liability to any third party except for direct loss or damage to the physical property of any person as set out in clause 9.1.2; or
- (d) any loss resulting from loss or corruption of or damage to any electronically-stored or electronically-transmitted data or software.

**9.1.6** Except as provided in clauses 9.1.2, Tas Gas's liability to the Network User whether in tort (including negligence), contract, breach of statutory duty,

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equity or otherwise arising from the relationship between them and of any nature whatsoever is excluded to the fullest extent permitted by law.

**9.2 Quantum of liability:** Without limiting any indemnity provided under this Agreement, the maximum total liability of Tas Gas to the Network User and the Network User to Tas Gas or otherwise arising from the relationship between them will be:

**9.2.1** subject to clause 9.2.2, in respect of a single event or series of events arising from the same event or circumstance, for each Receipt Point, the lesser of "Single Event Liability Amount" specified in Schedule 1 or the amount of the loss or damage suffered; and

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

**9.3 Indemnity:**

**9.3.1** Subject only to clauses 9.3.2 and 9.3.3, Tas Gas will be indemnified and kept indemnified by the Network User in respect of all reasonable expenses, costs (including legal costs on a solicitor/client basis), losses, liabilities and claims suffered or incurred by Tas Gas arising out of or in connection with any breach by the Network User of its obligations under this Agreement.

**9.3.2** The Network User will not be liable to Tas Gas under the indemnity provided by clause 9.3.1 in respect of any losses, liabilities or claims of the types provided for in clause 9.1.5(a), (b) or (d), but the Network User will be liable to Tas Gas under the indemnity provided by clause 9.3.1 in respect of any losses, liabilities or claims of the types provided for in clause 9.1.5(c).

**9.3.3** The maximum total liability of Network User to Tas Gas under the indemnity provided in clause 9.3.1 will be limited to \$1,000,000 for a single event, or \$5,000,000 for all events occurring in any year.

**9.3.4** The rights of indemnity set out in clause 9.3.1 are in addition to any other right that Tas Gas may have to be indemnified by the Network User in any circumstances whatsoever and whether by statute, in law, equity or otherwise, and the rights of indemnity in clause 9.3.1 do not prejudice any such rights of indemnity in any manner whatsoever.

## 10. FORCE MAJEURE

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

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

(a) full particulars of the Force Majeure Event;

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- (b) an estimate of its likely duration;
- (c) the obligations affected by it and the extent of its effect on those obligations; and
- (d) the steps taken to rectify it; and

**10.1.2** the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

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

## 11. CONFIDENTIALITY

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

**11.1.1** disclose any of that information to any other person; or

**11.1.2** use any of the Information for any purpose other than to give effect to that party's rights or obligations under this Agreement or any Gas Distribution Services Agreement;

except as provided in clause 11.2.

**11.2 Exceptions:** Clause 11.1 does not apply to the disclosure of information in the following circumstances:

**11.2.1** to employees, legal advisers, auditors and other consultants provided they have agreed to be bound by an obligation of confidence of the same scope and effect as set out in clause 11.1;

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

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

**11.2.4** where disclosure is required in connection with any legal proceedings, mediation or arbitration relating to this Agreement or the Gas Distribution Services Agreement; and

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

## 12. TERMINATION

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- 12.1 Termination:** This Agreement will terminate on:
- 12.1.1** the day after notice is given by one party to the other party terminating this Agreement for reason of an Event of Default occurring in relation to the other party;
  - 12.1.2** the day after notice is given by either party to the other party terminating this Agreement for the reason that performance of any material provision of this Agreement by either party has to a material extent become illegal and the parties acting reasonably agree that it is not practicable for this Agreement to continue;
  - 12.1.3** the 11<sup>th</sup> Working Day after notice is given by either party to the other terminating this Agreement for the reason that an event of Force Majeure, which has resulted in the party's failure to perform a material obligation under this Agreement, is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice to remain bound by its obligations under the this Agreement; or
  - 12.1.4** the Expiry Date.
- 12.2 Effect of Termination:** Upon termination of this Agreement, other than to the extent provided in any other agreement between the parties:
- 12.2.1** unless otherwise agreed, each party will return to the other party all property of that party held by the first party; and
  - 12.2.2** the Network User will have no further right to have its Gas accepted and distributed across the Network.
- 12.3 No Waiver:** Termination of this Agreement will not operate as a waiver of any breach of this Agreement or any other agreement by either of the parties and will be without prejudice to any rights, liabilities or obligations of either party which have accrued up to the date of termination. This clause and clauses 9, 11, 13 and 14 together with any other provisions which expressly or by implication are intended to survive termination, will continue in full force and effect notwithstanding termination.

## 13. RESOLVING DISPUTES

- 13.1 Good Faith:** The parties intend that any differences between them concerning this Agreement will be resolved amicably by good faith discussion.
- 13.2 Requirement to follow procedures:** Where any dispute or difference arises between the parties concerning this Agreement, no party may commence any proceedings unless that party has complied with the procedures set out in this clause 14.
- 13.3 Escalation to CEOs:** If any dispute or difference arises between the parties concerning this Agreement, either party may give notice to the other party. If the dispute or difference is not resolved by discussion between operational staff within 20 working days of notice being given, the matter is to be referred to the Chief Executives of the parties for resolution.

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- 13.4 Mediation:** If the dispute or difference cannot be resolved by the Chief Executives within 15 working days of the matter being referred to them, either party may require the matter to be referred to mediation by notice to the other party setting out the general nature of the difference.
- 13.5 Appointment of Mediator:** Within 10 working days of receipt of the notice referring the dispute to mediation the parties will agree on the appointment of a mediator or, where they cannot agree within that timeframe, a mediator will be appointed by the President for the time being of the Law Society of Tasmania. In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree, these matters will be determined by the mediator.
- 13.6 Representatives:** Each of the parties will appoint a representative who will have authority to reach an agreed solution and effect settlement.
- 13.7 Act in good faith:** In all matters relating to the mediation notice, the parties and their representatives will act in good faith and use all reasonable endeavours to ensure the expeditious completion of the mediation procedure.
- 13.8 Without prejudice:** All proceedings and disclosures in the course of the mediation will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings.
- 13.9 Non binding outcome:** Any decision or recommendation of the mediator will not be binding on the parties in respect of any matters other than the conduct of the mediation.
- 13.10 Mediation Costs:** The costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 13.11 Arbitration:** If the difference is not resolved through mediation within 60 days of the appointment of a mediator, the matter will be referred to arbitration under the Commercial Arbitration Act 1986 before a sole arbitrator and in relation to any such arbitration, the following provisions will apply:
- 13.11.1** in addition to the stated methods of giving notice, facsimile will also be permitted;
  - 13.11.2** the parties will endeavour to agree the choice of an arbitrator and failing agreement, the arbitrator will be appointed by the President of the Law Society of Tasmania;
  - 13.11.3** the venue of the arbitration will be Hobart;
  - 13.11.4** the arbitrator will not appoint any expert to advise except with the written consent of both parties.
- 13.12 Injunctive relief:** Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent injunctive or equitable relief before an appropriate court.



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### 14. GENERAL

- 14.1 Costs:** Subject to clause 14.2, each party must pay its own expenses incurred in negotiating and executing this document.
- 14.2 Duty:** The Network User must indemnify Tas Gas against and must pay Tas Gas on demand the amount of any duty that is payable on or in relation to this document and the transactions this document contemplates.
- 14.3 Partial Invalidity:** The provisions of this Agreement will apply to the extent that they are permitted by and not in conflict with any statutory requirements for the Network and the supply of Gas. Except as provided in clause 12.1.2, the illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
- 14.4 Inconsistency with Applicable Gas Laws:** If there is any inconsistency between a party's rights and obligations under this Agreement and its obligations or rights under any applicable laws, then its rights and obligations under the applicable laws will prevail to the extent of the inconsistency.
- 14.5 Assignment and Subcontracting:**
- 14.5.1** Tas Gas may sub-contract any of its obligations under this Agreement but will remain liable in accordance with this Agreement for the sub-contractor's default. Tas Gas may assign its rights and obligations under this Agreement without the consent of the Network User.
- 14.5.2** The Network User may not assign this Agreement without the prior written consent of Tas Gas, which consent will not be unreasonably withheld.
- 14.6 Entire Agreement:** This Agreement and any document expressly incorporated into this Agreement contains all terms of the arrangement between the parties with respect to the subject matter of this Agreement.
- 14.7 Implied terms:** All terms and conditions relating to the subject matter of this Agreement that are, or may at any time be, implied by law or custom are excluded to the maximum extent permitted by law except to the extent they are expressly incorporated into this Agreement.
- 14.8 Non-Waiver:** Nothing in this Agreement will be considered to be waived by either party except when such waiver is given in writing. Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision or any other provision.
- 14.9 No Third Party Rights:** Except as expressly provided in this Agreement the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of



## SUOSA - Short Use of System Agreement

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this Agreement and this Agreement will be for the sole and exclusive benefit of the parties.

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

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

**14.11.1** delivered by hand, when so delivered;

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

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

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

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

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

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



## SUOSA - Short Use of System Agreement

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### Execution

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of authorised person signing for  
**Tas Gas Networks**

\_\_\_\_\_  
Name of authorised person signing for  
**Network User**

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## SUOSA - Short Use of System Agreement

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### Schedule 1

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

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

**Receipt Points:** Bell Bay. Longford. Burnie.  
Carrick, Hadspen. Bridgewater. Wynyard.  
Buster Rd, Spreyton. Westbury.

**Addresses for Notices:**

Tas Gas: Tas Gas Tasmania  
Floor 2, 87 George St  
PO Box 858  
Launceston 7250  
Attn: Commercial Manager

Network User *[Network User address details]*

**Single Event Liability Amount:** 100,000

**Annual Liability Amount:** 250,000

**Disconnection charge**

(refer clause 4.3)

The disconnection charges as at the Commencement Date are:  
(a) \$100.00 plus GST for any disconnection effected between 9am and 5pm on a Working Day; and  
(b) \$150.00 plus GST for any disconnection effected outside of the above hours.

Tas Gas may amend the charges as at 1 January during each year of this agreement to reflect movements in the CPI Index over the previous 12 months. Tas Gas will advise the Network User of the current charge on request from the Network User.

**Special meter read charge**

(refer clause 4.4)

The charges for carrying out a special meter read as at the Commencement Date are:  
(a) \$100.00 plus GST for any special meter read carried out between 9am and 5pm on a Working Day; and  
(b) \$150.00 plus GST for any special meter read carried out outside of the above hours.

Tas Gas may amend the charges as at 1 January during each year of this agreement to reflect movements in the CPI Index over the previous 12 months. Tas Gas will advise the Network User of the current charge on request from the Network User.