



## SALE OF ELECTRICITY - AGREEMENT TERMS

This Agreement is between Origin Energy Electricity Limited (ABN 33 071 052 287) (referred to as “us”, “we” or “our”) and the customer specified in the Schedule (referred to as “you” or “your”).

### 1. THIS AGREEMENT

- 1.1 This Agreement is made up of these Agreement Terms, the Schedule and the Annexures.
- 1.2 Capitalised terms used in this Agreement are defined in clause 39 or, if they relate to the Charges, Annexure 1.
- 1.3 If the Schedule indicates:
  - (a) you have elected to take up GreenPower, the GreenPower Annexure will apply;
  - (b) you are transferring Environmental Certificates, the Self Surrender Annexure will apply to those Environmental Certificates indicated in the Schedule; or
  - (c) we have agreed to purchase export electricity from you, the Export Electricity Annexure will apply.
- 1.4 To the extent of any inconsistency, these Agreement Terms will prevail over the Schedule and all Annexures.

### 2. TERM

- 2.1 We must receive a copy of this Agreement signed by you before the Validity Date.
- 2.2 If so, this Agreement starts on the date you sign it and ends on the End Date unless:
  - (a) you continue to take supply from us after the End Date without entering into a new agreement (see clause 25); or
  - (b) it has been terminated earlier.
- 2.3 If we do not receive a signed copy of this Agreement by the Validity Date, there will be no agreement between us.

### 3. SALE OBLIGATIONS

- 3.1 During the Supply Term, we agree to sell to you, and you agree to buy from us, the Services and any Other Services.
- 3.2 We are not obliged to provide the Services or any Other Services at a Site before the Supply Date for that Site or after the End Date.
- 3.3 If we are not already, we will arrange to become Financially Responsible for each Site. We do not control this process and, subject to clause 26.15, are not liable to you for any delay.
- 3.4 We have no obligation to become Financially Responsible or provide the Services or Other Services (at any time) to a Site if:
  - (a) that Site does not have metering which is appropriate for the Site and which complies with the Regulatory Requirements;
  - (b) you have undertaken to arrange for Metering Services for that Site but have not done so; or
  - (c) you are not a Large Customer.

### 4. LARGE CUSTOMERS

- 4.1 You agree that where your NERR Aggregate Consumption exceeds the applicable Large Customer Threshold, the Small Customer Rules will not apply to those Sites in the NERR Jurisdictions.

- 4.2 You warrant that your consumption at each Site in Victoria and your NERR Aggregate Consumption will each exceed the applicable Large Customer Threshold during each Agreement Year. If this warranty becomes incorrect at any time, or is likely to become incorrect, you must notify us promptly.

### 5. WARRANTIES

- 5.1 You warrant and acknowledge that:
  - (a) you have the power to execute this Agreement and have all authority, Approvals and rights needed to perform it;
  - (b) your Target Consumption is a reasonable forecast of the electricity you anticipate we will sell you under this Agreement; and
  - (c) you have had the opportunity to review the terms of this Agreement (in particular the Break Fee) and you understand them.

### 6. DISTRIBUTION SERVICES

- 6.1 The Distributor is responsible for the connection and disconnection of your Sites to the relevant distribution network and the delivery of electricity to those Sites. We do not control the quality, voltage or continuity of your electricity supply.
- 6.2 As your retailer, we will arrange for Distribution Services to each Site unless you notify us that you have made different arrangements with the Distributor. If a Site is being connected to the distribution network for the first time, we will also arrange that new connection. We will pay for the Distribution Services (including connection of the Site) and pass the costs of doing so to you through the Network Charge. You must also pay our reasonable administrative costs of arranging any new connection.
- 6.3 We do not control the process for arranging connection to a Site and are not liable to you for any delays.
- 6.4 We are not responsible for ensuring a Site is on, or remains on, the correct or optimal network tariff classification.

### 7. CHARGES

- 7.1 You must pay us the Charges and any other amounts payable by you under this Agreement. The Charges are described in Annexure 1.
- 7.2 [commercial-in-confidence]
- 7.3 If the Schedule does not specify an Environmental Rate, then clause 42.2 applies.
- 7.4 Charges based on the quantity of electricity sold to you will be determined by us from readings of the meter located at each Site, except in the circumstances described in clause 7.5. The record of meter readings at a Site is prima facie evidence of the amount of electricity sold to you unless the circumstances set out in clause 7.5(b) apply or an adjustment is made to relevant data by the Distributor or AEMO.
- 7.5 If:

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- (a) we or the Metering Provider are unable to obtain safe access to a meter or a meter reading for any reason;
  - (b) we consider the meter reading is unreliable or incorrect; or
  - (c) we are unable to issue a bill using actual meter readings for any reason (such as a failure of our IT systems),

we may base the Charges on estimated data reasonably determined by us in accordance with the Regulatory Requirements or any other criteria we consider relevant.

- 7.6 If we base your bill on estimated data and actual data which we consider is reliable and correct becomes available, we will include an adjustment on a later bill.

## 8. CHANGE OF LAW

- 8.1 Where there is a Change of Law we may increase or decrease the Charges to reflect our increased or decreased costs in accordance with this clause 8 and we must do so for a decrease in the Charges unless we consider the Change of Law is unlikely to have a significant impact of the Charges.
- 8.2 Subject to clause 8.3, we will determine the amount of the increase or decrease of a Charge using reasonable methods of calculation, estimation, allocation or attribution, which may include the use of:
  - (a) estimates and forecasts;
  - (b) methodologies based on an index, industry benchmark, relevant law or regulatory guideline, published or produced by a third party;
  - (c) determinations of suitably qualified independent experts selected by us;
  - (d) averaging methodologies; or
  - (e) a combination of the above.
- 8.3 Any increase or decrease of a Charge must be either:
  - (a) directly referable to the electricity supplied to you; or
  - (b) if not directly referable to the electricity sold to you, not more than a pro-rata of the total cost as is referable to your load when compared with the total load of all of our customers for which the relevant increased or decreased costs are applicable.
- 8.4 An increase or decrease under clause 8.1 may be applied retrospectively (and will be applied retrospectively in the case of a decrease to the Charges) to when the Change of Law took effect.
- 8.5 On request we will advise the reasons and manner of calculation of any variation of the Charges under clause 8.1, however this clause does not require us to provide any information which is confidential or commercially sensitive.

## 9. ENVIRONMENTAL RATE

- 9.1 Where the Schedule specifies a Forecast Environmental Percentage, the Environmental Rate is based on that percentage. We will do this if the Actual Environmental Percentage is not known at the time the Agreement is prepared. We may

amend the Forecast Environmental Percentage and as a result, the Environmental Rate, at any time.

- 9.2 Once the relevant Actual Environmental Percentage is known, we will vary the Environmental Rate to reflect this.
- 9.3 We will include an adjustment amount on a subsequent bill for previous supply to account for the difference between the Actual Environmental Rate and the Forecast Environment Rate.

## 10. ENVIRONMENTAL EXEMPTION

- 10.1 You must notify us promptly if you are issued an Environmental Exemption and provide us with evidence (to our satisfaction) of that Environmental Exemption.
- 10.2 If we agree that your Environmental Exemption permits us to reduce our obligations under the relevant Environmental Legislation in respect of the electricity sold to you under this Agreement, we will propose variations to this Agreement to address this. The Environmental Charges will not change until after the variation is agreed in accordance with this clause.

## 11. OTHER RIGHTS TO VARY CHARGES

- 11.1 If we become Financially Responsible for a Site more than 8 weeks after the Estimated Supply Date and the delay was not due solely to our non performance of our obligations under this Agreement, we may vary the Energy Rates and/or Environmental Rates applicable to that Site.

## 12. NOTICE OF VARIATION

- 12.1 If we vary any Charges, the Environmental Rate or the Forecast Environmental Percentage, we will notify you of the variation, the reason for the variation and the date the variation takes effect.

## 13. YOUR CONSUMPTION

- 13.1 Your Energy Rates and Environmental Rate (if fixed) are based on:
  - (a) your Target Consumption, with an allowance for variation represented by the Maximum Consumption and Minimum Consumption (as applicable); and
  - (b) your Load Profile.
- 13.2 If we request it, you must provide us with forecasts of your consumption for each Site for up to a year in advance. That forecast must be prepared on a reasonable basis using reasonable assumptions.
- 13.3 If the aggregate consumption of your Sites in a Jurisdiction in an Agreement Year is:
  - (a) above the Maximum Consumption, we may charge you an Adjustment Charge; or
  - (b) below the Minimum Consumption, we may charge you a Shortfall Charge.

For the avoidance of doubt, under no circumstances will the Adjustment Charge or Shortfall Charge be payable by us to you. The Adjustment Charge or Shortfall Charge is only payable if it is higher than or equal to the sum of the Peak Adjustment Charge and Off Peak Adjustment Charge.

- 13.4 If the aggregate consumption of your Schedule 1 Sites in a Jurisdiction in an Agreement Year is:

- (a) for the Peak Time and Shoulder Time, above the Peak Maximum Consumption, we may charge you a Peak Adjustment Charge; or
- (b) for the Off Peak Time, above the Off Peak Maximum Consumption, we may charge you an Off Peak Adjustment Charge.

For the avoidance of doubt under no circumstances will the Peak Adjustment Charge or Off Peak Adjustment Charge be payable by us to you. The Peak Adjustment Charge and Off Peak Adjustment Charge are only payable if the sum of the Peak Adjustment Charge and Off Peak Adjustment Charge is higher than the Adjustment Charge or Shortfall Charge.

13.5 Not Used

13.6 We are the exclusive electricity retailer for each Site. You must not without our prior written consent (not to be unreasonably withheld if there is no adverse operational or financial impact to us):

- (a) enter into an arrangement with any third party for curtailment of electricity consumption, or load management, at a Site; or
- (b) install electricity generation at a Site. This clause does not apply to small-scale solar generation installed at your Sites, or any other form of small-scale electricity generation installed at a Site that does not result in a material change to your Load Profile.

13.7 Not Used

13.8 You may on-sell any electricity we supply to a Site to your embedded network customers. We will provide reasonable assistance to enable parent-child metering to be set up for your embedded network customers if those customers elect to be supplied by their retailer of choice.

**14. EXPORTED ELECTRICITY**

14.1 If you export any electricity from a Site to the national electricity market, unless the Export Electricity Annexure applies:

- (a) we will not pay or credit you any amount in relation to that exported electricity;
- (b) the amount of electricity sold to you and for which you must pay us or any other Charges under this Agreement will not be reduced by the amount of electricity exported; and
- (c) to the extent permitted by law, you will reimburse us for any Liability we incur or suffer relating to any Regulatory Requirements or other requirements relating to your generation of electricity.

**15. ADDING SITES AND DISCONTINUING SUPPLY TO A SITE**

15.1 Where a Roll-In Maximum Percentage is specified in a Schedule, you may request to add a Site under Schedule 1 or Schedule 2 at any time. We will not refuse your request unless, in our reasonable opinion, the addition of the Site would mean your aggregate consumption in a Jurisdiction is likely to exceed the relevant Target Consumption by the Roll-In Maximum Quantity.

If we do agree to add a new Site:

- (a) the prevailing Energy Rates in that Jurisdiction and in the relevant Schedule will apply to that Site; and
- (b) we will use reasonable endeavours to arrange to become Financially Responsible for the new Site no later than 30 days from when we receive your request to add the Site under clause 15.1, however we do not control this process and subject to clause 26.15 are not liable to you for any delay.

15.2 You may request to have supply discontinued to a Site before the End Date if you:

- (a) no longer require us or any other retailer to sell you electricity at that Site; and
- (b) give us 30 days prior notice of the date on which the Site will be vacated (such notice to also include a forwarding address for future correspondence).

We will not refuse your request unless, in our reasonable opinion, it would mean the aggregate consumption of the discontinued Sites in a Jurisdiction is likely to exceed the Site Vacation Maximum Quantity.

15.3 Where supply is discontinued to a Site under clause 15.2, this Agreement will no longer apply to that Site.

15.4 Not used.

15.5 If supply is discontinued, or you attempt to discontinue supply, to a Site before the End Date and you do not give us the required notice:

- (a) you remain liable for all electricity supplied to the Site; and
- (b) your obligations under this Agreement continue to apply to you until 30 days after we receive the required notice or the End Date (whichever occurs first).

15.6 Your:

- (a) Target Consumption, Peak Target Consumption, Off Peak Target Consumption and Roll-In Maximum Quantity will not change where we agree to add a Site; and
- (b) Site Vacation Maximum Quantity will not change but your Target Consumption, Peak Target Consumption and Off Peak Target Consumption will be reduced where supply to a Site is discontinued under clause 15.2.

15.7 We will request that the Distributor disconnect a Site no later than 30 days from the date you provide us with notice under this clause 15 that you wish to have supply to that Site discontinued.

**16. BILLING**

16.1 We will:

- (a) issue you a bill for each Site, which will be sent to the Address for Accounts; and
- (b) prepare and forward to you an aggregate invoice supported by individual Site information in a format agreed between you and us prior to the relevant billing cycle.

16.2 The bill will include:

- (a) the period for which the bill applies (which is normally one month);

- (b) the consumption at the Site for that billing period;
- (c) the Charges payable for that Site for that billing period;
- (d) any adjustments to the Charges payable for that billing period or any other billing period in accordance with this Agreement;
- (e) any outstanding amounts from previous bills; and
- (f) the Due Date.

16.3 If you have a Basic Meter and any Charges are varied during a billing period, we may assume the electricity is consumed at a uniform daily amount for the whole of the billing period and the Charges will be calculated using a pro-rata calculation over the billing period.

16.4 If we have overcharged, undercharged or not charged you, we will credit or bill you for these amounts as soon as reasonably practicable after we determine you have been overcharged, undercharged or not charged, except we will not do this more than 24 months:

- (a) after the date that any undercharges or amounts which were not charged, should have been billed; and
- (b) after the date the overcharge was billed, unless you have disputed your bill within the time specified in clause 18.

16.5 The 24 month limit in clause 16.4 will not apply where the undercharge or failure to charge was due to an event that was:

- (a) outside our control; or
- (b) caused or contributed to by the actions or omissions of you or a third party.

16.6 You must pay each bill in full no later than the Due Date, except in the circumstances set out in clause 18.3.

16.7 We may include details of any commission or fees payable by us to a broker or other third party service provider in relation to this Agreement in a bill issued to you under this clause 16.

## 17. FAILURE TO PAY

17.1 If you fail to pay a bill in full or in accordance with clause 18.3 by the Due Date, we may:

- (a) apply any security we hold towards payment of the bill;
- (b) arrange to disconnect the Site to which that bill applies (see clause 22.1(a));
- (c) charge you Interest on the unpaid amount from the Due Date;
- (d) refer your bill for collection by a debt collection agency;
- (e) recover our costs of collecting the bill from you; or
- (f) sell the rights to the unpaid amount to a third party who may seek to collect it from you.

## 18. BILL DISPUTES

18.1 If you wish to dispute a bill, you must provide us with a notice setting out why the amount of the bill is incorrect no later than 21 days after you receive the bill.

18.2 We will assess your claim as soon as reasonably practicable and advise you if we consider the

original bill was incorrect. If the parties do not agree on the disputed amount of the bill within 10 days after notification by you under clause 18.1, the dispute resolution procedures in clause 30 will apply.

18.3 If the dispute is not resolved by the Due Date, you must pay by the Due Date the undisputed amount.

18.4 Once the dispute is resolved:

- (a) if we owe you a refund, we will credit your next bill and subject to clause 18.5, we must pay you Interest on that amount if you notify us to do so in writing within 2 weeks of us applying the credit to your bill; or
- (b) if you owe us an amount, you must pay it within 2 weeks from the date the dispute is resolved, and you must pay us Interest on that amount,

where the Interest on the relevant amount is calculated from the Due Date for that amount to the date we credit your next bill or the date you pay it to us, retrospectively.

18.5 We will not pay you Interest on a refund we owe you under clause 18.4(a) if that refund was due to an event:

- (a) that was outside our control; or
- (b) caused or contributed to by the actions or omissions of you or a third party.

## 19. SECURITY AND CREDIT

19.1 We may require you to pay us a security deposit, or provide us with another form of security, up to the amount we estimate to be the aggregate of your next three bills for all Sites if:

- (a) you fail to pay any three bills, or two consecutive bills, on time; or
- (b) at any time, we reasonably form the view that your creditworthiness is not satisfactory.

19.2 You must comply with our request within 2 weeks of receiving that request.

19.3 We will release the security deposit or other security after this Agreement ends and all outstanding amounts you owe us under this Agreement have been paid.

19.4 This clause 19 does not apply where you are wholly owned by the State of New South Wales.

## 20. SITE ACCESS

20.1 You must give us, our Representatives, the Distributor, Metering Providers and AEMO safe, convenient and unhindered access to a Site as reasonably required for the purposes of this Agreement. This includes access after this Agreement ends or a Site is removed from this Agreement to remove the meter and any other equipment or disconnect electricity supply.

20.2 Neither we, the Distributor or the Metering Provider need to give you notice of our intention to enter a Site, but we give you notice if practicable, except:

- (a) where you have provided permission to access a Site;
- (b) where entry is during business hours for the purpose of reading, maintaining, inspecting,

testing, installing, replacing, repairing or altering meter; or

(c) in the case of an emergency.

20.3 When we access your Site, we will comply with any reasonable procedures, including your relevant operational and safety requirements and procedures, and WH&S Laws (as notified to us), including any relevant safety management system and environmental management system as notified by you to us, when we are on your Site except in an emergency. You will provide us with copies of the relevant requirements or procedures and will notify and provide reasonable notice to us of any new or amended requirements or procedures.

## 21. METERING

21.1 Unless we make a different agreement with you, we will arrange on your behalf for metering equipment to be installed and/or Metering Services to be supplied by a Metering Provider at a Site in accordance with the Regulatory Requirements.

21.2 Not used

21.3 We may revoke our acceptance of your Direct Metering Agreement if the Metering Provider does not comply with the Regulatory Requirements or their obligations under the Direct Metering Agreement or any agreement we enter into with that Metering Provider concerning Metering Services provided to you. If we revoke your Direct Metering Agreement we will appoint a Metering Provider.

21.4 We may vary your Metering Charge, Supplementary Metering Charge, VAS Charge or Instrument Testing Charge or the terms of this Agreement if:

(a) we or a Metering Provider visit the Site and determine that it is appropriate to do so to reflect the nature of the Metering Services required at that Site;

(b) after the date you sign this Agreement, we become aware you have a Direct Metering Agreement for a Site, the Direct Metering Agreement you have ends or is varied, or we revoke our acceptance of your Direct Metering Agreement; or

(c) the Regulatory Requirements permit you to change the metering arrangements (including the person responsible for metering) and you elect to do so.

21.5 If, as a result of a variation under clause 21.4, or where supply to a Site has been discontinued under clause 15, we have to terminate or vary any contract we have entered into with any third party to perform our metering obligations under this Agreement, you are liable to us for all Liability we incur or suffer in connection with that termination or variation.

21.6 The meter at a Site is the property of the Metering Provider.

## 22. DISCONNECTION

22.1 We may request the Distributor to disconnect a Site if:

(a) you do not pay a bill in full or as contemplated by clause 18.3 by the Due Date and any part of that bill remains outstanding 1 week after

we give you notice of our intention to disconnect the Site;

(b) you fail to comply with clause 19.2;

(c) you breach any other provision in this Agreement and do not remedy the breach within 3 weeks of us giving you notice that we will disconnect that Site if you do not do so within that time;

(d) you cease to occupy, or carry on business at, that Site;

(e) this Agreement is terminated in respect of that Site or in its entirety;

(f) you have illegally used electricity at any Site or tampered with a meter; or

(g) we are permitted or required to do so by the Regulatory Requirements,

provided that we have first followed the procedures set out in clause 22.2 and 22.3 (where permitted by law and the Regulatory Requirements).

22.2 We must give you notice (in addition to any notice under clauses 22.1(a) – (g)) that we intend to instruct the Distributor to disconnect the relevant Site unless a meeting of senior managers takes place.

22.3 Senior managers from both parties must meet to discuss the circumstances of the proposed disconnection and the transfer of the relevant Site. This meeting must take place no later than 10 Business Days from the date we give you notice under clause 22.2. If a meeting does not take place within this timeframe, we may proceed with instructing the Distributor to disconnect the relevant Site.

22.4 In relation to clause 22.1, we acknowledge that (where permitted by law and the Regulatory Requirements):

(a) we must not disconnect your Site in preference to any other customer's site and, to the greatest extent possible, only disconnect your Site as a last resort in circumstances where we are permitted to disconnect a Site under the Regulatory Requirements and have discretion as to which of our customers' sites we disconnect;

(b) we will use all reasonable endeavours to minimise the period of any disconnection and restore the supply of electricity to your Site as soon as possible in circumstances where we have disconnected a Site under clause 22.1(a), 22.1(b), 22.1(c) or 22.1(f) and provided you have rectified any breach or situation which gave rise to our right to disconnect under those clauses; and

(c) we will take all reasonable steps to have the requirements outlined in this clause 22.4 noted on our relevant systems and advise the Distributor that your Sites are a sensitive load.

22.5 The notification referred to in clause 22.2 must include:

(a) an explanation of the reason for the proposed disconnection;

(b) the date and time that the proposed disconnection will take effect; and

(c) in circumstances where we have disconnected a Site under clause 22.1(a), 22.1(b), 22.1(c) or 22.1(f):

- (i) the measures to be taken by us to mitigate the effects of the disconnection; and
- (ii) where reasonably possible, an estimate of the time when the supply of electricity will be restored,

assuming that you will rectify any breach or situation which gave rise to our right to disconnect under those clauses as soon as practicably possible.

22.6 You acknowledge that the Distributor has the power to disconnect, curtail or interrupt supply to a Site for other reasons.

22.7 Disconnection of a Site does not automatically terminate this Agreement for that Site.

22.8 You are liable to us for reasonable costs, including reasonable administrative costs, that we incur relating to disconnection and any subsequent reconnection of a Site.

22.9 In relation to clause 22.1, where a Site is a Schedule 2 Site we will also follow any procedures for disconnection set out in the Regulatory Requirements.

### 23. TERMINATION AND SITE CANCELLATION

23.1 A party may terminate this Agreement by notice to the other:

- (a) if an insolvency event occurs in respect of the other party;
- (b) if the other party is in breach of this Agreement and does not remedy such breach within 3 weeks after notice to do so;
- (c) if any representation or warranty made by the other party is untrue or misleading (whether by omission or otherwise) when made; or
- (d) on or after the End Date on four weeks' notice to the other party.

23.2 We may terminate this Agreement (in its entirety) by notice to you:

- (a) if there are no Sites taking electricity;
- (b) if we reasonably form the view that your creditworthiness is not satisfactory. This clause does not apply where you are wholly owned by the State of New South Wales;
- (c) if an event of Force Majeure which has been notified in accordance with clause 28 continues for more than 6 months;
- (d) if you are no longer a Large Customer for Sites in aggregate under clause 4.1;
- (e) if we reasonably form the view that you have provided us with incorrect information; or
- (f) if we reasonably form the view that there is a manifest error in a Schedule of this Agreement.

23.3 We may remove a Site from this Agreement by notice to you:

- (a) if we are entitled to disconnect or have disconnected under clause 22.1;
- (b) a Distributor has disconnected that Site for any reason;

(c) if we reasonably form the view that there is a manifest error in the Schedule relating to that Site; or

(d) if we reasonably form the view that you have provided us with incorrect information relating to that Site; or

(e) if you are no longer a Large Customer at that Site,

and with effect from the date set out in that notice we will have no obligation to supply electricity to you under this Agreement in respect of that Site and this Agreement will no longer apply to that Site.

23.4 This Agreement will automatically terminate if we are no longer permitted to sell you electricity under the Regulatory Requirements for any reason.

### 24. BREAK FEE

24.1 You acknowledge and agree that you have entered into a fixed term agreement with us and if a Break Fee Event occurs prior to the End Date, we may suffer loss. To allow us to recover our genuine pre estimate of that loss, we may charge you, and you agree to pay, a reasonable Break Fee determined in accordance with this clause 24.

24.2 The Break Fee is an amount equal to [commercial-in-confidence]

24.3 The Break Fee:

- (a) will be calculated by reference to the period from the date that the relevant Break Fee Event occurs until the End Date; and
- (b) will never be payable in respect of electricity which is sold, and billed, to you under this Agreement; and
- (c) will only be calculated in respect of, and be applicable to, Sites affected by the Break Fee Event.

24.4 In calculating your Break Fee, we will act reasonably and we will be entitled to use any or all of:

- (a) estimates and forecasts;
- (b) methodologies based on an index, industry benchmark, relevant law or regulatory guideline, published or produced by a third party;
- (c) determinations of suitably qualified independent experts selected by us; and
- (d) averaging methodologies.

As we manage the purchasing of electricity for our customers on a portfolio basis, some costs we incur and which are included in the calculation of your Break Fee may be allocated across our customers using methodologies we consider appropriate, such as on a proportionate basis across our customers.

24.5 [commercial-in-confidence]

24.6 Accordingly, you also acknowledge that, due to the nature of the variables used in calculating your Break Fee, it is possible that your Break Fee could be substantial - particularly if you consume large amounts of electricity and the wholesale cost of electricity is lower at the time of the Break Fee Event from that applying at the time you signed this Agreement.

- 24.7 You may request an estimate of your likely Break Fee for a proposed Break Fee Event. We will give you this estimate within a reasonable time of such request. Any estimated Break Fee will be based on information current at the date we calculate the estimate and, as such, that estimated Break Fee may be different to your actual Break Fee.
- 24.8 You must pay us the Break Fee within 2 weeks of receipt of a bill. The Break Fee will appear on your bill as the 'Combined Break Charge' and will include any amount payable under clause 21.5.
- 24.9 At your request, we will give you a statement setting out how we calculated your Break Fee.
- 24.10 For the avoidance of doubt, clause 30 will apply to any dispute in relation to this clause 24.
- 25. HOLDING OVER**
- 25.1 If, at a particular Site, you continue to take Services or Other Services from us after the Supply Term or after this Agreement ends, this Agreement will continue to apply to that Site, except:
- (a) the Energy Rates for that Site will be those notified by us to you to apply for a specified period or, if we do not notify you or the period specified by us has expired, equal to the applicable Default Rate; and
  - (b) we may vary any of the other Charges and the terms of this Agreement by notice to you.
- 25.2 We may vary the Energy Rates, Charges and terms more than once after the Supply Term ends. We will give you notice in accordance with clause 12.1 at least one month before the variation takes effect.
- 26. RISK AND LIABILITY**  
[Commercial-in-confidence]
- 27. PARTNERSHIPS AND TRUSTS**
- 27.1 If you are a partner in a partnership, each partner is jointly and severally liable under this Agreement.
- 27.2 If you enter this Agreement as a trustee you represent and warrant in your own right and as trustee of the Trust, that as at the date of this Agreement and until such time as all your obligations under this Agreement are discharged:
- (a) you are the sole trustee of the Trust;
  - (b) you have the requisite capacity and authority to enter this Agreement on behalf of, and to bind the beneficiaries of, that Trust and to perform all obligations under this Agreement pursuant to the documents governing that Trust; and
  - (c) you have the right to be fully indemnified out of the assets of the Trust in relation to this Agreement and the assets of the Trust are sufficient to satisfy all obligations of the Trust under this Agreement.
- 28. FORCE MAJEURE**
- 28.1 A party will be excused for any non performance of its obligations under this Agreement (other than an obligation to pay money) during the time and to the extent that Force Majeure prevents the party from doing so.
- 28.2 A party must:
- (a) try to remove, overcome or minimise the effects of Force Majeure as soon as it can; and
  - (b) give the other party prompt notice of the Force Majeure including details of its expected duration.
- 28.3 If the effect of such an event are widespread, we may give you prompt notice by making the necessary information available on a 24 hour telephone service promptly after becoming aware of the event.
- 28.4 If:
- (a) we notify you of Force Majeure; and
  - (b) that Force Majeure affects the amount of electricity we are able to sell you;
- after we notify you of the resumption of the performance of our affected obligations under this Agreement, we will reduce your Target Consumption by an amount we estimate to be reflective of the amount of electricity we would have sold to you had the Force Majeure not prevented us from doing so.
- 29. GST**
- 29.1 In this clause, all terms that are defined in the GST law have the same meaning in this clause.
- 29.2 The supplier will add the prevailing rate of GST onto the consideration for any taxable supplies made in connection with this Agreement, and the recipient agrees to pay that GST following the receipt of a tax invoice from the supplier.
- 29.3 The GST applicable to any taxable supplies made in connection with this Agreement is payable at the same time as the consideration for those supplies.
- 29.4 Where a party reimburses the other party for an expense or other amount, the reimbursement will be net of any input tax credit the other party is entitled to claim.
- 30. DISPUTE RESOLUTION**
- 30.1 All disputes must be dealt with in accordance with this clause 30.
- 30.2 The party claiming the dispute must give a written notice to the other party setting out particulars of the dispute (**Dispute Notice**).
- 30.3 The dispute must be referred to senior representatives of the parties. The senior representatives must meet (by telephone if not in person) within 2 weeks and negotiate to resolve the dispute.
- 30.4 If for any reason the dispute has not been resolved within 4 weeks after service of the Dispute Notice either party may commence court proceedings.
- 30.5 Pending the resolution or determination of a dispute, each party must continue to perform their respective obligations under this Agreement.
- 30.6 Nothing in clause 30 prevents a party from:
- (a) seeking urgent interlocutory or declaratory relief where, in that party's reasonable opinion, that action is necessary to protect that party's rights; or
  - (b) terminating this Agreement where it has a right under the Agreement to do so.

- 30.7 You are liable to us for any Liability we incur or suffer if you dispute a bill or other matter other than under clause 18 or clause 30 (as applicable).
- 31. CONFIDENTIALITY**
- 31.1 Both parties must keep all Confidential Information confidential for 3 years after this Agreement ends.
- 31.2 Either party may disclose Confidential Information:
- (a) with the other party's prior written consent;
  - (b) on a confidential basis to its officers, employees, agents, advisers and insurers (or those of a Related Body Corporate or, in the case of Sydney Trains, another New South Wales government agency) to the extent disclosure is reasonably required;
  - (c) if required by Regulatory Requirements, law or applicable stock exchange rules; or
  - (d) to a Related Body Corporate for any reason
- 31.3 We may request, use and disclose Confidential Information and other information about you to the extent we reasonably consider it is required:
- (a) to enable us to obtain a credit report on you;
  - (b) in communications with AEMO, any Regulatory Authority or the Distributor, Metering Provider or any service provider we engage to provide the Services or Other Services to you; or
  - (c) if necessary in an emergency situation.
- 31.4 You consent for us to provide the Metering Data for each Site to our Related Bodies Corporate.
- 32. PRIVACY**
- 32.1 Both parties must comply with applicable provisions of the Privacy Act 1988 (Cth).
- 33. VARIATIONS TO THE AGREEMENT AND WAIVER**
- 33.1 Unless otherwise specified in this Agreement, any variations to the terms of this Agreement or any waiver of any rights of any party has no effect unless it is in writing and signed by the parties (in the case of a variation) or the party granting the waiver (in the case of a waiver).
- 33.2 Where this Agreement is varied at your request, you must pay us the Administration Charge to cover our reasonable administration costs.
- 34. ASSIGNMENT**
- 34.1 Notwithstanding anything in this Agreement to the contrary, except as provided in clause 34.2, neither party may assign or otherwise transfer its rights under this Agreement, or novate any of its rights or obligations under this Agreement (each a "transfer") without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, having regard to:
- (a) the assignee's creditworthiness and financial capacity; and
  - (b) the level and nature of any financial guarantees or other credit support to be procured by that assignee in favour of the other party.
- 34.2 You may, without our prior written consent, assign, novate, transfer or otherwise deal with any or all of your rights, or obligations under this Agreement at any time if:
- (a) the transferee is a related entity of you or an entity which is wholly owned by or is an agency of the State of New South Wales; or
  - (b) the assignment, novation, transfer or dealing is in connection with any reform, restructure or privatisation of you,
- and we will execute all documents reasonably necessary to effect the assignment, novation, transfer or dealing.
- 34.3 The parties acknowledge and agree that the arrangements set out in this Agreement may need to be restructured to apply to a number of agencies of the State of New South Wales then the parties agree to negotiate in good faith with a view to:
- (a) enter into a new agreement or agreements with the relevant agencies on the basis of the same pricing structure as this Agreement; and
  - (b) make the necessary adjustments to this Agreement and any other agreements to ensure that the consumption levels and other terms of those agreements reflect in aggregate a risk profile commensurate with that provided for under this Agreement.
- 35. NOTICES**
- 35.1 A notice or other communication under this Agreement is only effective if:
- (a) in writing and addressed to the person to whom it is given; and
  - (b) where we are the recipient, sent by pre-paid mail to GPO Box 186 Melbourne Vic 3001 or sent by email to the Origin email address specified in the Schedule; or
  - (c) where you are the recipient, sent by bill, sent to any Address for Accounts or sent by email to the email address as notified by you to us.
- 35.2 A notice is given:
- (a) if sent by email – 24 hours after the email was sent, unless the sender receives an automated message that the email was not delivered or knows the email was not delivered or could not be read; or
  - (b) if sent by mail – if sent by priority mail, 3 Business Days after posting, or if sent by regular mail, 6 Business Days after posting.
- 36. LAWS APPLICABLE TO THIS AGREEMENT**
- 36.1 If there is one Site or all Sites are in the same Jurisdiction, this Agreement is governed by the laws in force in the Jurisdiction where the Sites are located.
- 36.2 If there are Sites in more than one Jurisdiction, this Agreement is governed by the laws in force in Victoria. However, the Regulatory Requirements in a Jurisdiction continue to apply to Sites in that Jurisdiction.
- 36.3 You submit to the non-exclusive jurisdiction of the courts of the place determined in accordance with clauses 36.1 and 36.2.
- 37. ANTI-BRIBERY**
- 37.1 You must ensure that you and your Representatives comply with all applicable anti-bribery, fraud, secret commission and corruption laws.

37.2 You agree that you and your Representatives have not received, and will not receive, any payment, benefit or other thing of value (whether by way of gift, kickback or otherwise) in connection with this Agreement that is not legitimately due to you or your Representatives.

37.3 You must not make any facilitation payment in connection with this Agreement.

### 38. GENERAL PROVISIONS

38.1 This Agreement supersedes all prior and other negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement.

38.2 You acknowledge you have not relied on any predictions, forecasts, advice or statements of opinion by us, or any of our employees or agents, as to the appropriateness or financial effect of this Agreement, market conditions, the likelihood of price changes or any Change of Law.

38.3 Clauses 31 and 32 survive termination or expiry of this Agreement. Other terms of this Agreement will survive termination or expiry of this Agreement where it is necessary for it to do so to enable a party to enforce a right accrued on or before termination or expiry.

38.4 It is not necessary for us to incur an expense or make a payment before enforcing a right to vary the Charges in accordance with this Agreement.

38.5 If any part of this Agreement is unlawful, unenforceable or invalid, that part will be treated as removed from the Agreement, but the rest of the Agreement is not affected.

38.6 Representations and warranties set out in this Agreement are made, given and repeated on the date you sign the Agreement, the Supply Date and each following day until this Agreement ends.

### 39. DEFINITIONS

The following definitions apply in this Agreement unless the context requires otherwise.

**Address for Accounts** means the address for accounts specified in the Schedule.

**AEMO** means the Australian Energy Market Operator.

**Agreement Date** means the date of you sign this Agreement.

**Agreement Terms** means this document.

**Agreement Year** means each successive period identified as a year, or where there is only one year, the period identified as Agreement Year 1, as set out in the Energy Rates table in the relevant Schedule.

**Annexure** means an annexure to these Agreement Terms.

**Approval** means any licence, permit, consent, authorisation, approval, registration, determination, certificate, exemption, filing, notice, qualification or other requirement (and any conditions attached to any of them) of or issued by any Regulatory Authority that must be obtained, held or satisfied to supply, perform, receive or

use the Services or Other Services, or for either party to perform its obligations under this Agreement.

**Basic Meter** means a metering installation without a device that collects and stores interval metering data and allows such data to be read remotely.

**Break Fee Event** means this Agreement is terminated in its entirety for any reason other than termination under clauses 23.1 (by you), 23.2(f) or 23.4 before the End Date.

**Business Day** means a day that is not a Saturday, Sunday or a Jurisdiction wide public holiday in the Jurisdiction where the Site is located.

**Change of Law** means:

- (a) any Regulatory Requirement or Tax being:
  - (i) introduced, taking effect or commencing; or
  - (ii) amended or repealed, in whole or in part after the Agreement Date;
- (b) the rate at, or basis on, which any Tax is levied or calculated being increased or decreased from the rate or basis prevailing as at the Agreement Date;
- (c) a variation in the interpretation, effect or administration of a Regulatory Requirement or Tax by a Regulatory Authority which is effected by way of a public pronouncement after the Agreement Date; or
- (d) a scheme that provides for us to gain or hold any Approval or authorisation or to purchase, hold or surrender any certificate, permit or instrument or directly or indirectly imposes costs, including costs passed through from third parties, on us, being:
  - (i) introduced, taking effect or commencing; or
  - (ii) amended or repealed, in whole or in part after the Agreement Date,

that has or will directly or indirectly affect the costs that we have or will incur, in connection with this Agreement, except that a Change of Law does not apply if the event in question relates to income tax as defined in the *Income Tax Assessment Act 1997* (Cth) or if the relevant change has been announced on or before the date of this Agreement unless we can demonstrate that such change has not otherwise been accounted for in the Charges. This clause does not require us to provide any information which is confidential or commercially sensitive.

**Charges** mean the charges described in Annexure 1 and Annexure 2.

**Confidential Information** means:

- (a) clause 26 of this Agreement, the Schedules and Annexures;
- (b) all information relating to the Charges disclosed or made available to a party by or on behalf of the other party; or
- (c) all information a party derives or produces, whether in whole or in part, from the

information disclosed under paragraphs (a) and (b).

**Cost to Carry** means our estimate of the costs we would have incurred as a result of the time difference between when we pay for wholesale energy, network and other third party charges related to the sale of electricity to you and when you pay us those charges as billed to you under this Agreement. This cost is expressed as dollars per megawatt hour.

**Cost to Serve** means our estimate of the costs we would have incurred to service your account from the date of the Break Fee Event to the End Date but will not incur because of the Break Fee Event. This cost is expressed as dollars per megawatt hour.

**Default Rate** means the rate published by us from time to time on our website and described as the "Default Rate" for Commercial & Industrial Electricity Supply Agreements or sent by notice to you.

**Direct Metering Agreement** or **DMA** means, with respect to a Site, an agreement between you and a Metering Provider for Metering Services at that Site.

**Distribution Services** means the services provided by the Distributor relating to you or a Site.

**Distributor** means the entity that is authorised or licensed to supply Distribution Services through the distribution network to which a Site is connected.

**Due Date** means the date you must pay your bill by as specified on the bill which will be consistent with the Payment Term.

**End Date** is the date specified in the relevant Schedule.

**Environmental Certificate** has the meaning set out in the Self Surrender Annexure (if applicable).

**Environmental Exemption** means an exemption created under the governing legislation for an Environmental Product (as defined in Annexure 1).

**Environmental Legislation** means the REC Legislation, ESS Legislation, VEET Legislation or *Energy Efficiency (Cost of Living) Improvement Act 2012*.

**ESS Legislation** means the *Electricity Supply Act 1995* (NSW) and related regulations.

**Estimated Supply Date** means for a Site, the estimated supply date for that Site, as specified in the relevant Schedule.

**Excluded Loss** means:

- (a) loss of contract, profit, revenue or anticipated savings;
- (b) loss of, or damage to, reputation, credit rating or goodwill;
- (c) loss or denial of opportunity;
- (d) loss of access to markets;
- (e) overheads and wasted expenditure;
- (f) financing costs;
- (g) special, incidental or punitive damages; or

(h) loss or damage arising from special circumstances that are outside the ordinary course of things,

however arising in respect of any circumstances under or in connection with this Agreement and/or the Services or Other Services, and regardless of whether a claim for same is made under this Agreement, a Regulatory Requirement, tort, negligence, strict liability, under an indemnity or a warranty, in equity or otherwise.

**Financially Responsible** has the meaning given to that term in the Rules.

**Force Majeure** means, with respect to an obligation of a party under this Agreement, any event or circumstance occurring on or after the Supply Date that:

- (a) is not within the reasonable control of that party;
- (b) could not be prevented, overcome or remedied by the exercise of due diligence and good industry practice by that party; and
- (c) results in that party being unable to meet or perform that obligation, or delays its ability to do so.

**Forward Cost of Electricity** means, in respect of a Jurisdiction, our estimate of our wholesale cost of electricity per megawatt hour in that Jurisdiction, for each of the Peak Time, Shoulder Time and Off Peak Time (as applicable), for the period from the Break Fee Event to the End Date.

**GST** has the meaning given in the GST law.

**GST law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Instrument Testing** means any testing of the current transformers and/or voltage transformers which may form part of the metering installation at a Site or any site of our other customers, which we are required to carry out to comply with the Regulatory Requirements.

**Interest** means the Reserve Bank of Australia cash rate plus 8%, calculated daily, and at our discretion, compounded monthly.

**Jurisdiction** means Victoria, South Australia, New South Wales, the Australian Capital Territory or Queensland, as the context requires.

**Large Customer** is a customer whose consumption at a Site (or Sites where aggregated under clause 4.1) exceeds the Large Customer Threshold.

**Large Customer Threshold** means the threshold at which the Small Customer Rules no longer apply to a Site in a Jurisdiction, which at the date of this Agreement is:

- (a) 40MWh per annum in Victoria;
- (b) 160MWh per annum in South Australia; and
- (c) 100MWh per annum in all other Jurisdictions.

**Liability** includes any loss, damage, liability, cost, charges and expenses.

**Load Profile** means the pattern of consumption for a typical customer of your type (as determined by us or your historical load profile (if we have it)).

**Metering Data** has the meaning given in the Rules.

**Maximum Consumption** means the maximum amount of electricity we will sell you under this Agreement at all Sites in a Jurisdiction before we can charge you the Adjustment Charge, being an amount (in MWh) equal to the applicable Maximum Volume Flexibility Quantity Percentage (as specified in the relevant Schedule (if not specified, it is zero)) of your Target Consumption.

**Metering Provider** means a person who provides Metering Services and/or Instrument Testing.

**Metering Services** includes the installation, maintenance or testing of metering equipment at a Site and the reading and forwarding of data from that metering equipment to us, the Distributor and AEMO and discharging our regulatory obligations in relation to those services (but excludes Instrument Testing).

**Minimum Consumption** means the minimum amount of electricity we will sell you under this Agreement at all Sites in a Jurisdiction before we can charge you the Shortfall Charge, being an amount (in MWh) equal to the applicable Minimum Volume Flexibility Quantity Percentage (as specified in the Schedule (if not specified, it is zero)) of your Target Consumption.

**NEL** means the National Electricity Law that is contained in a Schedule to the *National Electricity (South Australia) Act 1996* and has been adopted by each of the participating jurisdictions.

**NERR Aggregate Consumption** means the total consumption for all Sites in NERR Jurisdictions.

**NERR Jurisdictions** means those Jurisdictions in which Sites are located and the National Energy Retail Rules apply, which are currently Queensland, New South Wales, South Australia and Australian Capital Territory.

**Off Peak Target Consumption** means the quantity of electricity which we anticipate selling you during the Off Peak Time at all Schedule 1 Sites for each Jurisdiction in an Agreement Year as specified in Schedule 1.

**Off Peak Maximum Consumption** means the maximum amount of electricity we will sell you during the Off Peak Time under this Agreement at all Schedule 1 Sites in a Jurisdiction before we can charge you the Off Peak Adjustment Charge, being an amount (in MWh) equal to the applicable Off Peak Maximum Volume Flexibility Quantity Percentage (as specified in the relevant Schedule at the date of execution of this Agreement) of your Off Peak Target Consumption.

**Off Peak Time** has the meaning given in Schedule 1.

**Origin Product** means a product or service that we agree to provide you during the Term at a Site, as specified in the Schedule or as otherwise agreed between us from time to time.

**Other Services** means, in respect of a Site, any services other than the Services (including goods) which you agree to buy from us in respect of that Site.

**Payment Term** means the period specified in the Schedule.

**Peak Target Consumption** means the quantity of electricity which we anticipate selling you during the Peak Time and Shoulder Time at all Schedule 1 Sites for each Jurisdiction in an Agreement Year as specified in Schedule 1.

**Peak Maximum Consumption** means the maximum amount of electricity we will sell you during the Peak Time and Shoulder Time under this Agreement at all Schedule 1 Sites in a Jurisdiction during the Peak Time and Shoulder Time before we can charge you the Peak Adjustment Charge, being an amount (in MWh) equal to the applicable Peak Maximum Volume Flexibility Quantity Percentage (as specified in the relevant Schedule at the date of execution of this Agreement) of your Peak Target Consumption.

**Peak Time** has the meaning given in Schedule 1.

**REC Legislation** means the *Renewable Energy (Electricity) Act 2000* (Cth) and the *Renewable Energy (Electricity) (Charge) Act 2000* (Cth) and related regulations.

**Regulatory Authority** means:

- (a) any government or a governmental, quasi governmental or judicial entity or authority;
- (b) a stock exchange; and
- (c) any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity,

whether of Australia or elsewhere that has powers or jurisdiction under any Regulatory Requirement over a party or any act relating to this Agreement.

**Regulatory Requirements** means:

- (a) any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Agreement is or is to be carried out or regulated;
- (b) any applicable law, whether of a legislative, equitable or common law nature;
- (c) any applicable Australian Standards and codes; and
- (d) any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of a Regulatory Authority, including any Approval,

relevant to a party or the supply, performance, receipt or use of all or part of the Services or Other Services.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Representative** means a party and its Related Bodies Corporate, and each officer, director, employee, representative, agent of, secondee to, and contractor, to each of them.

**Roll-In Maximum Quantity** means an amount (in MWh) equal to the Roll-In Maximum Percentage of your Target Consumption.

**Roll-In Maximum Percentage** is as specified in Schedule 1 or Schedule 2 (as applicable). If not specified, it is zero.

**Rules** mean the National Electricity Rules.

**Schedule** means Schedule 1 and Schedule 2 to these Agreement Terms.

**Schedule 1** means schedule 1 to these Agreement Terms.

**Schedule 1 Sites** means the sites specified in Schedule 1.

**Schedule 2** means schedule 2 to these Agreement Terms.

**Schedule 2 Sites** means the sites specified in Schedule 2.

**Services** means with respect to a Site:

- (a) the sale of electricity at that Site; and
- (b) ancillary services, such as the procuring of Distribution Services or Metering Services for that Site.

**Shoulder Time** has the meaning given in Schedule 1.

**Site** means each site specified in the Schedule 1 and Schedule 2 or added under clause 15.1, except those sites which have been removed or to which this Agreement no longer applies in accordance with clauses 15.2 or 23.3.

**Site Vacation Maximum Quantity** means an amount (in MWh) equal to the Site Vacation Maximum Percentage of your Target Consumption at the date of executing this Agreement.

**Site Vacation Maximum Percentage** is as specified in the Schedule. If not specified, it is zero.

**Small Customer Rules** means Division 3 of Part 1 and Part 2 of the National Energy Retail Rules and relevant provisions of the Victoria Energy Retail Code.

**Supply Date** means, for each Site, the later of the date we become Financially Responsible for that Site or the Estimated Supply Date.

**Supply Term** means the period from the earliest Supply Date for any Site under this Agreement to the earlier of the End Date or termination of this Agreement.

**Target Consumption** means the quantity of electricity which we anticipate selling you at all Schedule 1 Sites and Schedule 2 Sites for each Jurisdiction in an Agreement Year as specified in Schedule 1.

**Tax** means a tax (including corporate tax, resource rent tax, income tax, fringe benefits tax, payroll tax, PAYG and subcontractor's taxes), levy, duty (including customs duty and stamp duty), excise, charge, royalty (whether based on value, profit or otherwise), fee, surcharge, contribution, impost, deduction or withholding, however it is described, whether direct or indirect, by whatever method collected or recovered, that is imposed by a Regulatory Requirement or by a Regulatory Authority, in any jurisdiction (including a liability on an entity as a result of its being jointly or severally liable for another entity's Tax).

**Trust** means the trust identified in the Schedule (if applicable).

**Unconsumed Load** means an amount equal to the target consumption for the Sites affected by the Break Fee Event (calculated by us based on the actual consumption of those sites as a proportion of the relevant Target Consumption), less your actual consumption at those Sites up to the date of the Break Fee Event.

**Validity Date** means the date specified in the Schedule.

**VEET Legislation** means the *Victorian Energy Efficiency Target Act 2007* and related regulations.

**WH&S Laws** means the *Rail Safety Act 2002* (NSW); *Work Health & Safety Act 2011* (NSW); *Workplace Injury Management and Workers Compensation Act 1998* (NSW), and regulations made under each of those Acts.

**Wilful Default** means with respect to a party:

- (a) any fraud, fraudulent concealment or dishonesty by or on behalf of that party;
- (b) criminal conduct by or on behalf of that party; or
- (c) any breach, act or omission done or omitted to be done by a party or other person acting on behalf of that party with deliberate, knowing or reckless disregard for foreseeable, harmful and avoidable consequences.

#### 40. Interpretation

40.1 Unless otherwise stated:

- (a) a reference to this Agreement or another document includes any variation or replacement of any of it;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute, code or other law includes regulations and other instruments

or directives under it and consolidations, amendments, re-enactments or replacements of any of them;

- (d) a person includes any type of entity or body, whether or not it is incorporated or has a separate legal identity, and any executor, administrator, successor or permitted assigns;
- (e) a reference to a body (other than a party) which ceases to exist, or whose powers or function are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions;
- (f) specifying anything after the words "include" "including", "for example" or similar expression does not limit what is included;
- (g) the expression "relating to" and similar grammatical expressions includes arising from, concerning or in connection with (whether directly or indirectly);
- (h) a reference to a Liability or cost incurred or suffered by us includes Liabilities of our Related Bodies Corporate relating to the relevant matter;
- (i) a reference to a variation of a Charge includes introducing a new charge; and
- (j) all amounts in this Agreement are expressed on GST exclusive basis.

#### 41. RETAILERS PERFORMANCE

41.1 Our performance shall be reviewed and assessed from time to time against key performance indicators, including the following:

- (a) billing:
  - (i) consolidated and supporting (as required);
  - (ii) timeliness (preparation and delivery);
  - (iii) completeness;
  - (iv) minimum substitutions;
  - (v) accuracy; and
  - (vi) timely dispute resolution
- (b) account management:
  - (i) foster sound business relationship;
  - (ii) our availability to respond to issues;
  - (iii) responsiveness;
  - (iv) timely resolution of issues;
  - (v) whole of account perspective; and
  - (vi) innovation (cost minimisation);
- (c) contract management:
  - (i) timely price change notifications in writing;
  - (ii) price changes supported by evidence;
  - (iii) contract management meeting participation; and
  - (iv) timely implementation of agreed actions;
- (d) reporting:
  - (i) accessibility;
  - (ii) timely delivery; and
  - (iii) meets business needs.

41.2 Within one month of the Estimated Supply Date, the parties shall use their best endeavours to:

- (a) develop a methodology to review and report against key performance indicators above; and
- (b) agree a full set of key performance indicators that represent the expectations of both parties under the Agreement against which performance will be constructively reviewed and assessed.

#### 42. MANAGEMENT OF ENVIRONMENTAL CERTIFICATES

42.1 If Schedule 1 specifies an LREC Rate, ESC Rate, or SREC Rate for an Agreement Year, then that Rate is fixed for that Agreement Year.

42.2 For each Agreement Year, where Schedule 1 does not specify an LREC Rate, ESC Rate or SREC Rate you may elect to:

- (a) fix your LREC Rate, ESC Rate and/or SREC Rate or
- (b) transfer to us (at no cost to us) the full amount of LRECs, SRECs and/or ESCs we require to meet our obligations under the REC Legislation and/or ESS Legislation (as applicable) in respect of the electricity supplied to you for that Agreement Year, in accordance with Annexure 2.

42.3 You must notify us of your election under clause 42.2 by 31 October of the previous Agreement Year.

42.4 Where you elect to fix a price for LRECs, ESCs and/or SRECs under clause 42.2(a) we will give you a quote for a LREC Rate, ESC Rate and/or SREC Rate which will apply for the next Agreement Year (**Offer**).

42.5 If you want to accept the Offer, you must notify us by 4pm (AESDT) on the day we make the Offer. If you do not accept the Offer, we agree to discuss a price with you and try to agree a LREC Rate, ESC Rate and/or SREC Rate with you.

42.6 If the parties cannot agree to an LREC Rate, ESC Rate or SREC Rate by 30 November in accordance with clause 42.5, and you do not elect to transfer to us LRECs, ESCs and SRECs in accordance with clause 42.2(b), it will be as if no request was made and clause 42.7 will apply.

42.7 If you do not notify us of your election under clause 42.2 by 31 October, then for the next Agreement Year, the LREC Rate, ESC Rate and/or SREC Rate (as applicable) will be determined by us based on our reasonable forecast of the LREC, ESC and SREC market price respectively and our obligations under the REC Legislation and ESS Legislation.

42.8 If you fix your LREC Rate, SREC Rate and ESC Rate for an Agreement Year under this clause 42, we may vary the LREC Rate, SREC Rate or ESC Rate in accordance with clause 8, 9, 11 or 13.

42.9 For the avoidance of doubt, only one LREC Rate, SREC Rate and ESC Rate will apply for an Agreement Year.

#### 43. REGULATORY REQUIREMENTS

43.1 This clause 43 applies to Schedule 2 Sites only.

43.2 If any matter that is required to be included in this Agreement by a Regulatory Requirement is not expressly dealt with in this Agreement, the Regulatory Requirement is incorporated as if it were a term of this Agreement.

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43.3 If there is any inconsistency between the Agreement and a Regulatory Requirement then this Agreement will prevail to the extent of any inconsistency, unless a Regulatory Requirement provides that it must prevail.

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**Annexure 1     Charges**

The Charges include:

- (a) Energy Charges;
- (b) Environmental Charges;
- (c) Network Charges;
- (d) Regulated Charges;
- (e) Charges relating to Metering Services;
- (f) Adjustment Charge;
- (g) Shortfall Charge;
- (h) Administration Charge and billing Charges;
- (i) Break Fee;
- (j) Peak Adjustment Charge; and
- (k) Off Peak Adjustment Charge.

[commercial-in-confidence]