

# Generator Deed

**The Distributor**

and

**The Customer**

# Contents

<b>Operative Provisions</b>		<b>1</b>
<b>1</b>	<b>Definitions</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	4
<b>2</b>	<b>Term</b>	<b>4</b>
2.1	Term of Deed	4
<b>3</b>	<b>The Distributor's Rights and Obligations</b>	<b>4</b>
3.1	The Distributor's Rights and Obligations	4
3.2	Connection and Energisation	5
3.3	No Compensation	6
<b>4</b>	<b>Export of Electricity</b>	<b>6</b>
4.1	Export of electricity	6
4.2	No export of electricity	6
4.3	Permission to Export of electricity may be revoked in certain circumstances	6
<b>5</b>	<b>Customer's Obligations</b>	<b>6</b>
5.1	National Electricity Rules and Distribution Code	6
5.2	Maximum Import Capacity	8
5.3	Network Tariff	8
5.4	Cessation of Operation	8
5.5	Access to the Customer Site	9
5.6	Deemed Distribution Contract	9
<b>6</b>	<b>The Distributor's Liability</b>	<b>9</b>
6.1	The Distributor not liable	9
6.2	Exclusion of Warranties	9
6.3	Limitation of the Distributor's liability under the Competition and Consumer Act	9
6.4	National Electricity Law	10
<b>7</b>	<b>Customer's Liability and Indemnity</b>	<b>10</b>
7.1	Liability and Indemnity	10
7.2	Indemnities and reimbursements	11
<b>8</b>	<b>Force Majeure</b>	<b>11</b>
<b>9</b>	<b>GST</b>	<b>11</b>
9.1	GST	11
<b>10</b>	<b>Insurance</b>	<b>12</b>
10.1	Insurance	12
<b>11</b>	<b>Termination</b>	<b>13</b>
11.1	Termination by the Distributor	13
11.2	Termination by the Customer	13

11.3	Termination for insolvency	13
11.4	Automatic Termination	14
11.5	Disconnection upon termination	14
<hr/>		
<b>12</b>	<b>Change in Electricity Law</b>	<b>14</b>
12.1	Obligations upon Change in Electricity Law	14
12.2	Dispute Resolution	15
<hr/>		
<b>13</b>	<b>General</b>	<b>15</b>
13.1	Special Conditions	15
13.2	Assignment	15
13.3	Governing Law and Jurisdiction	15
13.4	Waiver	16
13.5	Notices	16
13.6	Responsible Officer	16
13.7	Variation	16
13.8	Entire Agreement	16
13.9	Costs	16
13.10	No Agency or Partnership	16
13.11	Dispute Resolution	17



**Change in Electricity Law** means the occurrence of any one or more of the following after the date of execution of this Deed:

- (a) the enactment of any new Electricity Law;
- (b) the repeal, modification or re-enactment of any existing Electricity Law;
- (c) a change in the official interpretation or application of any Electricity Law; or
- (d) the commencement of any Electricity Law which has not yet entered into effect.

**Codes** mean the Distribution Code or any other code, order or other instrument applying from time to time to the Victorian region of the National Electricity Market, whether pursuant to statute, an order or certification of the AER, ESC or otherwise.

**Commencement Date** means that date specified in **item 2** of **Schedule 1**.

**Connect** has the meaning given to it in the National Electricity Rules.

**Deemed Distribution Contract** means the contract deemed to be entered into by the Distributor and the Customer under section 40A of the Act.

**Distribution Code** means the Electricity Distribution Code issued by the ESC pursuant to the Act.

**Distribution Licence** means a licence to distribute and supply electricity granted under the Act.

**Distribution System** has the meaning given to it in the National Electricity Rules.

**Electricity Law** means the Codes, the Electricity Industry Act 2000 (Vic) and regulations under that Act, the Electricity Safety Act (Vic) 1998 and regulations under that Act, the Essential Services Commission Act 2001 (Vic) and regulations and determinations under that Act, the National Electricity (Victoria) Act (Vic) 2005, the Energy Safe Victoria Act (Vic) 2005 and regulations under that Act, the National Electricity Law, the National Electricity Rules, and any other law, statute, regulation, proclamation, order in council, direction, tariff, guideline or standard which can be enforced by law or by a regulatory authority against a participant in the Victorian region of the National Electricity Market.

**Embedded Generating Unit** means the electricity generator described in **item 3** of **Schedule 1**.

**Embedded Generator** has the meaning given to that term by the National Electricity Rules.

**Energise** has the meaning given to it in the National Electricity Rules.

**ESC** means the Essential Services Commission established under the Essential Services Commission Act 2001 (Vic), or any body which assumes its functions.

**ESV** means Energy Safe Victoria established under the Energy Safe Victoria Act 2005 (Vic), or any body which assumes its functions.

**Force Majeure Event** means any event beyond the reasonable control of a party which could not have been avoided by that party taking all reasonable steps and includes an act of God, war, riot, natural disaster, act of terrorism, act of public enemy, strikes, blockades, lock out or

other industrial dispute but specifically does not include unavailability of items of equipment comprising the Embedded Generating Unit.

**Government Agency** means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal Government Agency, whether statutory or not.

**Land** means the land specified in **item 8** of **Schedule 1**.

**Maximum Import Capacity** means the rate specified in **item 7** of **Schedule 1**.

**Maximum Export Capacity** means the rate specified in **item 5** of **Schedule 1**.

**National Electricity Rules** means the rules made in accordance with the National Electricity Law.

**National Electricity Law** means the National Electricity (Victoria) Law which applies in Victoria as a result of the operation of section 6 of the National Electricity (Victoria) Act (Vic) 2005.

**National Electricity Market** has the meaning given to it in the National Electricity Law.

**Non-Regulatory Matter** means any dispute or difference other than a Regulatory Matter.

**Point of Supply** means the point of supply specified in **item 4** of **Schedule 1**.

**Regulatory Matter** means any dispute or difference which is to be, or is capable of being, determined in accordance with the National Electricity Rules.

**Responsible Officer** means in relation to each party, that person specified in **item 9** of **Schedule 1**.

**Retailer** has the meaning given to it under the Electricity Law.

**Service and Installation Rules** means the Victorian Electricity Distributors Service and Installation Rules a copy of which may be found on the following website:  
[www.victoriansir.org.au/sirs.html](http://www.victoriansir.org.au/sirs.html).

**Special Conditions** means the Special Conditions (if any) provided in **item 10** of **Schedule 1**.

**Supply** has the meaning given to it in the National Electricity Rules.

**Supply Address** means the supply address specified in **item 6** of **Schedule 1**.

**Term** has the meaning given to it in **clause 2.1**.

## 1.2 Interpretation

### (a) General

In this Deed (including the Recitals) unless a contrary intention appears:

- (i) a reference to any legislation or statutory instrument includes a reference to that legislation or statutory instrument as amended, modified, re-enacted and replaced from time to time, any rulings, regulations, guidelines or codes made or issued under or in relation to that legislation or statutory instrument;
- (ii) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this Deed;
- (iii) a reference to this Deed includes a reference to any schedules and annexures to this Deed;
- (iv) a reference to a document includes a reference to that document as amended or replaced from time to time;
- (v) if the day on which any act, matter or thing is to be done under this Deed is not a Business Day, that act, matter or thing must be done no later than the next Business Day.

### (b) Headings

In this Deed headings are used for reference only and do not affect the construction of any provision in this Deed.

### (c) Parties Bound

- (i) This Deed binds and benefits each party and their respective successors, assigns and legal personal representatives.
- (ii) If a party consists of more than one person, this Deed binds them jointly and each of them severally.

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## 2 Term

### 2.1 Term of Deed

This Deed will commence on the Commencement Date and continues for a term of 25 years, unless terminated earlier in accordance with this Deed.

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## 3 The Distributor's Rights and Obligations

### 3.1 The Distributor's Rights and Obligations

- (a) From the Commencement Date and subject to **clauses 3.1(c), 5, 7 and 11.4**, the Distributor will comply with all applicable requirements of the Electricity Law when performing its obligations under this Deed.
- (b) Where the Customer is permitted to export electricity under this Deed, the Distributor will use its reasonable endeavours to ensure that its Distribution System is capable of

accepting the export of electricity from the Embedded Generating Unit to its Distribution System through the Point of Supply up to the Maximum Export Capacity

- (c) The Distributor may discontinue, interrupt or limit the quantity of electricity exported to the Distribution System at any time for the following reasons:
- (i) planned maintenance, repair or augmentation of the Distribution System;
  - (ii) unplanned maintenance or repair of the Distribution System in circumstances where, in the reasonable opinion of the Distributor, the Embedded Generating Unit poses an immediate threat of injury or material damage to a person, property or the Distribution System;
  - (iii) where otherwise permitted or required under the Electricity Law or in accordance with any valid direction given by an authority in accordance with Electricity Law;
  - (iv) in the case of an emergency;
  - (v) where the Customer has not obtained or has failed to maintain all necessary Authorisations or is otherwise in breach of its obligations under **clause 5.1** and has not remedied that failure or breach within 7 days after receiving a notice from the Distributor to remedy that failure or breach;
  - (vi) where the Customer has failed to act as required under Electricity Law and has not remedied that failure within 7 days after receiving a notice from the Distributor to remedy that failure; and
  - (vii) where the Distributor is entitled or required to disconnect the Point of Supply under its Deemed Distribution Contract.
- (d) If the Distributor discontinues, interrupts or limits the acceptance of export electricity under **clause 3.1(c)**, the Distributor must, after making allowance for the Distributor's total operational works program and Distribution System priorities, use reasonable endeavours to resume accepting the export of electricity as soon as possible after the reason for the discontinuance, interruption or limitation has been remedied or removed or otherwise ceases.
- (e) In the event of:
- (i) emergency;
  - (ii) any risk to the health or safety of any person or the Distribution System; or
  - (iii) matters relating to the Distributor's operation of its electricity distribution business,

the Distributor may at its sole discretion immediately block or isolate the control system that operates the Embedding Generating Unit.

### **3.2 Connection and Energisation**

The Distributor will connect and/or energise the Customer's Supply Address in accordance with its obligations under the Deemed Distribution Contract.



### 3.3 No Compensation

In the event the Embedded Generating Unit of the Customer is *constrained off* or *constrained on* during a *trading interval* for the purposes of clause 5.5(f)(4)(ii)(A) of the National Electricity Rules, the Distributor will not pay any compensation to the Customer.

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## 4 Export of Electricity

### 4.1 Export of electricity

If **item 5 of Schedule 1** specifies a Maximum Export Capacity, the Customer is permitted to export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System in accordance with this Deed.

### 4.2 No export of electricity

If **item 5 of Schedule 1** specifies that there is to be no export of electricity, the Customer must not export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System.

### 4.3 Permission to Export of electricity may be revoked in certain circumstances

- (a) The Distributor may by 30 days' written notice to the Customer revoke its permission for the Customer to export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System if, in the Distributor's opinion:
  - (i) the export of electricity from the Embedded Generating unit has not commenced within 6 months after the Commencement Date; or
  - (ii) there has been no export of electricity from the Embedded Generating Unit for any continuous period of 3 months.
- (b) If the Distributor provides the Customer with a notice in accordance with **clause 4.3**, at the end of the notice period the Customer must not export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System.

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## 5 Customer's Obligations

### 5.1 National Electricity Rules and Distribution Code

- (a) The Customer must comply with all obligations imposed on it by the Electricity Law and any direction given in accordance with the Electricity Law in relation to the connection and operation of the Embedded Generating Unit and the export of electricity from the Embedded Generating Unit.
- (b) The Customer must comply with the Distribution Code as though the Customer were an "embedded generator" (as defined in the Distribution Code).
- (c) Where the Customer is permitted to export electricity under this Deed, the Customer must obtain all necessary Authorisations and statutory approvals from the relevant responsible authorities to enable the Distributor to accept the export of electricity from the Embedded Generating Unit to its Distribution System.

- (d) In particular and without limiting the Customer's obligations under this clause, the Customer must:
- (i) ensure that the Embedded Generating Unit complies with, and is installed and maintained in accordance with:
    - (A) all applicable Australian Standards;
    - (B) the Electricity Safety Act 1998 (Vic) and any regulations applicable to installations issued under that Act;
    - (C) any other technical requirements reasonably required by the Distributor (including, without limitation, the Service and Installation Rules to the extent that they apply to the Embedded Generating Unit);
    - (D) in the case of any Embedded Generating Unit over 5 MW which exports electricity under this Deed, the registered performance standards for the Embedded Generating Unit under the National Electricity Rules, a copy of which is contained in **Schedule 2**; and
    - (E) in the case of any Embedded Generating Unit less than 5 MW which exports electricity under this Deed, the performance standards for the Embedded Generating Unit as notified by the Distributor, a current copy of which is contained in **Schedule 3**.
  - (ii) use its best endeavours to ensure the Embedded Generating Unit is maintained in a safe condition;
  - (iii) use its best endeavours to ensure the Distribution System and the reliability and quality of Supply to other customers of the Distributor are not adversely affected by the Embedded Generating Unit and the Customer's use or operation of it;
  - (iv) inform the Distributor as soon as practicable if there is any:
    - (A) proposed change to wiring or plant or equipment in relation to the Embedded Generating Unit which may affect the ability of the Embedded Generating Unit to comply with this clause;
    - (B) change to the major purpose for which the electricity is used in relation to the Embedded Generating Unit;
    - (C) change affecting access to the Distributor's equipment located in or around the Embedded Generating Unit; and
    - (D) major change to the amount of electricity likely to be used by the Customer in relation to the Embedded Generating Unit;
  - (v) notify the Distributor without delay if it becomes aware of:
    - (A) anything that materially affects or is likely to affect its ability to comply with its obligations under this Deed;

- (B) anything that occurs or becomes apparent that may affect the safety of its own or the Distributor's employees or agents, the Distributor's customers or their employees, agents or customers or any member of the public or result in the Distributor being in breach of the Codes, the Distribution Licence or the Act; or
  - (C) a material claim, dispute, proceeding, judgment or award affecting the Customer.
- (vi) where the Customer is permitted to export electricity under this Deed, not export electricity through the Point of Supply at a rate exceeding the Maximum Export Capacity.

## 5.2 Maximum Import Capacity

- (a) The Customer must not take electricity at a rate exceeding the Maximum Import Capacity at the Point of Supply, unless the Distributor's prior written approval is obtained, which approval will not be unreasonably withheld. The Customer acknowledges that this is a reasonable requirement as contemplated by clause 2.6.1(d) of the Distribution Code.
- (b) Where the capacity of the Distributor's Distribution System is inadequate to make supply available at a higher rate on a continuous basis, the Distributor may advise the Customer that the new Maximum Import Capacity will apply only for the Billing Cycle in which it was established, pending augmentation of the Distributor's Distribution System and renegotiation of a revised Maximum Import Capacity. The Maximum Import Capacity thereafter is limited to the available capacity of the Distributor's Distribution System, as determined by the Distributor, by suitable load limiting equipment installed by the Customer to the Distributor's satisfaction.

## 5.3 Network Tariff

As at the date of signing this Deed, the Customer is not required to pay any network tariffs in relation to the export of electricity from the Embedded Generating Unit. If there is a Change in Electricity Law which entitles the Distributor to charge the Customer network tariffs in relation to the export of electricity from the Embedded Generating Unit, the Customer agrees that it will pay the Distributor any such relevant network tariff.

## 5.4 Cessation of Operation

If the Customer, for any reason, ceases to be responsible for operating the Embedded Generating Unit, the Customer must:

- (a) advise the proposed operator that it must not take electricity in excess of the Maximum Import Capacity;
- (b) give notice to the Distributor specifying the proposed date of cessation; and
- (c) where another person will become responsible for operating the Embedded Generating Unit, subject to first obtaining the Distributor's consent in accordance with **clause 13.2**, procure the person who will become responsible for operating the Embedded Generating Unit to execute a deed of novation under which it becomes bound by this Deed.

## **5.5 Access to the Customer Site**

- (a) The Customer must give the Distributor reasonable access to the Land at all times for the purpose of complying with, or monitoring compliance with, the obligations of the parties under this Deed and the Electricity Law as it relates to the obligations of the parties under this Deed.
- (b) The Customer may refuse to give access under this **clause 5.5** to anyone who does not provide identification as an employee, contractor, subcontractor, officer or agent of the Distributor.

## **5.6 Deemed Distribution Contract**

- (a) The Customer must comply with all obligations imposed on it by the Deemed Distribution Contract.
- (b) The Customer warrants that it has and will continue to maintain a valid contract with a Retailer.
- (c) The Customer acknowledges and agrees that if it wishes to cease to have a valid contract with a Retailer:
  - (i) it will give written notification to the Distributor in a timely manner;
  - (ii) upon written request of the Distributor, the parties shall promptly meet to discuss and, acting in good faith, agree upon any amendments that may be required to the terms of this Deed or the terms of a new agreement; and
  - (iii) until such time as the parties have executed a variation to this Deed or entered into a new agreement, the Deemed Distribution Contract will continue to apply notwithstanding clause 2.2(b) of the Deemed Distribution Contract.

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# **6 The Distributor's Liability**

## **6.1 The Distributor not liable**

To the fullest extent permitted by law, except for personal injury or death directly caused by a negligent act or omission of the Distributor, the Distributor will not otherwise be liable to Customer, whether in contract, tort (including negligence), under statute or regulation, in equity or any other legal basis for any loss, damage (including economic and consequential loss or damage), injury, death, costs, charges or expenses resulting from or in any way connected with this Deed.

## **6.2 Exclusion of Warranties**

To the maximum extent permitted by law, all statutory or implied conditions and warranties are excluded from this Deed, and, to the extent they cannot be excluded, all liability in relation to them is disclaimed to the maximum extent permitted by law.

## **6.3 Limitation of the Distributor's liability under the Competition and Consumer Act**

The Competition and Consumer Act 2010 (Cth) and other laws may imply certain terms into this Deed that cannot be legally excluded. Any liability the Distributor has to the Customer

under any such term is limited to the maximum extent permitted under law and, if the law allows, is limited to:

- (a) in the case of goods, the supply of equivalent goods or paying the Customer the cost of acquiring equivalent goods (at the Distributor's option); and
- (b) in the case of services, supplying the services again or paying the Customer the cost of acquiring equivalent services (at the Distributor's option).

#### **6.4 National Electricity Law**

Notwithstanding anything else in this Deed, the Distributor is not liable for any failure to comply with this Deed if, and to the extent that:

- (a) the Distributor is relieved from the performance of, or liability in respect of, its obligations by the operation of section 119 and 120 of the National Electricity Law (and for the avoidance of doubt nothing in this Deed varies any of the legislative provisions mentioned above); or
- (b) the failure to comply arises as a result of the Customer's negligence, breach of this Deed or the Electricity Law or a Force Majeure Event.

Clauses **6.4(a)** and **(b)** are not exhaustive and do not limit or diminish other reasons why the Distributor may not be liable to the Customer under the law.

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## **7 Customer's Liability and Indemnity**

### **7.1 Liability and Indemnity**

- (a) Without prejudice to any other rights or remedies the Distributor may have under this Deed or at law, the Customer is liable for and indemnifies and agrees to keep the Distributor indemnified against all claims, actions, demands, proceedings, liabilities, damages, losses, amounts, costs and expenses (including legal costs and disbursements on a solicitor and own client basis) arising, paid, suffered or incurred by the Distributor (directly or indirectly) as a result of or in connection with:
  - (i) a negligent act or omission by the Customer;
  - (ii) any breach or non-performance of any express or implied obligation of the Customer under this Deed; or
  - (iii) any breach of or non-performance of an obligation imposed on the Customer under Electricity Law that relates to the operation of, or the export of electricity from, the Embedded Generating Unit.
- (b) In this **clause 7**, costs and expenses includes all reasonable legal costs and expenses on a solicitor and own client basis.
- (c) The Customer's liability under this Deed is reduced proportionately to the extent that the Distributor's negligent acts or omissions have caused or contributed to such loss, damage, expense or injury.

## 7.2 Indemnities and reimbursements

If a party is to indemnify, reimburse or pay a contribution to the other party under this Deed, the amount the paying party must pay the other is:

- (a) reduced by any input tax credit the other could have obtained in connection with that indemnity, reimbursement or contribution; and
- (b) increased by the GST the other is liable for on that indemnity, reimbursement or contribution.

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## 8 Force Majeure

- (a) Subject to **clause 8(c)**, neither party will be liable for any delay or failure to perform its obligations pursuant to this Deed (other than an obligation to pay money) to the extent that the delay or failure to perform its obligations is caused by a Force Majeure Event.
- (b) Subject to **clause 8(c)**, a party's obligations will be suspended to the extent that a delay or failure of the party to perform its obligations (other than an obligation to pay money) is caused by a Force Majeure Event.
- (c) A party suffering a Force Majeure Event (the **Affected Party**) must:
  - (i) as soon as practicable after the commencement of a Force Majeure Event, give the other party (the **Non-Affected Party**) notice in writing of the occurrence and details of the Force Majeure Event and the estimated delay in performance of any obligations resulting from the occurrence and regularly update those details and the estimated delay during the period of the Force Majeure Event; and
  - (ii) do all things reasonably required to mitigate the effect of the Force Majeure Event.
- (d) If an Affected Party's obligations are suspended due to a Force Majeure Event for a continuous period of 12 months, the Non-Affected Party may, at the expiry of that 12 month period, terminate this Deed by written notice to the Affected Party.

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## 9 GST

### 9.1 GST

- (a) The terms "Adjustment", "Adjustment Note", "Adjustment Event", "Decreasing Adjustment", "GST", "Increasing Adjustment", "Recipient", "Supplier", "Supply", "Taxable Supply", "Tax Invoice" and "Tax Period", have the meanings given in Section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) The parties acknowledge that all amounts payable under this Deed are expressed on a GST inclusive basis and reflect the rate of GST applicable at the time the amounts payable are calculated.
- (c) If, after the Commencement Date of this Deed, the GST rate changes (including to an effective rate of zero for any particular Supply) (the **New GST Rate**), the parties

agree that the Supplier may vary the GST inclusive price for any Supply made under this Deed that is attributable to a tax period on or after the commencement of the New GST rate, to reflect the new amount of GST payable (if any).

- (d) Each party agrees that to the extent it makes Taxable Supplies under this Deed, it shall issue a Tax Invoice to the other party. As a precondition to that party paying any amount in respect of a Taxable Supply, the Supplier must issue a Tax Invoice for that Taxable Supply.
- (e) If, in relation to a Taxable Supply made under this Deed, an Adjustment Event occurs that gives rise to an Adjustment, then the price of that Taxable Supply (including any GST Amount) will be adjusted accordingly and where necessary a payment will be made to reflect that Adjustment. If a payment is required it will be made within five (5) Business days of the payer becoming aware of the Adjustment. As a precondition paying any amount to a supplier in respect of an Adjustment, the supplier must issue an Adjustment Note.
- (f) If a Supply made under this Deed is treated as not subject to GST but is, or becomes, a Taxable Supply, the supplier may charge and recover from the Recipient in addition to any other consideration, an amount equivalent to the GST payable on that Taxable Supply.
- (g) If any party is required to pay, reimburse or contribute to an amount paid or payable by another party in respect of an acquisition from a third party, the amount for payment, reimbursement or contribution shall be the acquisition price paid by the acquiring party, less any input tax credit it is entitled to claim, plus GST.

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## 10 Insurance

### 10.1 Insurance

- (a) Subject to **clause 10.1(e)**, the Customer must at its cost, during the term, maintain public liability insurance in respect of personal injury, death or property damage that arises in respect to the operation of this Deed, for an amount of not less than the amount specified in **item 11 of Schedule 1** (the **Minimum Insurance Amount**).
- (b) The public liability policy maintained in accordance with this clause must be with an insurer, and be on terms, reasonably acceptable to the Distributor.
- (c) The Customer must comply with and observe the terms of the public liability policy and must not do anything which could result in the policy being rendered void or voidable.
- (d) The Customer must deliver to the Distributor evidence satisfactory to the Distributor, that the Customer has the public liability policy required in accordance with this clause and that the policy is current, promptly after a written request by the Distributor to do so.
- (e) With effect from each fifth anniversary of the Commencement Date (**Review Date**), the Minimum Insurance Amount will be adjusted in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

- A = the Minimum Insurance Amount from the Review Date;
- B = the Minimum Insurance Amount applicable immediately before the Review Date;
- C = the Consumer Price Index All Groups Victoria last published by the Australian Bureau of Statistics before the relevant Review Date; and
- D = the Consumer Price Index All Groups Victoria last published by the Australian Bureau of Statistics before the Review Date preceding the relevant Review Date and in the case of the first review, the Commencement Date.

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## **11 Termination**

### **11.1 Termination by the Distributor**

- (a) The Distributor may immediately terminate this Deed by written notice to the Customer if, in the Distributor's opinion, any of the following occurs:
- (i) any act or omission of the Customer places the safety of its own or the Distributor's employees or agents, the Distributor's customers or their employees, agents or customers or any member of the public at risk;
  - (ii) any act or omission of the Customer causes the Distributor to be in breach of its obligation under the Codes, the Distribution Licence or the Act; or
  - (iii) any act or omission of the Customer places the Distribution System or the efficient operation of the Distribution System seriously at risk.
- (b) The Distributor may terminate this Deed by 30 days written notice to the Customer if, in the Distributor's opinion, the Customer fails to remedy a breach of any of its obligations under this Deed within 14 days of receiving written notice of the breach from the Distributor.

### **11.2 Termination by the Customer**

The Customer may terminate this Deed by 30 days written notice to the Distributor if the Distributor fails to remedy a breach of any of its obligations under this Deed within 14 days of receiving written notice of the breach from the Customer.

### **11.3 Termination for insolvency**

Either party may give written notice to terminate this Deed immediately if the other party:

- (a) commits an act of bankruptcy;
- (b) has a winding up order made against it;



- (c) calls a meeting of its creditors;
- (d) has a receiver appointed over all or substantial part of its assets;
- (e) appoints an administrator;
- (f) passes a resolution for its winding up; or
- (g) compounds with its creditors.

This **clause 11.3** will not apply to the reconstruction or amalgamation of a party while solvent.

#### **11.4 Automatic Termination**

This Deed will automatically terminate (without the need for the provision of notice by either party) if:

- (a) the Point of Supply is disconnected in accordance with the Deemed Distribution Contract or as permitted under the Electricity Law, and is not reconnected within 12 months of the disconnection;
- (b) the Embedded Generating Unit is decommissioned;
- (c) the Customer fails to commence export of electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System within 12 months of connection to the Distributor's Distribution System;
- (d) the Customer fails to export of electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System for a continuous period of 6 months; or
- (e) the Negotiated Connection Contract for works to connect the Customer's Embedded Generating Unit to the Distributor's Distribution System is terminated by either party for any reason.

#### **11.5 Disconnection upon termination**

Upon termination of this Deed, the Distributor may disconnect the Embedded Generating Unit from the Distribution System.

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## **12 Change in Electricity Law**

### **12.1 Obligations upon Change in Electricity Law**

If there is a Change in Electricity Law during the Term which:

- (a) has a material effect on the terms of this Deed;
- (b) affects the ability of either party to fulfil its obligations under this Deed;
- (c) results in a material change in the allocation of risk between the parties as reflected in this Deed, or has the effect of providing a new and material financial benefit to one party whether at the expense of the other or not; or
- (d) imposes a new financial cost, impost or liability upon either party,

then upon the written request of either party, the parties shall promptly meet to discuss and, acting in good faith, agree upon any amendments that may be required to the terms of this Deed to give effect to the Change in Electricity Law.

## **12.2 Dispute Resolution**

If the parties are unable to come to an agreement under **clause 12.1** (and a dispute or difference shall be deemed to have arisen if the parties have not reached agreement within 30 days of the written request pursuant to **clause 12.1**), either party is entitled to terminate this Deed upon 30 days written notice to the other party.

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## **13 General**

### **13.1 Special Conditions**

Any Special Conditions set out in **item 10** of **Schedule 1** form part of this Deed. To the extent of any inconsistency between any of the Special Conditions and the rest of this Deed, the Special Conditions will prevail.

### **13.2 Assignment**

- (a) The Customer may assign its rights or transfer its obligations under this Deed with the prior written consent of the Distributor which must not be unreasonably withheld or delayed.
- (b) Subject to **clause 13.2(c)**, the Distributor may assign its rights or transfer its obligations under this Deed with the prior written consent of the Customer which must not be unreasonably withheld or delayed.
- (c) the Distributor may assign its rights or transfer its obligations under this Deed in its absolute discretion if the assignee or transferee (as the case requires) holds a Distribution Licence. The Customer agrees to execute any document the Distributor may reasonably require to effect such assignment or transfer.
- (d) The Customer may grant security over its rights and obligations under this Deed to financiers, provided that such financiers may only assign or transfer those rights or obligations to an assignee who:
  - (i) holds an electricity generation licence; and
  - (ii) meets all relevant requirements of the AER, ESC and ESV and the Electricity Law,

for the operation of the Embedded Generating Unit.

### **13.3 Governing Law and Jurisdiction**

The law of this Deed is the law of Victoria. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of Victoria or courts having jurisdiction in Victoria and of all courts competent to hear appeals from those courts. The parties waive any right to object to any proceedings being brought in those courts.

### **13.4 Waiver**

A party's failure or delay to exercise a power, right, authority, discretion or remedy does not operate as a waiver of that power, right, authority, discretion or remedy. The waiver of a breach of any of the provisions of this Deed or a power, right, authority, discretion or remedy under this Deed must be in writing and executed by the waiving party.

### **13.5 Notices**

- (a) The party giving notice or notifying under this Deed must do so in legible writing and in English:
  - (i) directed to the recipient's address as set out in **item 12 of Schedule 1** or as varied by any notice;
  - (ii) signed by the party, or, where the sender is a company, by an authorised representative or under the common seal of the sender; and
  - (iii) hand delivered or sent by pre-paid post, (airmail if to or from a place outside Australia).
- (b) A notice given in accordance with **clause 13.5(a)** is taken to be received:
  - (i) if hand delivered, on delivery; and
  - (ii) if sent by prepaid post, five days after the date of posting.

### **13.6 Responsible Officer**

Each party's Responsible Officer, or a substitute nominated in writing by that party, is authorised by that party to undertake any action and bind that party pursuant to, and for the purposes of this Deed.

### **13.7 Variation**

The parties may only vary this Deed by agreement in writing.

### **13.8 Entire Agreement**

This Deed sets out all the terms agreed by the parties and the Customer acknowledges that it has not relied on any representation, inducement, warranty or promise which is not contained in it.

### **13.9 Costs**

Each party must pay its own costs in relation to preparing, negotiating and executing this Deed and any document related to this Deed.

### **13.10 No Agency or Partnership**

No party is an agent, representative, partner or fiduciary of any other party by virtue of this Deed.

## 13.11 Dispute Resolution

### (a) Disputes

Any dispute or difference arising between the parties out of or in connection with this Deed must be resolved in accordance with this clause.

### (b) Notice of Dispute

Should any dispute or differences arise between the parties out of or in connection with this Deed, either party may give written notice of the dispute or difference to the other party. The notice shall state that it is a notice under this clause and shall identify the dispute concerned and the clauses of this Deed relevant to the dispute.

### (c) Referral to senior representative

If the parties fail to resolve a dispute or difference within 10 business days of a notice of dispute being given under this clause, the dispute or difference must be referred for resolution to each party's authorised senior representative whose decision shall be binding. If the matter is not resolved within 5 business days of such referral either party may then take further action in accordance with **clause 13.11(d)** or **13.11(e)**.

### (d) Expert Determination

- (i) The parties must comply with **clauses 13.11(b)** and **13.11(c)** as a pre-condition to submitting a Non-Regulatory Matter for dispute resolution in accordance with this clause.
- (ii) If a Non-Regulatory Matter is not resolved by the senior representatives of the parties as contemplated in **clause 13.11(c)**, either party may submit the Non-Regulatory Matter to expert determination by giving notice in writing to the other party. The provisions of the of the Expert Determination Rules 2001 as published by The Institute of Arbitrators and Mediators Australia (to be found on its website [www.iama.org.au](http://www.iama.org.au)) shall apply, except to the extent that they are inconsistent with provisions in this Deed.

### (e) Regulatory Matter

If a dispute or difference is a Regulatory Matter, the parties will resolve that dispute in accordance with the procedures specified in the Electricity Law for the resolution of that type of dispute.

**EXECUTED as a DEED**

**Executed as a deed** for and on behalf of the  
Distributor named in **Item 1 of Schedule 1**  
by its authorised representative in the presence  
of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name  
(Block Letters)

\_\_\_\_\_  
Name of witness  
(Block Letters)

**Executed as a deed** for and on behalf of the  
Customer named in **Item 1 of Schedule 1**  
by its authorised representative in the  
presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name  
(Block Letters)

\_\_\_\_\_  
Name of witness  
(Block Letters)

# Schedule 1

<b>Item 1</b>	<b>Customer</b>	
	<b>Distributor</b>	
<b>Item 2</b>	<b>Commencement Date</b>	
<b>Item 3</b>	<b>Embedded Generating Unit</b>	
<b>Item 4</b>	<b>Point of Supply</b>	
<b>Item 5</b>	<b>Maximum Export Capacity</b>	
<b>Item 6</b>	<b>Supply Address</b>	
<b>Item 7</b>	<b>Maximum Import Capacity</b>	
<b>Item 8</b>	<b>Land</b>	
<b>Item 9</b>	<b>Distributor Responsible Officer</b>	
	<b>Customer Responsible Officer</b>	
<b>Item 10</b>	<b>Special Conditions</b>	
<b>Item 11</b>	<b>Public Liability Insurance</b>	Cover for an amount not less than \$20 million for any one occurrence and in the aggregate per annum
<b>Item 12</b>	<b>Distributor Address for Notices</b>	
	<b>Customer Address for Notices</b>	

## **Schedule 2 - Registered Performance Standards for Embedded Generating Unit over 5 MW**

## **Schedule 3 - Performance Standards for Embedded Generating Unit less than 5 MW**