



**Recoverable Works Contract**

between

**The Distributor**

and

**The Customer**

## Recoverable Works Contract

This Contract is made

Between

The **Distributor** (named in Schedule 1 of this Contract) (the "Distributor"); and

The **Customer** (named in Schedule 1 of this Contract) (the "Customer").

**Recitals**

The Distributor has offered and the Customer has accepted the Distributor's offer to construct the Works or arrange the construction of the Works in accordance with this Contract. The offer is made on the basis of the least cost technically acceptable method of carrying out the Works.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Contract, unless a contrary intention appears:

"Business Day"	means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.
"Charges"	means the charges to be paid by the Customer in accordance with clause 5 and specified in item 5 of Schedule 1, including any additional charges as may be notified by the Distributor in accordance with clause 4.3 and clause 5.
"Code"	means any 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 ESC or otherwise.
"Commencement Date"	means the date this Contract is executed by both parties.
"Completion Date"	means the date specified in item 10 of Schedule 1 for completion of the Works.
"Construction Design"	means the plans and instructions describing the Works.
"Construction Program"	means the indicative timeframe for design and construction of the Works prepared by the Distributor in accordance with clause 4.1 and as specified in item 10 of Schedule 1.
"Customer's Responsible Officer"	means the person specified in item 8 of Schedule 1.
"Customer Works"	means the works to be completed by the Customer specified in item 12 of Schedule 1.

"Distributor's Responsible Officer"	means the person specified in item 7 of Schedule 1.
"Drawing"	means the conceptual design of the Works (if any) set out in Schedule 2.
"Electricity Distribution Code"	means the code of that name issued by the ESC pursuant to the <i>Electricity Industry Act (Vic)</i> 2000.
"Electricity Law"	means the Codes, the <i>Electricity Industry Act (Vic)</i> 2000 and regulations under that Act, the <i>Electricity Safety Act (Vic)</i> 1998 and regulations under that Act, the <i>Essential Services Commission Act (Vic)</i> (2001) and regulations and determinations under that Act, the <i>National Electricity (Victoria) Act (Vic)</i> 2005 and the National Electricity Law, the Deemed Distribution Contract 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.
"ESC"	means the Essential Services Commission under the <i>Essential Services Commission Act (Vic)</i> 2001, or any body which assumes its functions.
"Land"	means the land specified in item 2 of Schedule 1.
"National Electricity Law"	means the National Electricity Law which applies in Victoria as a result of the operation of section 6 of the <i>National Electricity (Victoria) Act (Vic)</i> 2005.
"National Electricity Rules"	means the rules made under the National Electricity Law.
"Premises"	means the premises within the Land upon which the Works will be constructed.
"Special Conditions"	means the Special Conditions (if any) provided in item 11 of Schedule 1.
"Start Date"	means the date specified in the Construction Program for commencement of the Works.
"Term"	has that meaning given to it in Clause 2.
"Works"	means the works to be completed pursuant to this Contract specified in item 9 of Schedule 1 and, if provided, as set out in the Drawing, and any services supplied by the Distributor under this Contract.

##### 1.2 Interpretation

###### (a) General

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

- (i) the singular includes the plural and vice versa and reference to a gender includes other genders;
- (ii) a reference to any legislation or statutory instrument includes all regulations and amendments to that legislation or statutory instrument and any legislation passed in substitution for that legislation or statutory instrument or incorporating any of its provisions to the extent that they are incorporated;
- (iii) a reference to a party to this Contract includes its successors and permitted assigns;
- (iv) where a word or phrase is defined, its other grammatical forms of have a corresponding meaning;
- (v) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this Contract;
- (vi) a reference to any agreement or document includes that agreement or document as amended or replaced from time to time;
- (vii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (viii) when a thing is required to be done (other than the payment of money) under this Contract on a day which is not a Business Day, the thing must be done and the money paid on the next Business Day; and
- (ix) no term or provision of this Contract is to be construed against a party on the basis that the Contract or the term in question was put forward or drafted by or on behalf of that party.

(b) **Headings**

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

(c) **Parties Bound**

This Contract binds and benefits each party and their respective successors, assigns and legal personal representatives.

If a party consists of more than one person, this Contract binds them jointly and each of them severally.

**2. TERM**

This Contract will commence on the Commencement Date and will continue until all of the obligations of the Customer and the Distributor under this Contract have been fulfilled or until terminated in accordance with this Contract.

**3. CONDITIONS PRECEDENT**

Without prejudice to any rights the Distributor has under this Contract, the Distributor will not be required to perform any obligation under this Contract until the following conditions precedent have been satisfied:

- (a) the Customer obtaining and providing to the Distributor the written consent of the Registered Proprietor (or any other person whose consent is required) to enter upon and to perform the Works on the Land and the Premises, or if the Customer is the Registered Proprietor then the Customer providing such consent to the Distributor;
- (b) all Customer Works specified in item 12 of Schedule 1 have been completed by the Customer to the satisfaction of the Distributor's Responsible Officer; and
- (c) any and all other works required to enable the Works to commence have been completed by the Customer to the satisfaction of the Distributor's Responsible Officer.

**4. CONSTRUCTION OF WORKS**

**4.1 Construction Program**

- (a) The Distributor will prepare a Construction Program that includes a Start Date as well as a date for completion of the Construction Design.
- (b) The Distributor will use its reasonable endeavours to construct the Works in accordance with the Construction Program.
- (c) Subject to clause 4.3, the Distributor will use its reasonable endeavours to complete the Works by the Completion Date.

**4.2 Design and Construction of Works**

- (a) The Distributor will prepare the Construction Design which will be consistent with the Drawing (if provided).
- (b) Once the Construction Design has been completed, the Distributor will construct the

Works on the least cost technically acceptable basis and in accordance with this Contract.

- (c) The Distributor may give the Customer a written notice requesting a variation to the Drawing (if provided) where:
- (i) there is a physical condition on the Land or its near surrounds which differs from the physical conditions which should reasonably have been anticipated by the Distributor; or
  - (ii) land access rights (including a licence, Registered Easement, Substation Lease, Agreement for Lease or memorandum of Contract) are required by the Distributor in respect of land that the Customer does not control, and the Customer is unable to procure such land access rights in favour of the Distributor; or
  - (iii) any change to any relevant law comes into effect on or after the Commencement Date.
- (d) If, within 10 Business Days of the Customer receiving the notice under clause 4.2(c), the Customer does not accept the requested variation to the Drawing, either party may give written notice to terminate this Contract immediately. The Distributor will stop carrying out the Works during the 10 Business Days unless the Customer gives the Distributor a written request to continue the Works. The Completion Date will be automatically extended by the same number of Business Days during which the Distributor stops carrying out the Works.

#### **4.3 Variation to Construction Program and/or Charges**

- (a) Subject to clause 5.2(b), the Distributor may give the Customer a written notice requesting a variation to the Construction Program and/or Charges if:
- (i) it becomes apparent upon completion of the Construction Design that the Construction Program needs to be adjusted;
  - (ii) there is a physical condition on the Land or its near surrounds which differs from the physical conditions which should reasonably have been anticipated by the Distributor;
  - (iii) the Distributor defers the Works upon written request of the Customer;

- (iv) the Distributor forms a reasonable opinion that an event beyond the control of the Distributor has interfered with construction of the Works;
  - (v) the Distributor forms a reasonable opinion that the Customer's instructions, or part thereof, on which the Works were based have altered;
  - (vi) the Distributor forms a reasonable opinion that the Customer has not disclosed all necessary information to the Distributor for the proper design or construction of the Works;
  - (vii) the obligations contained in clause 4.4 (Customer's Obligations) or 5.2 (Payment Obligations) have not been satisfied;
  - (viii) necessary to comply with a plan of subdivision, or the *Road Management Act (Vic) 2004* (or any regulations or determinations under that Act);
  - (ix) the Customer has accepted a variation to the Drawing pursuant to clause 4.2(c);
  - (x) the Customer causes any delay to the Works or has requested that Works be carried out in a way that does not meet the least cost technically acceptable basis of carrying out the Works;
  - (xi) if any change to any relevant law comes into effect on or after the Commencement Date which causes the Distributor to incur more cost than otherwise would have been incurred in performing the Works;
  - (xii) no allowance or an insufficient allowance was made for the removal of rock, contaminated soil and/or contaminated water; or
  - (xiii) any condition precedent specified in clause 3 has not been satisfied by the Customer on or before the Start Date.
- (b) the Distributor is not required to commence or continue with the Works if the Customer fails to comply with any of its obligations under this Contract.
- (c) If, within 10 Business Days of the Customer receiving the notice under clause 4.3(a), the parties are not able to agree to the variation to the Construction Program and/or the Charges, either party may terminate this Contract immediately. Unless it is not reasonable to do so or the

Customer requests otherwise, the Distributor will stop carrying out the Works during the 10 Business Days period. The Completion Date will be automatically extended by the same number of Business Days during which the Distributor stops carrying out the Works.

- (d) Where the Distributor requests a variation to the Construction Program pursuant to clause 4.3, the Distributor will use its reasonable endeavours to ensure the adjusted Construction Program allows the Works to be performed as soon as is reasonably possible by the Distributor after taking into consideration the Distributor's operational priorities.

#### **4.4 Customer's Obligations**

- (a) The Customer must:
  - (i) obtain all necessary permits and all statutory approvals to enable the construction of the Works (including any permit or statutory approval necessary to clear any vegetation) from the relevant responsible authorities unless otherwise specified to the contrary in item 3 of Schedule 1; and
  - (ii) be responsible for reinstatement as required by any responsible authority unless otherwise specified in item 4 of Schedule 1.
- (b) The Customer must ensure that the workplace for the Works and the means of access to and egress from the workplace for the Works are safe and without risk to health as required by the *Occupational Health and Safety Act (Vic) 2004*.
- (c) The Customer must provide enclosures to accommodate and secure the Distributor's and the Distributor's contractor's equipment on the Land and/or the Premises of a standard approved by the Distributor's Responsible Officer.
- (d) The Customer must provide to the Distributor, its employees, agents and contractors, safe and unhindered access to the Land, including full vehicular access for construction vehicles and plant to the Land of a standard approved by the Distributor's Responsible Officer.
- (e) Before the Customer commences any Customer Works, vegetation or other clearing necessary for the Works to proceed, if a permit is necessary, the Customer must promptly provide satisfactory evidence of the permit to the Distributor if requested by the Distributor. The Customer must complete to a standard required by the

Distributor's Responsible Officer any works, vegetation or other clearing necessary for the Works to proceed.

## **5. PAYMENT**

### **5.1 Customer to Pay for Works**

In consideration of the Distributor constructing the Works, the Customer agrees to pay the Charges.

### **5.2 Payment obligations**

- (a) The Customer must pay the Charges as a lump sum payment on or before the due date(s) specified in invoice(s) issued by the Distributor.
- (b) If, in the Distributor's reasonable opinion, there is reason for varying the Charges pursuant to clause 4.3 but it is not reasonable to stop construction of the Works and seek the Customer's prior written consent, the Distributor may give the Customer a written notice of variation of the Charges together with adequate particulars of such variation including the amount of the additional charges. For the avoidance of doubt, such reasons include circumstances where:
  - (i) no allowance was made for the removal of rock where rock was not discovered in trial holes but was discovered between boring holes once construction started and it is not reasonable to seek the Customer's prior written consent having regard to demobilisation costs and the timeframe to complete the Works under permit conditions,
  - (ii) no allowance or an insufficient allowance was made for the removal of contaminated soil and/or water; or
  - (iii) there is a physical condition on the Land or its near surrounds which differs from the physical conditions which should reasonably have been anticipated by the Distributor.
- (c) Where the Distributor gives a notice under clause 5.2(b), the additional charges will be a debt due and payable to the Distributor. The Customer must pay the Distributor the additional charges as a lump sum on or before the due date specified in the Distributor's invoice.

## 6. GST PAYABLE

- (a) All fees, charges and other amounts referred to in this Contract are exclusive of GST except where express provision is made to the contrary.
- (b) Subject to the Distributor providing the Customer with a tax invoice, the Customer must pay the fees, charges and other amounts including any GST payable.
- (c) A word or expression used in this clause which is defined in *A New Tax System (Goods and Services Tax) Act (Commonwealth) 1999* has the same meaning in this clause.
- (d) If, after the Commencement Date, the GST rate changes (including to an effective rate of zero for any particular Supply) (the "New GST Rate"), the parties agree that Supplier may vary the GST inclusive price for any Supply made under this Contract 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).

## 7. LIABILITY AND INDEMNITY OF CUSTOMER

- (a) The Customer hereby indemnifies and agrees to keep the Distributor indemnified against all claims, actions, demands, proceedings, liabilities, damages, 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 a negligent act or omission by the Customer, or any breach or non-performance of any express or implied obligations of the Customer under this Contract, or any breach of or non-performance of an obligation imposed on the Customer by any law.

## 8. EXCLUSIONS AND LIMITATION OF LIABILITY OF DISTRIBUTOR

- (a) Subject to clause 8(b), but notwithstanding any other provision of this Contract and except to the extent that liability cannot legally be limited or excluded:
  - (i) The Distributor's total liability for all events giving rise to liability on its part arising out of or in connection with this Contract will be limited to the lesser of the Charges or \$1,000,000 (one million dollars) in total aggregate;

- (ii) In no event will the Distributor be liable for any fines, penalties, liquidated sums that the Customer may be liable for under third party Contracts, loss of use, contract, profit or revenue, production stoppage or replacement services, or for any indirect or consequential loss or damage;

- (iii) The limitation and exclusion of liability contained in this clause 8(a) will apply whether the liability claim is based on breach of contract, breach of warranty, breach of statute or regulation, tort, negligence, under an indemnity, strict liability, in equity or other legal theory.

(b) The Distributor's liability for:

- (i) personal injury or death;
- (ii) fraud; or
- (iii) wilful misconduct,

will be unlimited to the extent it is caused by the Distributor's acts or omissions.

## 9. NOT A RETAIL OFFER

This Contract does not in any way constitute an offer to the Customer to sell electricity to the Customer.

## 10. CUSTOMER'S ONGOING OBLIGATIONS

### 10.1 Customer Compliance

- (a) The Customer must ensure that all electrical work in relation to the Customer's electrical installation is carried out by an appropriately licensed electrical contractor.
- (b) The Customer must comply with all its obligations under the Electricity Law, including the Electricity Distribution Code.
- (c) The Customer must comply with the "Victorian Electricity Distributors Service & Installation Rules" as amended from time to time. The Customer acknowledges that this is a reasonable requirement as contemplated by clause 2.6.1(d) of the Electricity Distribution Code.

### 10.2 Ongoing Protection of Works

The Customer must not interfere and must use its best endeavours not to allow interference with the Works on the Premises and must provide and maintain appropriate access to, accommodation and/or fencing for the Works and must maintain appropriate clearances from the Works.

## **11. WORKS ARE PROPERTY OF DISTRIBUTOR**

- (a) Unless otherwise provided in this Contract, the Works will be, and will remain, the property of the Distributor. The Distributor may provide electricity supply to any person from the Works upon such terms and conditions as it thinks fit and may at any time after the termination of a connection to supply electricity remove the Works, or any part of the Works. The Distributor may alter, replace or otherwise deal with the Works at any time and in its absolute discretion.

## **12. TERMINATION**

- (a) Either party may give written notice to terminate this Contract immediately:
- (i) in accordance with clause 4.2(c) (variation to Drawing);
  - (ii) in accordance with clause 4.3(c) (variation to Construction Program and/or Charges);
  - (iii) if the defaulting party fails to remedy a material breach within 10 Business Days of receiving written notice of the breach from the non-defaulting party; or
  - (iv) if the other party:
    - (A) commits an act of bankruptcy;
    - (B) is the subject of an application for winding up;
    - (C) calls a meeting of its creditors;
    - (D) has a receiver appointed over all or substantial part of its assets;
    - (E) passes a resolution for its winding up;
    - (F) compounds with its creditors; or
    - (G) evinces an intention to no longer perform its obligations under this Contract.
- (b) Clauses 5, 6, 7, 8, 10 and 13 will survive the termination of this Contract.
- (c) Where this Contract is terminated before the Distributor has completed the Works, the Distributor will reimburse to the Customer the Charges after deducting:

- (i) charges for Works costs already carried out by the Distributor under this Contract up to the date of termination;
- (ii) in the case of termination by the Distributor for breach by the Customer, any other costs and/or losses incurred by the Distributor as a result of the termination.

## **13. GENERAL**

### **13.1 Special Conditions**

Any Special Conditions set out in item 11 of Schedule 1 form part of this Contract. To the extent of any inconsistency between any of the Special Conditions and the rest of this Contract, the relevant Special Conditions will prevail.

### **13.2 Assignment**

- (a) The Customer may assign its rights or transfer its obligations under this Contract with the prior written consent of the Distributor which will not be unreasonably withheld or delayed.
- (b) The Customer's request for the Distributor's consent to the proposed assignment or transfer must be in writing and provide details of the name and postal address of the proposed assignee or transferee (as the case requires), the premises of the proposed assignee or transferee (as the case requires) and any other details required by the Distributor.
- (c) The Distributor may assign its rights or transfer its obligations under this Contract in its absolute discretion. The Customer agrees to execute any reasonable document the Distributor may prepare to effect such assignment or transfer.

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

The law of this Contract 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 Contract or a power, right, authority,

discretion or remedy under this Contract must be in writing and executed by the waiving party.

### **13.5 Notices**

- (a) A consent, approval or other communication (each a Notice) under this Contract by one party to the other party must be:
  - (i) in writing;
  - (ii) signed by or on behalf of an authorised person giving the Notice;
  - (iii) addressed to the person specified in item 6 of Schedule 1; and
  - (iv) provided in the following ways:
    - (A) delivered or posted to that party at the address for Notices specified in item 6 of Schedule 1; or
    - (B) emailed to that party at the email address as specified in item 6 of Schedule 1;
    - (C) and in each case, any other address notified by one party to the other party.
- (b) A Notice given to a party in accordance with clause 13.5 is treated as having been received:
  - (i) if delivered to that party's address before 5.00 pm on a Business Day, on the day of delivery, otherwise on the next Business Day;
  - (ii) if sent by mail, on the second Business Day after posting;
  - (iii) if transmitted by email to a party where a transmission report is received by the sending party, at the time of that

transmission but otherwise on the next Business Day.

### **13.6 Responsible Officer**

- (a) The Distributor's Responsible Officer, or a substitute nominated in writing by the Distributor, is authorised by the Distributor to undertake any action and bind the Distributor pursuant to, and for the purposes of this Contract.
- (b) Customer's Responsible Officer, or a substitute nominated in writing by the Customer, is authorised by the Customer to undertake any action and bind the Customer pursuant to, and for the purposes of this Contract.

### **13.7 Exclusion of Warranties**

To the fullest extent permitted by law, all statutory and implied warranties and terms are excluded in respect of the Works by the Distributor.

### **13.8 Variation**

The Parties may only vary this Contract by agreement in writing.

### **13.9 Entire Contract**

This Contract 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.

### **13.10 Costs**

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

### **13.11 No Agency or Partnership**

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



**EXECUTED** by the parties as an Contract

For the **Customer** by:

.....  
Signature

.....  
Print Name

.....  
Position

Date: .....

.....  
Witness Signature

.....  
Print Name

For the **Distributor** by:

.....  
Signature

.....  
Print Name

.....  
Position

Date: .....

.....  
Witness Signature

.....  
Print Name

«custreqnum»  
«house\_num1» «Street», «City1»

**Schedule 1 of Recoverable Works Contract**

<b>1.</b>	<b>Parties To This Contract</b>	
	<b>The Distributor</b>	
	Name & ABN of the Distributor:	
	Registered office address:	40 Market Street, Melbourne, Victoria
	Postal address of the Distributor:	Locked Bag 14090, Melbourne, Victoria, 8001
	<b>The Customer</b>	
	ABN:	
	Registered office address:	
	Postal address of the Customer:	
	<b>The Customer</b>	
	Address:	
	Postal address of the Customer:	
<b>2.</b>	<b>Land (clause 1.1):</b>	«House_Num1» «Street», «City1»
<b>3.</b>	<b>Permits to be obtained by the Distributor (if applicable) (clause 4.4(a)(i)):</b>	The Distributor will obtain road opening and other permits required for the Works.
<b>4.</b>	<b>Reinstatement by the Distributor (if applicable) (clause 4.4(a)(ii)):</b>	The Works include provision for temporary and permanent reinstatement of the Distributor's excavations as required.
<b>5.</b>	<b>Charges (clause 5):</b>	
	GST exclusive Charges payable:.....	\$«CONTR»
<b>6.</b>	<b>Notices (clause 13.5):</b>	
	Addresses for Notices to be given under this Contract will, until the addressee notifies the other party in writing otherwise, be as follows:	
		<b>The Distributor</b>
		Contractual notices and written requests:
		Locked Bag 14090
		Melbourne VIC 8001
		Telephone: 1800 771 434
		Facsimile: 03 9683 5156
		Email:
		<b>The Customer</b>
		Contractual notices and written requests:
		Telephone:
		Email: .....
		Address for Invoices (if different from above):
<b>7.</b>	<b>The Distributor's Responsible Officer (clause 13.6(a)):</b>	
<b>8.</b>	<b>Customer's Responsible Officer (clause 13.6(b)):</b>	
<b>9.</b>	<b>Description of Works (clause 1.1):</b>	
	Upon Execution of this Contract the Distributor will:	
<b>10.</b>	<b>Construction Program (clause 4.1):</b>	

11.	<b>Special Conditions (clause 13.1):</b> The Customer shall be responsible for:
12.	<b>Customer Works (clauses 3(b) &amp; 4.4):</b>

## Schedule 2

Drawing of the Works

