



# **Use of System Agreement Victorian Electricity Industry**

---

**Powercor Australia Limited**

**ABN 89 064 651 109**

**And**

**(RETAILER)**

**ABN**

---

## Contents

---

<b>1</b>	<b>Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	9
<b>2</b>	<b>Compliance with Electricity Law</b>	<b>9</b>
2.1	Electricity Law to take precedence	9
2.2	Parties must comply with Electricity Law	10
2.3	Parties must co-operate	10
2.4	Preservation of rights	10
2.5	Waiver of Compliance	10
2.6	Regulatory Relief	10
<b>3</b>	<b>Customer relationship</b>	<b>11</b>
<b>4</b>	<b>Services</b>	<b>11</b>
4.1	Provision of Services	11
4.2	Deemed request for Distribution Services	12
4.3	Cessation of provision of Services	12
4.4	Refusal to supply under Electricity Law	12
4.5	Suspension for supplier of last resort	13
4.6	Services for Qualifying Solar Energy Generating Facilities	13
4.7	Implementation of Premium Solar Feed-in Tariff Scheme	13
<b>5</b>	<b>Connection</b>	<b>13</b>
<b>6</b>	<b>Disconnection and Interruption of Customer</b>	<b>14</b>
6.1	Interpretation	14
6.2	Disconnection and Interruption	14
6.3	Disconnection at the request of the Retailer	14
6.4	Disconnection at the request of a Customer	16
6.5	Reconnection or restoration of Supply	16
<b>7</b>	<b>Fees, Billing and Payment</b>	<b>16</b>
7.1	Distribution Service Charges	16
7.2	Retail Service Charges	17
7.3	GST	18
7.4	Invoices	18
7.5	Metering Data	19
7.6	Adjustment of Invoices	20
7.7	GSL Payments	21
7.8	Payment and interest	21
7.9	Disputed invoices	22
7.10	Credit Support	23

<b>8</b>	<b>Information Exchange</b>	<b>26</b>
8.1	Compliance with privacy laws	26
8.2	Provision of information	26
8.3	Use of information	26
8.4	Information exchange protocols	26
8.5	Changes in information	27
8.6	Accuracy of information	27
<b>9</b>	<b>Communications regarding Customers and System Data</b>	<b>27</b>
9.1	Answering Fault calls	27
9.2	Provision of information concerning Faults and unplanned Interruptions	28
9.3	Provision of information for Planned Interruptions and Disconnections	28
9.4	Customer Details	29
9.5	Enquiries or Complaints relating to Retailer	30
9.6	Enquiries or Complaints relating to Distributor	30
9.7	Ombudsman complaints	31
9.8	Changes in Network Tariffs or Distribution Services	32
9.9	Theft of electricity	34
9.10	Information for Customers	34
<b>10</b>	<b>Force Majeure</b>	<b>35</b>
10.1	Suspension of Obligations	35
10.2	Mitigation of Force Majeure Event	35
10.3	Notice	35
<b>11</b>	<b>Enforcement of Distributor’s Rights Against Customers</b>	<b>35</b>
11.1	Restriction on Distributor’s enforcement rights	35
11.2	Consultation prior to Disconnection	35
11.3	Distributor to indemnify Retailer	36
11.4	Retailer to notify Customer and Distributor	36
11.5	Limitation of Retailer’s obligations	36
<b>12</b>	<b>Term and Termination</b>	<b>36</b>
12.1	Term	36
12.2	Termination for default or insolvency of Retailer	36
12.3	Notice of termination	37
12.4	Termination where no Customers	37
12.5	Termination by Distributor	38
12.6	Consequences of Termination	38
12.7	Remedies for Default	38
12.8	Preservation of rights	38
12.9	Distribution Services after termination	38
<b>13</b>	<b>Indemnities</b>	<b>39</b>
13.1	No Warranties	39
13.2	Liability for Supply	39
13.3	Non-operation of Limitations of Liability	39

13.4	Insurance	40
13.5	Preservation of statutory provisions	40
13.6	Third Party Claims and Demands	40
13.7	No Admissions	41
<b>14</b>	<b>Dispute Resolution</b>	<b>41</b>
14.1	Disputes	41
14.2	Notice of Dispute	41
14.3	Referral to Chief Executive Officers or nominees	41
14.4	Mediation	41
14.5	Arbitration	42
14.6	Summary or Urgent Relief and other exclusions	43
14.7	Customer Disputes	43
14.8	Obligations Continuing	43
<b>15</b>	<b>Representations and Warranties</b>	<b>44</b>
15.1	Retailer's representations and warranties	44
15.2	Distributor's representations and warranties	44
15.3	Other representations and warranties	44
15.4	No reliance	44
<b>16</b>	<b>Notices</b>	<b>44</b>
16.1	Method of Giving Notices	44
16.2	Time of receipt of notice	45
16.3	Time of receipt of Invoices	45
16.4	Confirmation of electronic delivery	45
<b>17</b>	<b>Confidentiality</b>	<b>45</b>
17.1	General obligation	45
17.2	Representatives to keep information confidential	46
17.3	Conditions on disclosure	46
17.4	Notice to other Party	47
<b>18</b>	<b>Law and Jurisdiction</b>	<b>47</b>
18.1	Governing Law	47
18.2	Submission to Jurisdiction	47
<b>19</b>	<b>General</b>	<b>47</b>
19.1	Waiver	47
19.2	Amendment	47
19.3	Attorneys	48
19.4	Severability	48
19.5	Counterparts	48
19.6	Further Assurance	48
19.7	Entire Agreement	48
19.8	Assignment	48
19.9	Remedies Cumulative	48

19.10 Review of Agreement	48
19.11 No Agency or partnership	49
19.12 Restriction on Authority	49
19.13 Costs	49
19.14 Appendix and Schedules	49
<b>APPENDIX</b>	<b>50</b>
<b>Schedule 1 – Excluded Services covered by deemed request</b>	<b>53</b>
<b>Schedule 2 – Approved Form of Unconditional Undertaking</b>	<b>54</b>
<b>Schedule 3 - Matters to be notified to Customer by Retailer</b>	<b>55</b>

---

## This Use of System Agreement

is made on the date shown in Item 1 of the Appendix between the following parties:

**1. Powercor Australia Limited ABN 89 064 651 109**

Level 8, 40 Market Street, Melbourne VIC. 3000

**(Distributor)**

**2.**

**(Retailer)**

### Recitals

- A. The Distributor is the holder of a Distribution Licence and the Retailer is the holder of a Retail Licence.
- B. The Retailer wishes to sell electricity to Customers at Supply Points within the Distributor's Distribution Area.
- C. The Retailer may also wish to procure Supply, and the provision of other services, to or on behalf of its Customers at Supply Points within the Distributor's Distribution Area.
- D. The Distributor and the Retailer also agree to co-ordinate with each other the performance of certain of their functions and obligations under the Electricity Law.
- E. This agreement sets out the rights and obligations of the parties in respect of:
  - (a) the provision of the Distribution Services by the Distributor to the Retailer in respect of Customers, and the payment for those Distribution Services by the Retailer; and
  - (b) the provision of Retail Services by the Retailer, and the payment for those Retail Services by the Distributor.

### The parties agree as follows

in consideration of, among other things, the mutual promises contained in this agreement:

---

## 1 Interpretation

### 1.1 Definitions

In this agreement, unless the context otherwise requires:

**Additional Charges** means any charge imposed on the Distributor by a Regulatory Authority which is referable to the Retailer or a Customer, and where such charge is referable to a class of electricity retailers or Customers rather than

an individual retailer or Customer, that charge will be allocated between the retailers or Customers (as the case may be) on a fair and reasonable basis by the Distributor, provided that the Distributor is not prohibited from passing through that charge to retailers or Customers under the Electricity Law.

**AEMO** means Australian Electricity Market Operator Limited, ACN 072 010 327.

**AER** means the Australian Energy Regulator established by section 44AE of the *Consumer & Competition Act 2010* (Cth).

**Alternative Control Service** has the meaning given to that term by the National Electricity Rules.

**Bank Bill Rate** means the bank bill standard rate defined to be equal to:

- (a) the “bid rate” (rounded up to four decimal places) quoted on the page entitled “BBSY” of the Reuters Monitor System at or about 10:00am (Melbourne time) on any Business Day for bank accepted bills of exchange which have a tenor of 30 days; or
- (b) if the Bank Bill Rate cannot be determined in accordance with paragraph (a) of this definition, the rate percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the then current bill market, and in default of agreement within 14 days, the rate nominated by the Distributor and approved by the Commission as an appropriate rate.

**Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in Melbourne on which banks are open for general banking business in Melbourne.

**Claim** means any claim, action, dispute, proceeding, loss, liability, demand, cost or expense whether arising in contract, tort (including negligence), equity or otherwise in respect of an event occurring after the Commencement Date.

**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 Commission or otherwise, and includes the National Electricity Rules, the Electricity Distribution Code, the Electricity Customer Transfer Code, the Electricity Customer Metering Code, the Energy Retail Code and the Metrology Procedure.

**Commission** means the Essential Services Commission under the *Essential Services Commission Act 2001* (Vic) and/or any other body given authority under the EI Act in relation to the provision of the Distribution Services by the Distributor to the Retailer or to Customers.

**Commencement Date** means the date on which this agreement is executed by both parties.

**Controller** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Connection** means the contact between:

- (a) the electrical systems of two persons; or

- (b) any electrical system and an Electrical Installation, such as will allow the delivery of electricity between those systems or that system and that Electrical Installation, but does not include energisation.

**Connection Request** means a request in a form reasonably required by the Distributor and consistent with any electricity industry practice and as required under the Electricity Law given by the Retailer to the Distributor requesting the Connection of a Customer's Supply Point.

**Connection Services** means, in relation to a Customer, the service of establishing Connection between the Distribution System and that Customer's Electrical Installation so as to allow the delivery of electricity from the Distribution System to that Electrical Installation, including maintenance of that Connection but excluding augmentation of the Distribution System or energisation.

**Consequential Loss** means loss of profits, business or anticipated savings or any other indirect or consequential loss of whatever kind arising out of any failure to comply with this agreement in contract, tort (including negligence) or otherwise.

**Credit Allowance** has the meaning given in Item 6 of the Appendix.

**Credit Allowance Percentage** has the meaning given in Item 7 of the Appendix.

**Credit Support** has the meaning given in clause 7.10(b).

**Customer** means, in relation to the Retailer, a person:

- (a) who has a Supply Point in the Distributor's Distribution Area or is seeking to establish a Supply Point in the Distributor's Distribution Area; and
- (b) either:
- (1) whose NMI is allocated to the Retailer under the National Electricity Rules; or
  - (2) to whom the Retailer agrees to sell electricity under a Retail Contract, or to whom the Retailer is deemed under the EI Act to have a contract for the sale and supply of electricity (whether as a "default retailer" or a "supplier of last resort" or otherwise).

**Deemed Contract** means a contract between the Distributor and a Customer under section 40A of the EI Act.

**Default Rate** means on any date the rate percent per annum which is the aggregate of 2% per annum and the Bank Bill Rate.

**Direct Loss** means loss resulting directly from any failure to comply with this agreement in contract, tort (including negligence) or otherwise, but excludes any Consequential Loss.

**Disconnect** means the operation of switching equipment or other deliberate action so as to prevent the flow of electricity at a single Supply Point.

**Disconnection Request** means a request in a form reasonably required by the Distributor and consistent with any electricity industry practice and as required under the Electricity Law given by the Retailer to the Distributor requesting the Disconnection of a Customer's Supply Point.

**Distribution Licence** means a licence granted under section 19 of the EI Act to distribute and deliver electricity using a distribution system.



**Distribution Service Charges** means:

- (a) the Network Tariff;
- (b) the Excluded Services Fees;
- (c) the Scheduled Excluded Services Fee;
- (d) the Network Tariff and Excluded Services Fees payable in respect of Unmetered Supply Services provided to the Retailer in accordance with this agreement; and
- (e) any Additional Charges.

**Distribution Service Charges Liability** has the meaning given in Item 10 of the Appendix.

**Distribution Services** means:

- (a) the UoS Services; and
- (b) any Excluded Services, provided to the Retailer by the Distributor, but does not include the sale of electricity.

**Distribution System** means the system of electric lines (generally at nominal voltage levels of 66kV or below) which the Distributor is licensed to use to distribute electricity for delivery under its Distribution Licence.

**Distributor Obligation Period** has the same meaning as given to that term in the EI Act.

**Distributor's Distribution Area** means the area in which the Distributor is licensed to deliver electricity to, and is responsible for, a Supply Point.

**EI Act** means the *Electricity Industry Act 2000* (Vic).

**Electrical Installation** means electrical equipment that is fixed or to be fixed in, on, under or over any land that is not part of the Distribution System.

**Electricity Customer Metering Code** means the code of that name approved by the Commission .

**Electricity Customer Transfer Code** means the code of that name approved by the Commission.

**Electricity Distribution Code** means the code of that name approved by the Commission.

**Electricity Law** means the Codes, the EI Act and regulations under that Act, the *Electricity Safety Act 1998* (Vic) and regulations under that Act, the Tariff Order, the *Essential Services Commission Act 2001* and regulations and determinations under that Act, the *National Electricity (Victoria) Act 2005* and the National Electricity Law, the Retailer's Retail Licence, the Distributor's Distribution Licence 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.

**Emergency** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages or threatens to destroy or damage any property.

**Energy Retail Code** means the code of that name approved by the Commission.

**Excluded Services** means Alternative Control Services and those services excluded from price controls made by AER or other competent Regulatory Authority with respect to the Distributor or services provided by the Distributor.

**Excluded Services Fee** means a charge imposed by the Distributor in addition to the Network Tariff for the provision of each Excluded Service, subject to any limitations under the Electricity Law, as follows:

- (a) in the case of Scheduled Excluded Services, the Scheduled Excluded Services Fees; and
- (b) in the case of Excluded Services not being Scheduled Excluded Services, the fees charged by the Distributor for that service.

**Fault** means any problem in Supply to a Supply Point or any damage to or breakdown of the Distributor's Distribution System.

**Force Majeure Event** means, with respect to any party, any event or circumstances which are not within the reasonable control of that party including without limiting the generality of the foregoing:

- (a) acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood and natural disaster;
- (b) strikes, lockouts or other industrial disturbances;
- (c) acts of public enemy, wars (declared or undeclared), blockades, insurrections, riots, revolution, sabotage, vandalism and civil disturbance;
- (d) unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination;
- (e) any generation, transmission or distribution shut-down or interruption which is required or directed by the State or Commonwealth Government or a Regulatory Authority or the System Operator;
- (f) any generation or transmission shut down or interruption which is required to avoid serious and immediate risks of a significant plant or equipment failure;
- (g) a partial or complete failure of any generator or transmission owner, operator or controller in the National Electricity Market to provide Connection or to supply network transmission services or to deliver electricity to the Distributor or any deficiency in such delivery;
- (h) any event caused by any Customer's or other third party's Electrical Installation; and
- (i) a failure of the owner or controller of a transmission system used to transmit to provide Connection or to supply network transmission services.

**Good Electricity Industry Practice** has the meaning given to that term in the National Electricity Rules.

**Guaranteed Service Levels** or **GSLs** means the standard of service that must be provided by the Distributor in respect of the UoS Services under the Distribution

Code or as otherwise prescribed by a determination of the Commission under sections 32, 33 and 34 of the *Essential Services Commission Act 2001* (Vic).

**Guarantor** has the meaning given in Item 9 of the Appendix.

**Insolvency Event** means the happening of one or more of the following events in relation to the Retailer:

- (a) an order is made that it be wound up or that a Controller be appointed to it or any of its assets;
- (b) a resolution that it be wound up is passed;
- (c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
- (d) an administrator is appointed to it (other than by the Commission pursuant to the Retailer's licence under the EI Act) or a resolution that an administrator be appointed to it is passed;
- (e) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors;
- (f) any action is taken by the Australian Securities and Investment Commission to cancel its registration or to dissolve it;
- (g) it is insolvent within the meaning of Section 95A of the *Corporations Act 2001* (Cth), as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (h) it stops or suspends:
  - (1) the payment of all or a class of its debts; or
  - (2) the conduct of all or a substantial part of its business; or
- (i) if the Retailer is constituted in another jurisdiction, any event having a substantially similar effect to any of the events specified in the preceding paragraphs happens to it under the law of that other jurisdiction;.

**Interruption** means the planned or unplanned temporary interruption of the Supply of electricity to one or more Supply Points, but does not include Disconnection.

**Maximum Credit Allowance** has the meaning given in Item 11 of the Appendix.

**Metering Data** means, in relation to a Customer, data obtained from a Metering Installation.

**Meter Reader** means the person carrying out the reading of Customers' meters.

**Metering Installation** has the meaning described in the National Electricity Rules.

**Metering Provider** has the meaning given to that term in the National Electricity Rules.

**Metrology Procedure** has the meaning given to that term in the National Electricity Rules.

**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 2005*.

**National Market** means the market for wholesale trading in electricity operated by AEMO under the National Electricity Law and the National Electricity Rules.

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

**Network Tariff** means the amounts chargeable by the Distributor to the Retailer in accordance with the Electricity Law for distributing electricity using the Distribution System and the Transmission System as approved by the Commission from time to time but does not include fees for Excluded Services.

**NMI** means “National Metering Identifier” as described in clause 7.3.1(d) of the National Electricity Rules.

**Qualifying Customer** means a Customer who also meets the requirements of a “qualifying customer” as defined in the EI Act.

**Qualifying Solar Energy Generation Credit** means the amount per kilowatt hour specified under section 40FH(2) of the EI Act.

**Qualifying Solar Energy Generation Electricity** has the same meaning as given to that term in the EI Act.

**Qualifying Solar Energy Generating Facility** has the same meaning as given to that term in the EI Act.

**Regulatory Authority** means any government or regulatory department (including AEMO, the AER and the Commission), body, instrumentality, minister, agency or other authority.

**Representative**, in relation to a person, means any employee, agent, trustee, permitted assignee, liquidator, administrator or third party contractor.

**Required Credit Support Amount** means the amount described in Item 2 of the Appendix.

**Retail Contract** means a contract (whether written, oral, deemed or otherwise) between the Retailer and a Customer for the provision by the Retailer to the Customer of any one or more of:

- (a) sale of electricity;
- (b) procuring Supply; and
- (c) Excluded Services.

**Retailer Credit Rating** has the meaning given in Item 8 of the Appendix.

**Retail Licence** means a licence granted under section 19 of the EI Act to sell electricity.

**Retail Services** means the services provided by the Retailer to the Distributor at the Distributor’s request, which include (without limitation):

- (a) processing of GSL payments at the request of the Distributor under clause 7.7(a);
- (b) notification of Network Tariffs to Customers under clause 9.8(e);

- (c) provision of information and documentation to Customers under clause 9.10(b);
- (d) delivering to a Customer any notification, information or documentation as requested by the Distributor under clause 9.10(e); and
- (e) advising Customers of the limitations of electricity supply in accordance with clause 13.2(b)(3), but does not include any such services to the extent that the Retailer is obliged to perform those services under the Electricity Law.

**Scheduled Excluded Services** means the Excluded Services in respect of which a fee has been approved (or deemed to be approved) by AER, the Commission or any other competent Regulatory Authority in an approved statement of charges, including Connection Services.

**Scheduled Excluded Services Fee** means the fee in respect of a Scheduled Excluded Service

**Scheme Start Date** means 1 November 2009.

**Services** means the Distribution Services or the Retail Services, as the case may be.

**Streetlight** means a public lighting fixture, including lamp, luminaire, mounting bracket, supply cable and control equipment (for example photoelectric cells and control circuitry) owned by the Distributor in the Distributor's Distribution Area.

**Supply** means the delivery of electricity.

**Supply Point**, in relation to a Customer, means:

1. other than in clause 6, the point where a supply of electricity taken by the Customer leaves a supply facility owned or operated by the Distributor before being Supplied to the Customer provided that:
  - (a) where the Customer's Electrical Installation is not directly connected to the Distribution System, the Supply Point is the point at which the electricity last leaves the supply facility owned or operated by the Distributor before being Supplied to the customer, whether or not the electricity passes through facilities owned or operated by any other person after leaving that point before being so Supplied; and
  - (b) where a supply of electricity is to a Streetlight or watchman light, the Supply Point is deemed to be the point at which the Streetlight or watchman light is connected to the Distribution System.
2. the point where electricity generated by a Qualifying Solar Energy Generating Facility enters the Distribution System.

**System Operator** has the meaning given to that term by the National Electricity Rules.

**Tariff Order** has the meaning given to it in the EI Act.

**Transmission System** means the system of electric wires generally at voltages above 66kV used for the bulk transportation of electricity.

**Unmetered Supply Services** means the provision of Distribution Services to unmetered Supply Points.

**UoS Services** means the transportation and delivery of electricity through the Distribution System and any other services which the Distributor includes in its Network Tariff.

## 1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) a reference to any legislation, legislative provision, regulations, order-in-council, code, licence condition or rule includes any modification or re-enactment of, or substitution for, and any subordinate legislation issued under, that legislation, legislative provision, regulation, code, licence condition or rule;
- (b) the singular includes the plural and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (e) a reference to a clause, Schedule, Annexure or Attachment is a reference to a clause, Schedule, Annexure or Attachment to this agreement;
- (f) a recital or a description of the parties forms part of this agreement;
- (g) examples are descriptive only and not exhaustive;
- (h) a reference to any agreement or document is a reference to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (i) a reference to any party to this agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (j) a reference to winding up includes liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), the appointment of an administrator and the occurrence of anything analogous or having a substantially similar effect to that condition under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute that condition; and
- (k) headings are for convenience of reference only and do not affect interpretation.

---

## 2 Compliance with Electricity Law

### 2.1 Electricity Law to take precedence

In the event of any inconsistency between:

- (a) a party's obligations or rights under the Electricity Law; and
- (b) its obligations or rights under this agreement, its obligations and rights under the Electricity Law shall take precedence to the extent of the inconsistency.

## **2.2 Parties must comply with Electricity Law**

Notwithstanding any other provision of this agreement, each party will comply with the obligations imposed on that party by the Electricity Law.

## **2.3 Parties must co-operate**

Each party will:

- (a) give to the other party all reasonable assistance; and
- (b) co-operate with the other party, so as to allow that other party to comply with any obligations imposed upon that other party under the Electricity Law or this agreement.

## **2.4 Preservation of rights**

Nothing in this agreement will limit any right either party may have under the Electricity Law unless the Electricity Law permits that right to be limited by agreement, and this agreement directly or indirectly limits that right.

## **2.5 Waiver of Compliance**

- (a) Notwithstanding clauses 2.1 to 2.4 (inclusive), if:
  - (1) a party has been excused from strict compliance with any aspect of the Electricity Law; or
  - (2) the application of the Electricity Law to a party has been varied by express written consent from the Regulatory Authority responsible for enforcing that aspect of the Electricity Law, the relevant party will not be obliged under this agreement to comply with that aspect of the Electricity Law to the extent of the consent.
- (b) A party who has received a written consent described in clause 2.5(a) must provide to the other party a copy of any such consent if that consent is likely to affect the performance of any of the Services for that other party.

## **2.6 Regulatory Relief**

For the purposes of this agreement, a party shall not have breached the terms of the Electricity Law if it has acted:

- (a) under the direction of a relevant Regulatory Authority; or
- (b) in accordance with the terms of any relief from compliance granted in writing by a relevant Regulatory Authority.

---

### 3 Customer relationship

- (a) The parties agree that the Distributor will provide the Distribution Services to the Retailer in respect of each Customer notwithstanding the existence of the Deemed Contract, except to the extent that:
  - (1) the Retailer notifies the Distributor that the Retailer and the Customer have entered into an agreement under which the Retailer does not provide or procure any UoS Services and/or Excluded Services for the Customer; and
  - (2) the Distributor and the Customer have entered into an agreement (other than a Deemed Contract) under which the Distributor provides any UoS Services and/or Excluded Services to the Customer.
- (b) If, at any time, a Customer contracts for the same Services from both the Distributor and the Retailer, the Distributor and the Retailer will use their reasonable endeavours to implement the contractual relationship desired by the Customer.
- (c) Without limiting clause 3(b), this agreement will not apply in respect of a Customer to the extent that and for so long as there is an inconsistent contract between a Customer and the Retailer or the Distributor as at the Commencement Date or between a Customer, the Distributor and the Retailer after the Commencement Date.

---

### 4 Services

#### 4.1 Provision of Services

- (a) Subject to the Retailer providing credit support as required under clause 7.10, the Distributor will provide to the Retailer in relation to each Customer the Distribution Services in accordance with:
  - (1) Good Electricity Industry Practice;
  - (2) the terms and conditions of this agreement; and
  - (3) without limitation to clause 2, the Electricity Law as if the Distributor were providing the Distribution Services directly to the Customer.
- (b) In respect of each Customer, this agreement applies:
  - (1) from and including the date the Retailer requests (or is deemed under clause 4.2 to have requested) the provision of the Distribution Services in respect of the Customer (or any later date nominated by the Retailer in any such request); and
  - (2) subject to clause 12, until and including the earlier of the dates described in clause 4.3(a) or (b) in relation to that Customer, or, if clause 4.3(c) applies to the Customer, the date that the Customer is no longer entitled to be reconnected by a Retailer under the Energy Retail Code.



## 4.2 Deemed request for Distribution Services

The Retailer shall be deemed to have requested the Distributor to provide Distribution Services in respect of a Customer as follows:

- (a) in respect of UoS Services and the Excluded Services specified in Schedule 1, whilst a person is a Customer in relation to a Supply Point which is connected to the Distributor's Distribution System; and
- (b) in respect of any other Excluded Services, when the Retailer requests the Distributor to provide those services or confirms the Customer's request for the provision of those services, provided that if the Customer was receiving any of those other Excluded Services from another electricity retailer immediately prior to the time that it became a Customer, the Retailer will be deemed to have requested the Distributor to provide those services in respect of that Customer at the time that it became a Customer.
- (c) Where a person who was receiving any Excluded Service to which clause 4.2(b) applies becomes a Customer, the Distributor shall notify the Retailer of the Excluded Services that the Customer is receiving to which clause 4.2(b) applies. The notification may be provided in the next invoice provided by the Distributor to the Retailer for Distribution Service Charges in accordance with this agreement or otherwise, as soon as practicable.
- (d) Where a person who becomes a Customer occupies premises to which Excluded Services were provided immediately prior to that person commencing to occupy the premises, the Retailer must notify the Distributor if it becomes aware that the Customer does not wish to be provided with those Excluded Services. If requested by the Distributor, the Retailer must make enquiries with the Customer and notify the Distributor if the Customer does not wish to be provided with the Excluded Services within 30 Business Days of the request by the Distributor.

## 4.3 Cessation of provision of Services

The Distributor shall cease to provide the Distribution Services to the Retailer in respect of a Customer's Supply Point upon the first to occur of:

- (a) the time at which AEMO transfers financial responsibility for the Customer's NMI from the Retailer to another electricity retailer or to the Customer directly; or
- (b) the time agreed between the Retailer and the Distributor on which the Customer ceases to, or ceases to be entitled to, receive Supply in respect of that Supply Point, which may or may not include Disconnection; or
- (c) the time at which the Distributor Disconnects the Customer in response to the Customer's request or otherwise in accordance with this agreement or the Electricity Law.

## 4.4 Refusal to supply under Electricity Law

Nothing in this agreement requires the Distributor to supply or deliver electricity to or in respect of a Customer in circumstances where the Electricity Law requires or permits the Distributor to refuse to supply or deliver electricity.

#### **4.5 Suspension for supplier of last resort**

The obligations of the Distributor under this agreement are suspended for so long as a person other than the Retailer is acting as the “supplier of last resort” in respect of the Retailer under section 49D of the EI Act.

#### **4.6 Services for Qualifying Solar Energy Generating Facilities**

- (a) If the Distributor receives a request for Connection of a Qualifying Solar Energy Generating Facility from a Customer, the Distributor must immediately refer the request to the Retailer and only make the connection if requested to do so by the Retailer.
- (b) The Retailer must notify the Distributor as soon as practicable on or after the Retailer entering into an agreement with a Qualifying Customer to purchase Qualifying Solar Energy Generation Electricity including such details, and in such manner and form, as the Distributor reasonably requires.
- (c) The Retailer shall be deemed to have requested the Distributor to provide Distribution Services for the conveyance of Qualifying Solar Energy Generation Electricity in respect of that Qualifying Customer from the date the notice is received from the Retailer under clause 4.6(a).
- (d) Subject to clause 4.6(c), the Distributor will use reasonable endeavours to provide the Distribution Services for the conveyance of Qualifying Solar Energy Generation Electricity from the date nominated by the Retailer if the Metering Installation has been commissioned and all other requirements under the Distribution Code have been met.
- (e) The Retailer must notify the Distributor within five (5) Business Days after becoming aware of the Retailer ceasing to purchase Qualifying Solar Energy Generation Electricity from the Qualifying Customer.
- (f) The Distributor is deemed to have ceased to provide the Distribution Services for the conveyance of Qualifying Solar Energy Generation Electricity to the Qualifying Customer from the date the Customer ceases to supply the Qualifying Solar Energy Generation Electricity.
- (g) This clause 4.6 ceases to apply on the earlier of the fifteenth anniversary of the Scheme Start Date and the expiry of the Distributor Obligation Period.

#### **4.7 Implementation of Premium Solar Feed-in Tariff Scheme**

Without limiting any other provision of this agreement, the parties will act in good faith to ensure that the provisions of this agreement are implemented fairly and efficiently so as to give full effect to the parties’ rights and obligations under Electricity Law constituted by or relating to sections 40FA to 40FJ of the EI Act.

---

## **5 Connection**

- (a) If the Retailer receives a request for Connection from a Customer, the Retailer must submit to the Distributor a Connection Request in respect of the Customer without delay and in accordance with any electricity industry

standards, but no later than the next Business Day following receipt of the Customer's request for Connection.

- (b) The Retailer will provide to the Distributor any information reasonably required by the Distributor for the purposes of effecting the Connection of Supply to a Customer's Supply Point. Without limiting the information required from a Retailer under this clause 5(b), such information will include the information described in clause 9.4(a) and any information which the Distributor is entitled to or required to receive for the purposes of Connection under the Electricity Law.
- (c) This clause 5 does not apply to reconnection following Disconnection.

## **6 Disconnection and Interruption of Customer**

### **6.1 Interpretation**

In this clause "Supply Point" means:

- (a) in respect of a Customer who occupies one or more of a number of premises which are connected to one Supply Point (as defined in clause 1.1), the Electrical Installation at the boundary of each of the premises occupied by the Customer; and
- (b) in any other case, the meaning in clause 1.1.

### **6.2 Disconnection and Interruption**

The Retailer acknowledges that in addition to the Distributor's rights under clauses 6.3 and 6.4, the Distributor may:

- (a) Disconnect; or
- (b) Interrupt Supply to, a Customer's Supply Point in accordance with the Electricity Law.

### **6.3 Disconnection at the request of the Retailer**

- (a) The Retailer may request, in a Disconnection Request, the Distributor to Disconnect a Customer's Supply Point.
- (b) Subject to the Electricity Law and this clause, if the Retailer provides a Disconnection Request to the Distributor, the Distributor will Disconnect the Customer's Supply Points specified in the Disconnection Request on the later of:
  - (1) the time specified in the Disconnection Request; and
  - (2) the soonest practicable time, which must be no more than 3 Business Days from the date of receipt by the Distributor of the Disconnection Request.

If a Disconnection Request is received by the Distributor after 3 pm on any day, it will be deemed to have been received on the next Business Day.

- (c) Subject to clause 6.3(d), if the Distributor does not Disconnect the Customer in the time specified in clause 6.3(b), the Distributor will from

that time waive the Network Tariff, and be liable to pay to the Retailer the costs incurred by the Retailer payable to AEMO in connection with the consumption of electricity by the Customer, provided that:

- (1) this will not render the Distributor the retailer of the Customer; and
- (2) the Retailer has exercised all reasonable endeavours to recover the relevant Network Tariff and consumption costs and has been unable to recover those costs directly from the Customer.

If the Retailer subsequently recovers from the Customer all or any part of any amount which the Distributor has waived or paid under this clause 6.3(c), the Retailer must promptly pay that recovered amount to the Distributor.

- (d) The Distributor may refuse to Disconnect a Customer's Supply Point where the Distributor reasonably considers that:
  - (1) such Disconnection would be detrimental to the health or safety of any person (including the Customer) ;
  - (2) the Retailer has issued a Disconnection Request in breach of the Electricity Law; or
  - (3) where the Retailer has issued a Disconnection Request for non payment of bills, the Customer does not have any outstanding amounts owing to the Retailer in respect of the Customer's Connection to the Distributor's Supply Point, provided that the Distributor is not obliged to make enquiries of the Customer as to any outstanding amounts.

In the case of clause 6.3(d)(1), the Distributor will use reasonable endeavours to remove or mitigate the risk of detriment. In each case under clause 6.3(d), the Distributor must notify the Retailer of the reasons for its refusal to Disconnect without delay.

- (e) Where the Distributor refuses to Disconnect a Customer on any of the grounds set out in clause 6.3(d), the Retailer will continue to be liable for the Distribution Service Charges in respect of the use of the Distribution System by the Customer and the consumption of electricity by the Customer.
- (f) By providing a Disconnection Request to the Distributor, the Retailer represents and warrants to the Distributor that the Retailer is entitled to make a request for Disconnection under its Retail Contract with the Customer and under any applicable Electricity Law, and it has complied with the procedures for Disconnection prescribed in that contract and any other procedures under the Electricity Law.
- (g) The Retailer shall indemnify the Distributor against all Claims arising from, or incurred by the Distributor as a consequence of the cessation of Supply as a result of any Disconnection by the Distributor pursuant to a Disconnection Request, except to the extent that the Claim arises from the negligent or reckless act or omission of the Distributor or from any breach or non-observance by the Distributor of this agreement or the Electricity Law.

## **6.4 Disconnection at the request of a Customer**

- (a) If a Customer requests the Distributor to Disconnect the Customer, the Distributor must Disconnect the Customer in accordance with the Distribution Code and notify the Retailer of the request.
- (b) If the Retailer receives from a Customer a request for Disconnection, the Retailer must pass on to the Distributor that request in a Disconnection Request as soon as reasonably practicable, in which case clause 6.3 will apply.

## **6.5 Reconnection or restoration of Supply**

- (a) Subject to clause 6.5(b), the Distributor must reconnect and restore Supply to the affected Customer's Supply Point:
  - (1) when required to do so under the Electricity Law, following Disconnection or Interruption; and
  - (2) when requested by the Retailer in a form reasonably required by the Distributor and consistent with any electricity industry practice, following Disconnection at the request of the Retailer, and such reconnection or restoration shall be carried out in accordance with the Electricity Law.
- (b) The Distributor may refuse to reconnect or restore Supply to a Customer's Supply Point where the Distributor is permitted by the Electricity Law to do so.
- (c) The Retailer will provide to the Distributor any information reasonably required by the Distributor in connection with the reconnection or restoration of Supply to a Customer's Supply Point. Such information will include any information which the Distributor is entitled to or required to receive for the purposes of reconnection or restoration of Supply under the Electricity Law.

---

# **7 Fees, Billing and Payment**

## **7.1 Distribution Service Charges**

- (a) The Retailer shall pay the Distributor the Distribution Service Charges in respect of each Customer for the entire period after the Commencement Date during which the Customer is a customer of the Retailer and during which the Distributor provides Distribution Services to the Retailer in respect of the Customer in accordance with this agreement.
- (b) Subject to clause 7.4(e), the obligation of the Retailer to pay the Distribution Service Charges to the Distributor will not be affected by any failure of a Customer to pay the Retailer in respect of the Distribution Services under the Retail Contract.
- (c) The Retailer acknowledges and agrees that the Distributor will be entitled to render an invoice to the Retailer for any Distribution Services Charges incurred by or on behalf of the Retailer where the Distributor has been unable to carry out or complete the relevant Distribution Services as a

result of any act or omission of the Retailer. Any such Distribution Service Charges will be invoiced and payable in accordance with this clause 7.

- (d) If the Distributor is required to credit the Retailer in accordance with the EI Act for Qualifying Solar Energy Generation Electricity, the Distributor will credit the Qualifying Solar Energy Generation Credit for the Qualifying Solar Energy Generation Electricity against the Distribution Service Charges payable by the Retailer pursuant to clause 7.1(a).

## **7.2 Retail Service Charges**

- (a) The Distributor shall pay the Retailer fair and reasonable fees in respect of any Retail Services provided by the Retailer to the Distributor at the request of the Distributor.
- (b) If the Distributor disputes the fairness or reasonableness of the charge for Retail Services or otherwise disputes its obligation to pay all or part of that invoice, the dispute will be resolved in accordance with the procedure set out in clause 7.9 (subject to the necessary amendments).

### 7.3 GST

- (a) The terms “Adjustment”, “Adjustment Note”, “Adjustment Event”, “GST”, “Recipient”, “Supplier”, “Supply”, “Taxable Supply”, and “Tax Invoice”, 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 agreement are expressed on a GST inclusive basis and reflect the rate of GST applicable at the time the Taxable Supply is provided.
- (c) 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 agreement 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 agreement, 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 agreement, an Adjustment Event occurs that gives rise to an Adjustment, then the price of that Taxable Supply (including any GST) will be adjusted accordingly and where necessary a payment will be made to reflect that 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 agreement 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.
- (h) Any non-monetary consideration (if any) given under this agreement is GST-inclusive. The Supplier shall issue the Recipient with a Tax Invoice within 28 days of the Recipient giving any non-monetary consideration.
- (i) If non-monetary consideration is given for a Supply under this agreement and the GST-inclusive market value of that consideration is not clearly identifiable, the party giving the non-monetary consideration must advise the GST-inclusive market value of the consideration at the time of giving this non-monetary consideration.

### 7.4 Invoices

- (a) Subject to clauses 7.4(b), and 7.4(e), each party will use its best endeavours to render invoices each month for Services provided, on the

- same Business Day of each month (or such other invoicing period as agreed between the Distributor and the Retailer).
- (b) The Distributor may render invoices at any time for Distribution Services provided at any time while a person was a Customer (whether or not during the period described in clause 7.4(a)) if the Distribution Services were obtained as a result of the Customer's or the Retailer's fraud or the use of electricity otherwise than in accordance with the Electricity Law.
  - (c) Invoices issued under clauses 7.4(a) or 7.4(b) shall be in a format determined by the party which issued the invoice and must be consistent with electricity industry practice and must contain sufficient information as is reasonable to allow the recipient:
    - (1) to assess the accuracy of the charges specified in each invoice; and
    - (2) to comply with its obligation under the Electricity Law in relation to the provision to the Customer of information concerning such charges.
  - (d) The Network Tariff component of an invoice for Distribution Services must only include Network Tariff charges for Customers whose meters were due to be read in the period of the invoice in accordance with clause 7.5(a) or in relation to the correction or substitution of previous meter reads relating to earlier invoicing periods. All other services will be invoiced after provision of the Service unless otherwise agreed by the parties or required by the Electricity Law.
  - (e) Subject to clause 7.6(c), if the Distributor renders an invoice for Distribution Services that were provided more than 11 months prior to the date of the invoice, the Retailer will not be obliged to pay that invoice to the extent that the Retailer is precluded from recovering those costs from the relevant Customers by operation of the Electricity Law.

## **7.5 Metering Data**

- (a) Subject to clauses 7.5(b) and 7.5(d), where a party or its Representative (including any Metering Provider, which may include a party in its capacity as Metering Provider) is the person responsible for providing services in respect of the Customer's Metering Data, that party must use best endeavours to ensure that:
  - (1) the Customer's meter is read (or attempted to be read) in accordance with the frequency specified in Item 3 of the Appendix; and
  - (2) subject to any exemptions required to be given under the Electricity Law, the Customer's meter is read at the time the Customer ceases to be a Customer of the Retailer; and
  - (3) the other party receives a copy of all Metering Data in respect of each of the Customers in accordance with the Metrology Procedure, and any additional data in a form sufficient to enable the Distributor to invoice those of its Distribution Service Charges that require Metering Data.



- (b) Where, for the purposes of a Retail Contract, a Retailer wishes to read a meter at the end of a period other than in accordance with the frequency specified in Item 3 of the Appendix, the Distribution Service Charges may, with the agreement of the Distributor, be based on estimated meter readings or meters read at the end of the other period.
- (c) Subject to clause 7.5(d) and clause 7.6, actual Metering Data in respect of a Customer's Supply Point shall be evidence of electricity supplied to a Customer and, shall be the basis for determining Distribution Service Charges.
- (d) Distribution Service Charges may be based upon estimated meter readings in accordance with the Electricity Law .
- (e) Where the Metering Data becomes available subsequent to the issuing of a bill based on estimated meter readings in accordance with clause 7.5(b) or (d), the charge must be adjusted in accordance with clause 7.6.
- (f) Estimated meter readings shall be determined by reference to the method set out in the Electricity Law or, if there is no such method, by reference to prior billing history or subsequent meter readings or any other method agreed between the parties.
- (g) A party must promptly notify the other party if it becomes aware of or perceives any errors in Metering Data provided by the other party.

## **7.6 Adjustment of Invoices**

- (a) Subject to clause 7.6(b), an incorrect charge in an invoice rendered under this agreement must be altered by the party rendering the invoice in a subsequent invoice to rectify the error. Causes of error may include, but are not limited to:
  - (1) meter tampering or bypass; or
  - (2) defective meters or defective meter readings; or
  - (3) errors by the System Operator in its charges to the Distributor; or
  - (4) errors in the billed electricity consumption of a Customer; or
  - (5) differences between estimated meter readings and Metering Data obtained after the invoice is issued;
  - (6) amounts imposed or adjusted by a Regulatory Authority; or
  - (7) amounts credited in error for the supply of Distribution Services for the conveyance of Qualifying Solar Energy Generation Electricity.
- (b) An adjusted invoice issued under clause 7.6(a) must include, or be accompanied by, an explanation of the reason why the adjusted invoice is being issued.
- (c) An alteration to an invoice to reflect an adjustment under clauses 7.6(a)(2), (3), (4) or (5) must not be made where the Retailer is precluded by the Electricity Law from recovering the adjusted Distribution Service Charges from its Customers.

## 7.7 GSL Payments

- (a) If the Distributor is required to pay a Customer in accordance with the Electricity Law for a failure by the Distributor to satisfy a Guaranteed Service Level, the Distributor may notify the Retailer that it wishes to make the payment through the Retailer, in which case:
- (1) the Distributor must notify the Retailer of the amount owing to the Customer;
  - (2) the Retailer must pay that amount to the Customer or credit that amount to the Customer as soon as practicable, in accordance with the Retailer's Customer invoicing procedures; and
  - (3) subject to clause 7.7(b), the Distributor must credit that amount to the next invoice which it issues to the Retailer under this agreement.
- (b) If:
- (1) the Retailer receives notification of a matter and the Retailer delays in passing on that notification to the Distributor; and
  - (2) as a result of that delay, the Distributor is required to make a payment to the Customer as a result of failing to satisfy the Guaranteed Service Level, then the Retailer must either:
    - (i) reimburse the Distributor for the payment made to the Customer; or
    - (ii) if requested by the Distributor, on behalf of the Distributor, pay the required payment to the Customer or credit that amount to the Customer's next bill,
 and the Distributor is not required to reimburse or credit the Retailer for that amount.
- (c) A Retailer must notify a Distributor where it is aware that the Distributor is required to make a Guaranteed Service Level payment to a Customer under the Electricity Distribution Code.
- (d) The Distributor must notify the Retailer where it makes a Guaranteed Service Level payment directly to a Customer under the Electricity Distribution Code.

## 7.8 Payment and interest

- (a) Subject to clause 7.9, a party ("**first party**") must pay to the other party ("**second party**") the amount specified in each invoice rendered to the first party by the second party in accordance with this agreement as follows:
- (1) for invoices issued prior to 1 January 2012 which:
    - (i) relate to Supply Points with a "smart meter" (as defined in the Energy Retail Code);
    - (ii) are billed by the Retailer to the Customer quarterly; and
    - (iii) are billed by the Distributor to the Retailer monthly;
 the first party must pay the amount specified in the invoice rendered to it in accordance with this agreement to the second party

- within 30 Business Days after the day on which the invoice is received (or deemed to be received) by the first party; and
- (2) for all other invoices, the first party must pay the amount specified within 10 Business Days after the day on which the invoice is received (or deemed to be received) by the first party.
- (b) Payment shall be made by deposit into the nominated account of the party issuing the invoice, or in a manner otherwise agreed between the Retailer and the Distributor.
  - (c) If an invoice is not paid in full in accordance with this clause, the party who has failed to make the payment must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 7.9) from the 10<sup>th</sup> Business Day after the day the invoice is received (or deemed to be received) until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

## 7.9 Disputed invoices

- (a) A party in receipt of an invoice (“**Disputing Party**”) must notify the party which issued the invoice (“**Invoicing Party**”) within 7 Business Days of receipt of an invoice (of the kind described in clause 7.8(a)) (“**Dispute Period**”) if it disputes its obligation under this agreement to pay all or part of that invoice (“**Disputed Invoice**”) and must include in that notice its grounds for disputing the Disputed Invoice and the amount disputed.
- (b) Unless the Disputing Party gives notice to the Invoicing Party within the Dispute Period, the Disputing Party must pay the Disputed Invoice in full, subject to its right to seek a subsequent adjustment under clause 7.6 or to dispute the amount of the invoice under clause 7.9(d) after the invoice has been paid in full.
- (c) If the Disputing Party notifies the Invoicing Party of a Disputed Invoice with the Dispute Period, the parties will seek to resolve that dispute in accordance with clause 7.9(d), and the Disputing Party will be required to pay the greater of the following amounts within the applicable period for payment of the relevant invoice under clause 7.8(a):
  - (1) the amount of the invoice not genuinely disputed by the Disputing Party; or
  - (2) 80% of the amount of the previous undisputed invoice from the Invoicing Party (or any other reasonable amount agreed by the parties).

For the purposes of this clause 7.9(c), where a dispute as to an invoice is resolved, the resolved amount will be deemed to be an undisputed invoice amount.

- (d) Any dispute (notified under clause 7.9(a)) shall be resolved in accordance with this clause and neither party may refer the dispute to the dispute resolution procedure under clause 14 until the parties have satisfied

obligations under clause 7.9(c), paragraph (1) of this clause 7.9(d) and, if applicable, paragraph (2) of this clause 7.9(d).

The Invoicing Party will:

- (1) discuss with the Disputing Party any queries that the Disputing Party may have in relation to an invoice; and
- (2) conduct an internal review of the invoice within 10 Business Days after receipt of the notice. The Invoicing Party will report its findings to the Disputing Party as soon as practicable after completion of that review.

If the matter is not resolved within 2 Business Days from the receipt by the Disputing Party of the Invoicing Party's report under clause 7.9(d)(2), either party may refer it to dispute resolution under clause 14.

- (e) If, following the resolution of a dispute in accordance with clause 7.9(d) or clause 14, it is determined that the amount that is properly due to the Invoicing Party in relation to that invoice is:
  - (1) more than the amount already paid by the Disputing Party, then the Disputing Party must pay within 3 Business Days to the Invoicing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the underpayment;
  - (2) less than the amount already paid by the Disputing Party, then the Invoicing Party must pay within 3 Business Days to the Disputing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the overpayment.
- (f) Interest on the difference payable under clause 7.9(e) shall be calculated at the Default Rate applicable on the first day of each month, capitalised on the first day of each month and calculated on actual days elapsed and a 365 day year for each day after that invoice was due to be paid up to and including the date the difference and any accrued interest payable under this clause 7.9(e) (if any) is paid.
- (g) Unless the parties otherwise agree, no party may set off or deduct any money which it owes to the other party against any money which the other (second) party owes to the first party.
- (h) The payment by the Disputing Party of all or part of an invoice from the Invoicing Party (whether or not that invoice was disputed by the Disputing Party at the time) will not preclude the Disputing Party from subsequently challenging its liability to pay that invoice or a part of that invoice (unless the challenge relates to a dispute which has already been finally determined in accordance with this clause 7.9).

## 7.10 Credit Support

- (a) Where the Required Credit Support Amount is greater than zero, the Distributor may request the Retailer to procure an unconditional undertaking in favour of the Distributor in accordance with this clause 7 ("**Credit Support**"). Subject to clause 7.10(n), the Retailer must provide

to the Distributor, within 10 Business Days after a request by the Distributor, an unconditional undertaking in favour of the Distributor which is:

- (1) substantially in the form of Schedule 2 (or such other form as approved by the Distributor), and
- (2) issued by either an Australian bank or any other financial institution approved by the Distributor which is capable of paying on the Credit Support in Melbourne when demanded,

to secure the due and punctual performance of the Retailer's obligations to pay the Distributor amounts owed under this agreement.

- (b) For the purpose of the calculation of the Required Credit Support Amount the Credit Allowance of the Retailer will be equal to zero, if at the time of the Distributor's request for Credit Support under clause 7.10(a) any of the following apply:

- (1) within the previous 12 months, (or where the Commencement Date occurs within the previous 12 months, since the Commencement Date) the Retailer has failed to pay in full:
  - (A) 3 invoices within the required time limit for payment; or
  - (B) 2 consecutive invoices within the required time limit for payment; or
  - (C) 1 invoice within 25 Business Days of the due date, or
- (2) any amounts owing by the Retailer to the Distributor in respect of the provision of Distribution Services in the period prior to the Commencement Date, are not paid in full within 30 days of the Commencement Date, or
- (3) AEMO calls upon any credit support provided by the Retailer or its Guarantor to AEMO under the National Market, or
- (4) the Retailer ceases to be registered with the National Market, or
- (5) where the Retailer purchases energy under an agreement with a person registered with the National Market and that person issues a notice of default to the Retailer under that agreement;
- (6) where the Retailer purchases energy under an agreement with a person registered with the National Market and that person ceases to be registered with the National Market

provided that nothing in clause 7.10(b)(1) or (2) shall apply where the Retailer has failed to pay the invoice or invoices due to bona fide dispute under clause 7.9.

- (c) The Credit Support procured by the Retailer under clause 7.10(a) must be for an amount requested by the Distributor, not exceeding the Required Credit Support Amount.
- (d) If at any time during the term of this agreement the aggregate amount of uncalled Credit Support held by the Distributor in accordance with this clause 7.10 is less than 90% of the Required Credit Support Amount, the

Retailer must, on request by the Distributor, within 10 Business Days, increase the amount of the Credit Support to the Required Credit Support Amount.

- (e) If at any time during the term of this agreement, the aggregate amount of uncalled Credit Support held by the Distributor in accordance with this clause 7.10 is more than 110% of the Required Credit Support Amount or if the Required Credit Support Amount is zero, the Distributor must upon request by the Retailer and in conjunction with the Retailer, do all things necessary to reduce the aggregate amount of uncalled Credit Support held by the Distributor to the Required Credit Support Amount.
- (f) The Distributor may only set off from, apply or draw on the Credit Support (as the case may be) where:
  - (1) the Retailer has failed to pay any amount due and owing by the Retailer to the Distributor under this agreement at any time 3 Business Days after giving notice to the Retailer that it intends to set off, apply or draw on the Credit Support; and
  - (2) there is no bona fide dispute outstanding in accordance with clause 7.9 in relation to the Retailer's liability to pay an amount.
- (g) If the Retailer has been required to provide Credit Support, the Retailer shall ensure that at all times the aggregate undrawn or unclaimed amount of the Credit Support is not less than the amount determined by the Distributor in accordance with clause 7.10(c) or adjusted in accordance with clause 7.10(d).
- (h) Any balance of the Credit Support outstanding after payment of all amounts owing by the Retailer to the Distributor under this agreement shall be paid to the Retailer (or cancelled or returned to the Retailer, as appropriate) following termination of this agreement.
- (i) The exercise of any rights of set off by the Distributor under this clause does not prejudice any other right of recovery which the Distributor has in respect of any outstanding amount owed by the Retailer.
- (j) The Retailer must not take any steps to seek an injunction or otherwise restrain:
  - (1) any issuer of the Credit Support from paying the Distributor pursuant to the Credit Support;
  - (2) the Distributor from taking any steps for the purposes of making a demand against the Credit Support; or
  - (3) the Distributor using the money obtained in the calling of the Credit Support,
 where the Distributor has acted in accordance with this clause 7.10.
- (k) The Retailer acknowledges that the Distributor may disclose to its financiers, the Commission or AEMO that it has required or called upon credit support provided by the Retailer under this clause 7.10.
- (l) The Retailer must notify the Distributor within 1 Business Day if the Credit Allowance of the Retailer becomes equal to zero because of the operation of clause 7.10(b)(3), (4), (5) or (6).

- (m) If the issuer of Credit Support pays an amount to the Distributor pursuant to an unconditional undertaking provided by the Retailer in accordance with clause 7.10(a), which amount was not called in accordance with this clause 7.10, the Distributor will hold that amount on trust for the Retailer and pay it to the Retailer (together with interest on that amount at the Default Rate from the date upon which that amount was called to the date upon which that amount is paid to the Retailer) when the Retailer provides a further unconditional undertaking to the Distributor for an amount equal to the amount held on trust (or otherwise so that the Retailer has complied with clause 7.10(a)).
- (n) The Retailer may nominate an alternative method of credit support as an alternative to Credit Support under clause 7.10(a) which provides equivalent credit assurance and to which the Distributor consents provided that such consent must not be unreasonably withheld.

---

## **8 Information Exchange**

### **8.1 Compliance with privacy laws**

Each party agrees that:

- (a) any obligation under this agreement to provide information is subject to any applicable laws (including the Electricity Law) imposing obligations in respect of privacy, disclosure, use or confidentiality of information; and
- (b) it will hold any information which it receives under this agreement in accordance with any requirements of this agreement and any applicable laws (including the Electricity Law) relating to privacy, disclosure, use or confidentiality of information.

### **8.2 Provision of information**

To the extent permitted by law, and subject to any legislative, contractual or other obligations of confidentiality (including under the Electricity Law), each party must use its reasonable endeavours to provide the other party at no cost and in a timely manner any information or documentation which the other party reasonably requires to carry out its obligations under this agreement or under the Electricity Law.

### **8.3 Use of information**

Subject to clause 17, a recipient may only use or disclose the information disclosed to it under clause 8.2 for the purposes for which the information was provided by the party providing the information or to the extent that it is permitted to use or disclose the information under the law or any contractual obligation or in accordance with any guidelines issued by the Commission .

### **8.4 Information exchange protocols**

- (a) The parties must establish, implement and comply with a scheme or arrangement for the operation and management of communication

protocols, systems and procedures as are necessary to facilitate the exchange of information described in clause 8.2.

- (b) The parties must act reasonably and in a co-operative and timely manner in establishing and implementing the protocols, systems and procedures described in clause 8.4(a).
- (c) Notwithstanding that any of the protocols, systems and procedures described in clause 8.4(a) have not been established and implemented, this will not affect the operation of any of the provisions of this agreement.

## **8.5 Changes in information**

If either party becomes aware of any material change in any of the information provided under clause 8.2, that party must notify the other party as soon as reasonably practicable of that change.

## **8.6 Accuracy of information**

Each party must take all reasonable steps to ensure that all information which it provides to the other party (whether that information is generated by the first mentioned party or a third person) under this agreement (including this clause 8 and clause 9) is accurate and complete.

# **9 Communications regarding Customers and System Data**

## **9.1 Answering Fault calls**

- (a) Subject to clause 9.1(c),(f) and (g), if a Customer contacts the Retailer by telephone about a Fault or an unplanned Interruption in the Distributor's Distribution Area, the Retailer must:
  - (1) transfer the Customer to the Distributor's faults telephone number, where communication systems are technically capable of identifying the area from which the telephone call was made by the Customer upon transfer of the call; or
  - (2) otherwise, refer the Customer to the Distributor's faults telephone number.
- (b) The Retailer must not handle, deal with or advise on a Customer's enquiry regarding a Fault other than to the extent that it is permitted to provide information to the Customer in the circumstances described in clause 9.1(c).
- (c) If the Retailer:
  - (1) is informed by the Customer that the Customer has been unable to contact the Distributor through the Distributor's faults telephone number; or
  - (2) believes on reasonable grounds that the Distributor's fault telephone number is not properly functioning; or
  - (3) is informed by the Customer that the Customer declines to contact or (where appropriate) be transferred to the Distributor, then the



Retailer may provide the Customer with the information regarding the Fault that has been provided to the Retailer by the Distributor in accordance with clause 9.2. The Retailer must not provide any other information regarding the Fault to the Customer.

- (d) The Distributor will provide to the Retailer a contact telephone number which the Retailer must publish on its Customers' accounts as the "fault number". Until otherwise notified, the Distributor advises the Retailer for the purpose of clause 9.1(d) that the fault number is as specified in item 5 of the Appendix.
- (e) The Distributor will provide to the Retailer a contact telephone number for Emergencies. The Retailer must not call the emergency number or transfer a telephone call to the emergency number unless the Retailer reasonably considers that the subject of the call comprises an Emergency situation. The Retailer acknowledges that the emergency number is confidential information for the purposes of clause 17.
- (f) If the Fault identified by the Customer relates to an Emergency, the Retailer must transfer the Customer to the telephone number provided by the Distributor to the Retailer for Emergencies.
- (g) Nothing contained in this clause affects the particular arrangements between the Distributor, the Retailer and any Customer regarding notification of and dealing with Faults and Interruptions.

## **9.2 Provision of information concerning Faults and unplanned Interruptions**

- (a) The Distributor must provide to the Retailer information regarding Faults, or unplanned Interruptions which the Distributor is required to provide to a Customer under the Electricity Distribution Code within the same time period as the information is required to be provided by the Distributor to the Customer under the Electricity Distribution Code.
- (b) Any information described in clause 9.2(a) is not required to distinguish between Faults affecting Customers and Faults affecting customers of other retailers.
- (c) The Retailer indemnifies the Distributor against any liability to a Customer arising as a result of the Retailer providing fault information to the Customer other than the information described in clause 9.2(a).

## **9.3 Provision of information for Planned Interruptions and Disconnections**

- (a) The notification which the Distributor sends out to Customers notifying them of any planned Interruptions or Disconnections which are not the subject of a Disconnection Request in accordance with the Electricity Law must bear the Distributor's contact details and should state that any enquiries regarding planned Interruptions or such Disconnections should be directed to the Distributor.
- (b) The Distributor must make available to the Retailer information which the Distributor is required to provide to a Customer under the Electricity Distribution Code in respect of planned Interruptions within the same time

period as the information is required to be provided by the Distributor to the Customer under the Electricity Distribution Code. This information must include information regarding the area in which the planned Interruption is to occur.

- (c) If a Customer contacts the Retailer about a planned Interruption or a Disconnection requested or proposed by a Distributor, the Retailer must:
  - (1) subject to paragraph (2), refer the Customer to the Distributor; or
  - (2) where the Customer informs the Retailer that it declines to contact or (where appropriate) be transferred to the Distributor, deal with the Customer itself.
- (d) Any information referred to in clause 9.3(b) in respect of planned Interruptions must include information regarding specific premises where such information is readily available or otherwise must include at least information regarding the area in which the planned Interruption is to occur.

#### **9.4 Customer Details**

- (a) In respect of each Customer, the Retailer must provide to the Distributor the following details:
  - (1) name;
  - (2) contact name;
  - (3) telephone number;
  - (4) address for service of notices;
  - (5) site address for NMI;
  - (6) NMI;
  - (7) confirmation from a registered medical practitioner or a hospital that a person residing at a Customer's supply address requires a life support machine, if the Customer has provided such confirmation to the Retailer; and
  - (8) details of any special circumstances (such as meter access restrictions) of which the Customer has informed the Retailer or of which the Retailer is otherwise aware, and which the Distributor requires to assist it to comply with its obligations under the Electricity Law.
- (b) Information described in clause 9.4(a) must be provided in the following manner:
  - (1) on or before the Commencement Date, by an electronic transfer of the requisite details from the Retailer's database;
  - (2) on a transaction by transaction basis as Customers are Connected or Disconnected or as the details described in clause 9.4(a) otherwise change; and
  - (3) by monthly electronic transfers of the requisite details from the Retailer's database (or at any other agreed intervals) for the

purposes of the reconciliation of information provided under this clause 9.4.

## **9.5 Enquiries or Complaints relating to Retailer**

- (a) If a person contacts the Retailer about an enquiry or a complaint (other than a Fault or an Interruption) and the enquiry or the complaint relates to the Retailer, the Retailer must deal with the enquiry or the complaint and the Retailer is not required to notify the Distributor.
- (b) If a person contacts the Distributor about an enquiry or a complaint (other than a Fault or an Interruption) and the enquiry or the complaint relates to the Retailer, the Distributor must:
  - (1) where the enquiry or complaint is made by telephone, transfer the person directly to the Retailer's enquiry or complaint telephone number where practicable; or
  - (2) otherwise, as soon as practicable, but no later than the next Business Day after receiving the enquiry or complaint, provide the Retailer with the details of the enquiry or the complaint, including contact details of both the person making the enquiry or complaint and the person who received the enquiry or complaint. The Distributor must provide to the Retailer on request copies of any documents or written records (including in electronic format) relating to the enquiry or complaint.

The Retailer will then be responsible for resolving the enquiry or the complaint and must attempt to resolve the enquiry or complaint expeditiously.

## **9.6 Enquiries or Complaints relating to Distributor**

- (a) If a person contacts a Distributor about an enquiry or a complaint and the enquiry or the complaint relates to the Distributor, the Distributor must deal with the enquiry or the complaint and is not required to notify the Retailer.
- (b) If a person contacts a Retailer about an enquiry or a complaint and the enquiry or the complaint relates to a Distributor, the Retailer must:
  - (1) where the enquiry or complaint is made by telephone, transfer the person directly to the Distributor's enquiry or complaints telephone number where practicable; or
  - (2) otherwise, as soon as practicable, but no later than the next Business Day after receiving the enquiry or complaint, provide the Distributor with the details of the enquiry or the complaint, including contact details of both the person making the enquiry or complaint and the person who received the enquiry or complaint. The Retailer must provide to the Distributor on request copies of any documents or written records (including in electronic format) relating to the enquiry or complaint.

The Distributor will then be responsible for resolving the enquiry or the complaint and must attempt to resolve the enquiry or complaint expeditiously.

## 9.7 Ombudsman complaints

- (a) If a party to this agreement (**First Party**) receives an Enquiry, Consultation, Complaint or Dispute or notice of an Enquiry, Consultation, Complaint or Dispute from the Energy and Water Ombudsman (Victoria) (**Ombudsman**) and the Enquiry, Consultation, Complaint or Dispute relates to an act or omission of the other party to this agreement (**Second Party**):
- (1) the First Party must:
    - (A) notify the Second Party as soon as reasonably practicable, setting out the details of the Enquiry, Consultation, Complaint or Dispute (as applicable), including any relevant time frames;
    - (B) consult in advance with, and use its best endeavours to take into account the interest of, the Second Party in preparing any response to any Enquiry, Consultation, Complaint or Dispute (as applicable); and
    - (C) keep the Second Party informed of the progress of the Enquiry, Consultation, Complaint or Dispute (as applicable); and
    - (D) use its best endeavours to take account of the Second Party's interests in deciding what compensation is payable or in incurring costs because of the Enquiry, Consultation, Complaint or Dispute (as applicable);
  - (2) the Second Party must:
    - (A) as soon as practicable after receipt of the notification under clause 9.7(a)(1)(A) and in any case within sufficient time to permit the First Party to comply with its obligations to the Ombudsman, supply the First Party all information relevant to the Enquiry, Consultation, Complaint or Dispute (as applicable) which the Second Party would reasonably be expected to have, or have access to, as a Retailer or Distributor (as applicable);
    - (B) provide all reasonable assistance that the Second Party could provide having regard to the nature of the Enquiry, Consultation, Complaint or Dispute (as applicable); and
    - (C) permit its employees, agents or sub-contractors to attend and provide information at any meeting, conference or interview convened by the Ombudsman to consider the case being investigated; and
  - (3) both the First Party and the Second Party must use their best endeavours to resolve any Enquiry, Consultation, Complaint or Dispute (as applicable) as quickly as practicable in the

circumstances provided, however, that neither the First Party nor the Second Party shall be prevented from defending any Enquiry, Consultation, Complaint or Dispute (as applicable).

- (b) Prior to the First Party settling any Consultation, Complaint or Dispute relating to an act or omission of the other party, the First Party must provide not less than 5 Business Days advance written notification to the Second Party of the terms of the proposed settlement and must take into consideration any views expressed by the Second Party.
- (c) If following an Enquiry, Consultation, Complaint or Dispute the First Party is required or agrees to compensate a person, then to the extent that such compensation relates directly to acts or omissions of the Second Party, the Second Party will, within 7 Business Days of receipt of notification from the First Party (which notification shall include a copy of the Ombudsman's Binding Decision if applicable) reimburse the First Party for such part of the compensation required to be paid by the First Party as relates directly to the acts or omissions of the Second Party, including reasonable disbursements incurred by the First Party, including the Ombudsman's case handling charges because of the Enquiry, Consultation, Complaint or Dispute.
- (d) Subject to clause 9.7(b), nothing in this clause prevents the First Party from settling any Enquiry, Consultation, Complaint or Dispute.
- (e) In this clause 9.7, the terms "**Enquiry**", "**Consultation**", "**Complaint**" and "**Dispute**" mean any enquiry, question, consultation, discussion, written or verbal expression of dissatisfaction, dispute or disagreement (as applicable) arising from a person in relation to the Customer, the Retailer or the Distributor which the Ombudsman receives, facilitates, investigates or resolves.

## **9.8 Changes in Network Tariffs or Distribution Services**

- (a) If the Retailer requests a change in Network Tariffs applicable to a Customer, the Distributor must advise the Retailer within 10 Business Days after receiving notice of the request either:
  - (1) that the change in Network Tariffs can occur, and when the change will occur; or
  - (2) that the change in Network Tariffs cannot occur, with reasons.
- (b) If the Retailer requests a change in the Distribution Services, the Distributor must advise the Retailer as soon as practicable, but no later than 20 Business Days of receiving notice of the request either:
  - (1) that the change in Distribution Services can occur, when that change will commence and the Distribution Service Charges for the changed Services; or
  - (2) that the change in Distribution Services cannot occur, with reasons.
- (c) The Distributor must notify the Retailer of:
  - (1) any proposed changes in the level of Network Tariffs, no later than 2 Business Days after the date on which the changes are notified to the Commission under the Electricity Law;

- (2) any changes in the level of Network Tariffs approved by the Commission no later than 2 Business Days after the date on which the Commission notifies the Distributor of the approval; and
  - (3) any changes in the level of a Distribution Service Charge other than a Network Tariff as soon as reasonably practicable after the Distributor becomes aware of that change and, in respect of a change requiring the approval of the Commission under the Electricity Law, no later than 2 Business Days after the date on which the Commission advises the Distributor that the change (or the resulting charge) is approved by the Commission.
- (d) The Retailer acknowledges and agrees that:
- (1) any information notified under clause 9.8(c)(1) will consist of proposed charges and will not have been approved by the Commission at the time of notification to the Retailer;
  - (2) the Distributor will have no liability to the Retailer for any differences between the information notified under clause 9.8(c)(1) and any charges approved by the Commission or for any rejection by the Commission of the proposed charges; and
  - (3) without limiting clause 17, the Retailer must not disclose the information notified under clause 9.8(c)(1) to any other person or to any employees or Officers of the Retailer engaged in any electricity distribution business.
- (e) If the Distributor requests, the Retailer must notify each affected Customer of any change in the Network Tariff that has been approved by the Commission in accordance with the requirements of the Electricity Law.
- (f) The Retailer must notify the Distributor within 3 days if it is informed by a Customer of a change in the use of the Customer's premises which may result in the Customer no longer satisfying the conditions relating to the Distributor's Network Tariff applying to that Customer.
- (g) If a Customer requests a Retailer to re-assign the Customer to a different Network Tariff, the Retailer must refer the request to the Distributor within 2 Business Days after receiving the request.
- (h) If a Customer requests a Distributor, or a Retailer refers a request from a Customer, to re-assign the Customer to a different Network Tariff, the Distributor may deal with the request or require the Retailer to deal with the request. If the Distributor deals with the request and the request is not immediately rejected or withdrawn, the Distributor must:
- (1) where the request was received directly from the Customer, notify the Retailer of the request as soon as practicable after receiving the request; and
  - (2) notify the Retailer of the outcome of the request at the same time that the Customer is notified.

If the Retailer is required to deal with the request, the Distributor must use its reasonable endeavours to assist the Retailer to resolve an outcome for the request and the Retailer must notify the Distributor of the outcome of the request at the same time as the Customer is notified.

- (i) Despite anything else contained in this clause 9.8, and except in relation to Network Tariffs approved by the Commission on or before the later of 1 January 2002 and the date of this Agreement, the Distributor must not, unless otherwise agreed with the Retailer, introduce any change in the structure of a Network Tariff or any new Network Tariff until 3 months after notifying the Retailer of the proposed change.
- (j) Despite anything else contained in this clause 9.8, where the installation of a smart meter (as defined in the Energy Retail Code) causes the re-assignment of a Customer to a different Network Tariff, the Distributor must provide at least 30 Business Days notice prior to re-assignment taking effect unless shorter notice period is otherwise agreed with the Retailer.

### **9.9 Theft of electricity**

A party must promptly notify the other party if it reasonably believes that a person is committing or has committed theft of electricity from the Distribution System and the other party may be affected by the theft.

### **9.10 Information for Customers**

Subject to clauses 9.1, 9.2 and 9.3:

- (a) If the Retailer receives a request from a Customer for documentation or information required to be provided by the Distributor under the Electricity Law:
  - (1) where the request is for the Distributor's charter, a copy of the Electricity Distribution Code or standard document or other standard information approved by the Distributor, the Retailer may provide such documents and information to the Customer; or
  - (2) otherwise, or if the Retailer does not provide to the Customer documentation or information requested under clause 9.10(a)(1), the Retailer must promptly notify the Distributor of the request.
- (b) If the Distributor requests the Retailer to do so, the Retailer will respond directly to a Customer's request for documentation or information, and the Distributor shall use its reasonable endeavours to assist the Retailer to respond to the request to the Customer's reasonable satisfaction.
- (c) If the Distributor elects to respond directly to a Customer's request for documentation or information, the Distributor shall use its reasonable endeavours to respond to the request to the Customer's reasonable satisfaction, and the Retailer shall use its reasonable endeavours to assist the Distributor to respond.
- (d) If the Distributor receives a request from a Customer for documentation or information required to be provided by the Retailer under the Electricity Law, the Distributor will advise the Customer of the Retailer's contact details or pass on any written request to the Retailer as soon as reasonably practicable and within any time limit imposed under the Electricity Law.
- (e) Where requested by the Distributor, the Retailer must deliver to a Customer any notification, information or documentation provided by the

Distributor for that Customer which is required to be provided by the Distributor under this agreement or the Electricity Law, including, without limitation, the Distributor's charter.

- (f) Where a Retailer provides any notifications, information or documentation to a Customer under clauses 9.10(b) or (c), the Retailer may charge the Distributor a reasonable fee for providing such notifications, information or documentation.

---

## **10 Force Majeure**

### **10.1 Suspension of Obligations**

If a party is unable wholly or in part to perform on time as required any obligation under this agreement (other than an obligation to pay money) by reason of the occurrence of a Force Majeure Event, that obligation shall be suspended, without liability, so far as the party's ability to perform is affected by the Force Majeure Event.

### **10.2 Mitigation of Force Majeure Event**

A party affected by a Force Majeure Event shall use its best endeavours to remove the effect of each Force Majeure Event affecting its performance of this agreement, but nothing in this clause 10.2 requires it to settle any industrial dispute otherwise than as that party in its absolute discretion sees fit.

### **10.3 Notice**

Subject to clause 10.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a Force Majeure Event, it shall as soon as reasonably practicable thereafter give to the other party notice containing full particulars of the Force Majeure Event including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

---

## **11 Enforcement of Distributor's Rights Against Customers**

### **11.1 Restriction on Distributor's enforcement rights**

Subject to clauses 11.2(a) and 11.2(c), the Distributor is not entitled to enforce its rights directly against the Customer (whether under the Deemed Contract, the Electricity Law or otherwise) without notifying or consulting with the Retailer.

### **11.2 Consultation prior to Disconnection**

- (a) Prior to the Distributor Disconnecting a Customer's Supply Point (other than pursuant to a Disconnection Request), the Distributor and the Retailer must use reasonable endeavours to agree:
  - (1) the procedure to be followed in effecting the Disconnection; and



- (2) the manner in which the costs incurred in taking the action will be allocated between the parties, subject to the Distributor's and Retailer's obligations under the Electricity Law.
- (b) If the Distributor and the Retailer fail to agree a procedure or cost allocation under clause 11.2(a) within 3 Business Days of the Distributor first advising the Retailer of its desire to Disconnect the Customer's Supply Point, the Distributor may effect the Disconnection and otherwise enforce its rights against the Customer.
- (c) Notwithstanding clauses 11.2(a) and 11.2(b), the Distributor may take action to Disconnect a Customer's Supply Point without notifying or consulting with the Retailer where the Disconnection is due to an Emergency or where the Distributor Disconnects any private overhead power lines as a result of a total fire ban or other bushfire mitigation action.

### **11.3 Distributor to indemnify Retailer**

The Distributor shall indemnify the Retailer against Claims arising from, or incurred by the Retailer as a consequence of, any action taken by the Retailer under this clause 11 to enforce the Distributor's rights at the request of the Distributor, except to the extent that the Claim arises from the negligent or reckless act or omission of the Retailer or from any breach or non-observance by the Retailer of this agreement or the Electricity Law.

### **11.4 Retailer to notify Customer and Distributor**

The Retailer must notify the Customer if the Retailer becomes aware that a Customer is, or may, breach any of its obligations under the Electricity Law relating to the matters set out in Schedule 3, and if the Customer does not take remedial action, the Retailer must promptly notify the Distributor of the breach or potential breach. A failure by the Retailer to notify the Distributor under this clause 11.4 is not a ground for termination of this agreement under clause 12.2(a)(3).

### **11.5 Limitation of Retailer's obligations**

Nothing in this clause is intended to affect or impose on the Retailer any of the Distributor's rights or obligations under the Electricity Law.

---

## **12 Term and Termination**

### **12.1 Term**

This agreement commences on the Commencement Date and continues until terminated under this clause 12, or as otherwise agreed by the parties.

### **12.2 Termination for default or insolvency of Retailer**

- (a) Where:

- (1) the Retailer defaults in due and punctual payment of any money at the time and in the manner prescribed under this agreement; or
  - (2) the Retailer fails to provide Credit Support in accordance with clause 7.10; or
  - (3) the Retailer defaults in the performance of any of its other promises or obligations under this agreement which would cause material detriment to the Distributor; or
  - (4) there is an Insolvency Event in relation to the Retailer, then the Retailer is in default and the Distributor may give written notice of the default to the Retailer stating:
    - (A) that the Distributor considers that the Retailer is in default; and
    - (B) the cause of the default.
- (b) At the same time as giving any notice to the Retailer under clause 12.2(a), the Distributor must give a copy of that notice to the Commission.
- (c) If the Retailer does not remedy the default specified in the notice given under clause 12.2(a) within the following times:
- (1) in the case of a default described in clause 12.2(a)(2) or clause 12.2(a)(4), 7 days; and
  - (2) in the case of any other default described in clause 12.2(a), 21 days, then the Distributor may give notice of its intention to terminate this agreement under clause 12.3.

### **12.3 Notice of termination**

- (a) Where the Distributor is entitled to give a notice under this clause 12.3, the Distributor may give written notice to the Retailer stating:
- (1) that the Distributor intends to terminate this agreement; and
  - (2) the cause for terminating this agreement.
- (b) At the same time as giving any notice to the Retailer under clause 12.3(a), the Distributor must give a copy of that notice to the Commission.
- (c) The Retailer must within 7 days of the service of a notice of termination under clause 12.3(a) remedy or remove the cause or causes stated in the notice of termination.
- (d) If within the 7 days referred to in clause 12.3(c) the Retailer does not remedy or remove the cause or causes, the Distributor may by further notice in writing to the Retailer terminate this agreement with effect from the date specified in the notice.

### **12.4 Termination where no Customers**

If at any time there is no Customer in respect of whom the Retailer requires Distribution Services under this Agreement, the Retailer may, by notice to the Distributor, terminate this agreement.

## **12.5 Termination by Distributor**

The Distributor may terminate this agreement on the giving to the Retailer of 90 Business Days' notice, where, under the Electricity Law, the Distributor ceases to be obliged to provide UoS Services to the Retailer.

## **12.6 Consequences of Termination**

Upon termination or expiration of this agreement, or replacement of this agreement with an agreement having similar effect, this agreement, other than clauses 7.6, 7.10, 12.8, 12.9, 13, 14, 17 and 18, is at an end as to its future operation except for the enforcement of any right or claim which arises on, or has arisen before, termination.

## **12.7 Remedies for Default**

Subject to clause 12.9, without limiting any other rights of the parties under this agreement or otherwise at law, if a party has defaulted on the performance of an obligation to pay any amount to the other party under this agreement, the non-defaulting party may:

- (a) set off, apply or draw on (as the case may be) any Credit Support and any accrued interest for the amount then due and payable by the defaulting party to the non-defaulting party; or
- (b) sue the defaulting party for compensation for that default and exercise all available legal and equitable remedies including without limitation, suing for specific performance, injunctive relief or such other orders as it deems appropriate.

## **12.8 Preservation of rights**

Nothing in clause 12 will operate to exclude, limit or otherwise affect the parties' rights, remedies or powers under statute, common law or in equity and the parties' rights under clause 12 to terminate this agreement will be without prejudice to the parties' rights to pursue relief by way of damages, injunction or specific performance in respect of a breach of this agreement. Without limiting the foregoing, each party shall be entitled to render an invoice to the other party for Services provided and not invoiced up to and including the date of termination, and any such invoice will be payable in accordance with clause 7.

## **12.9 Distribution Services after termination**

Notwithstanding the termination of this agreement, the Distributor and the Retailer acknowledge that the Distributor may continue to provide Distribution Services to the Retailer in respect of any Customer of the Retailer until the first to occur of the events specified in clause 4.3. In respect of any such Distribution Services provided after termination of this agreement, all provisions of this agreement which relate to the provision of Distribution Services shall continue to apply.

---

## 13 Indemnities

### 13.1 No Warranties

- (a) Subject to the *Competition & Consumer Act 2010* (Cth) and the express provisions of this agreement, all warranties, terms and conditions in relation to the supply of electricity or other product or service and of every other kind which may be otherwise implied by use, statute or otherwise are, to the extent that they may lawfully be, hereby excluded.
- (b) Nothing in clause 13.1(a) excludes the operation of the Guaranteed Service Levels required to be satisfied by the Distributor under the Electricity Law.

### 13.2 Liability for Supply

Without limiting any other legal liability of a Distributor, subject to the exclusions provided in section 99 of the EI Act and sections 119 and 120 of the National Electricity Law, the Distributor shall indemnify the Retailer against any:

- (a) Claim by a Customer against the Retailer relating to the quality of, or interruptions to, the Supply by the Distributor (other than a Claim of the type referred to in clause 13.2(b)), where the Distributor would have been liable to that Customer under the Deemed Contract had that Customer claimed against the Distributor, but only to the extent that the Distributor would have been liable to that Customer under the Deemed Contract;
- (b) Claim against the Retailer by a Customer for breach by the Retailer of any conditions, warranties or terms implied by Part 3-2 of Schedule 2 to the *Competition & Consumer Act 2010* and equivalent State legislation in respect of the Supply by the Distributor in relation to that Customer:
  - (1) to the extent that the breach has not occurred as a result of the acts or omissions of the Retailer;
  - (2) where the Retailer has by its conduct and in its Retail Contract with that Customer limited or excluded its liability to that Customer for breach of any of the conditions, warranties or terms implied by Part 3-2 of Schedule 2 to the *Competition & Consumer Act 2010* and equivalent state legislation into that Retail Contract to the maximum extent permitted by that Act and by the Electricity Law; and
  - (3) where the Retailer has, at the Distributor's request, delivered to the Customer any information published by the Distributor concerning the inherent limitations in the quality and reliability of the supply of electricity.

### 13.3 Non-operation of Limitations of Liability

- (a) The Distributor may not rely on clause 13.1(a) of this agreement to exclude any liability of the Distributor to the Retailer for any Claim made against the Retailer by a Customer, to the extent that, at the time the Retailer entered into its contract with the Customer, the Retailer was prohibited by law (including the Electricity Law) from including in that

contract a provision which excluded the Retailer from liability for that Claim.

- (b) Clause 13.1(a) shall not apply in relation to any Customer to whom the Retailer sells electricity under a contract executed before the Commencement Date.

### 13.4 Insurance

Each party must obtain adequate insurance covering any liability which it may incur under clause 13.2. A party must provide the other party with proof of the currency of this insurance and details of the adequacy of the insurance cover, on the other party's reasonable request from time to time.

### 13.5 Preservation of statutory provisions

Despite any other provision of this agreement, this agreement:

- (a) does not vary or exclude the operation of section 99 of the EI Act or sections 119 or 120 of the National Electricity Law; and
- (b) does not constitute an agreement under sections 119(5) or 120(2) of the National Electricity Law.

### 13.6 Third Party Claims and Demands

- (a) A party (the **Indemnified Party**) must:
  - (1) notify the other party (the **Responsible Party**) of any third party Claim, for which it may be indemnified under this clause 13;
  - (2) permit the Responsible Party (entirely at the Responsible Party's expense) to defend or settle that third party Claim as the Responsible Party sees fit, or where the Responsible Party does not elect to defend or settle that third party Claim, to have a watching brief and be kept fully informed by the Indemnified Party of the progress of that third party Claim; and
  - (3) provide the Responsible Party (at the Responsible Party's expense) with such assistance in respect of the third party Claim as the Responsible Party may reasonably request.
- (b) If the Responsible Party elects to take over conduct of a third party Claim as contemplated in clause 13.6(a) the Responsible Party must:
  - (1) consult with and where reasonably possible, take account of the views of the Indemnified Party in relation to the progress of the third party Claim; and
  - (2) if it becomes aware that the Indemnified Party may have some liability in respect of that third party Claim for which the Indemnified Party will not be indemnified under this clause 13, notify the Indemnified Party of that fact, consult with and keep the Indemnified Party informed in respect of the progress of that third party Claim and comply with the provisions of clause 13.6 as if references in that clause to the Indemnified Party were to the Responsible Party, and vice versa.

- (c) If the Responsible Party elects not to take over the conduct of a third party Claim as contemplated in clause 13.6(a) the Responsible Party must indemnify the Indemnified Party against all costs (including reasonable legal costs) incurred by the Indemnified Party in defending the third party Claim, to the extent that those costs are not recovered from any other person.

### **13.7 No Admissions**

Except where required by law to do so, the Indemnified Party must not, in relation to any Claim of the type referred to in clause 13:

- (a) make any admission or representation prejudicial to the Responsible Party;
- (b) agree to any compromise or settlement; and
- (c) do anything else that may be prejudicial to the Responsible Party, without the Responsible Party's written consent.

## **14 Dispute Resolution**

### **14.1 Disputes**

Subject to clause 7.9, any dispute or difference arising between the parties out of or in connection with this agreement must be resolved in accordance with this clause 14.

### **14.2 Notice of Dispute**

Should any dispute or difference arise between the parties out of or in connection with this agreement, 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 14 and shall identify the dispute concerned and the clauses of this agreement relevant to the dispute.

### **14.3 Referral to Chief Executive Officers or nominees**

If the parties fail to resolve a dispute or difference within 10 Business Days of a notice of dispute being given under clause 14.2, the dispute or difference must be referred for resolution to the respective chief executive officers (or the chief executive officer's nominee) of the parties whose decision shall be binding. Subject to clause 14.6, the parties waive their rights to commence court proceedings for resolution of the dispute prior to referral of the issue to the chief executive officers (or their nominees) under this clause. If the matter is not resolved within 5 Business Days of such referral either party may then take further action in accordance with clause 14.4 or clause 14.5.

### **14.4 Mediation**

- (a) The parties must comply with clauses 14.2 and 14.3 as a pre-condition to submitting a dispute to mediation in accordance with this clause 14.4.
- (b) If a dispute is not resolved by the chief executive officer (or nominees, as applicable) of the parties as contemplated in clause 14.3 within 5 Business

Days of it being referred to those persons, either party may submit the dispute to mediation in accordance with and subject to the Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes by giving notice in writing to the other party, that the dispute remains unresolved and will be submitted to mediation.

- (c) The Distributor and the Retailer will bear their own costs in respect of the mediation.
- (d) If a dispute has been submitted to mediation in accordance with this clause 14, subject to clause 14.6, the parties waive their rights to commence court or arbitration proceedings for resolution of the dispute until completion of the mediation.
- (e) Once a party submits a dispute to mediation, the other party must participate in the mediation.

#### **14.5 Arbitration**

- (a) The parties must comply with clauses 14.2 and 14.3 as a pre-condition to submitting a dispute to arbitration in accordance with this clause 14.5.
- (b) Subject to clause 2.6, if a dispute is not resolved by the chief executive officer (or their nominees, as applicable) of the parties as contemplated in clause 14.3, or if a dispute is not resolved in mediation pursuant to clause 14.4, either party may submit the dispute to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations (Victorian Chapter) (the **Rules**) by giving notice in writing to the other party, in accordance with the Rules, that the dispute remains unresolved and will be submitted to arbitration.
- (c) The Distributor and the Retailer will bear their own costs in respect of the arbitration.
- (d) Subject to clause 14.5(e), without limiting the generality of clause 17:
  - (1) any proceedings conducted under clause 14.5(b) will be private and confidential as between the parties;
  - (2) no party may cause or permit any part of proceedings or correspondence under clause 14.5(b) to be published in the press or other media; and
  - (3) all such proceedings and correspondence, the documentation and information relevant to such proceedings and correspondence, and the reasons for any award or other determination made under clause 14.5(b), must be kept confidential by the parties and may not be disclosed other than to the extent permitted under clause 17.
- (e) Nothing in clause 14.5(d) applies to or in relation to or restricts in any way:
  - (1) disclosure of information to an arbitrator or umpire in accordance with clause 14.5(b); or
  - (2) disclosure of the proceedings or correspondence or the reasons for the award or other determination in the course of legal proceedings

relating to the arbitration, award or other determination made under clause 14.5(b), or in the course of any other judicial, arbitral or administrative proceedings between the parties.

- (f) Once a party submits a dispute to arbitration, the other party must participate in the arbitration.

#### 14.6 Summary or Urgent Relief and other exclusions

- (a) Nothing in clause 14 shall prejudice the right of a party to seek urgent injunctive or declaratory relief in a court in respect of any matter arising under this agreement.
- (b) To the extent that clause 8.2 of the National Electricity Rules applies to a dispute under this agreement the parties agree to apply the dispute resolution procedures set out in clause 8.2 of the National Electricity Rules to that dispute.
- (c) Nothing in this clause 14 derogates from the jurisdiction of the Commission to determine the fairness and reasonableness of any offer made by the Distributor in accordance with clause 4 of the Distributor's Distribution Licence, or to determine the application of any guidelines.

#### 14.7 Customer Disputes

- (a) If any Customer brings any legal proceedings in any court against any party to this agreement (the **Defendant Party**) and the Defendant Party wishes to make a third party claim (as defined in clause 14.7(b)) against the other party to this agreement, then the parties agree that the third party claim can be dealt with in the legal proceedings brought by the Customer rather than being dealt with under clause 14.4 or 14.5.
- (b) For the purposes of clause 14.7(a), **third party claim** shall mean:
  - (1) any claim by a Defendant Party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
  - (2) any claim by a Defendant Party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Customer; or
  - (3) any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Customer and the Defendant Party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

#### 14.8 Obligations Continuing

Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 14:



- (a) the parties shall, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this agreement to the extent that such obligations are not the subject of that dispute; and
- (b) the parties are not precluded by this clause 14 from exercising their rights of termination in accordance with clause 12.

---

## 15 Representations and Warranties

### 15.1 Retailer's representations and warranties

The Retailer represents and warrants to the Distributor that it holds and will continue to hold a Retail Licence for the duration of this agreement.

### 15.2 Distributor's representations and warranties

The Distributor represents and warrants to the Retailer that it holds and will continue to hold a Distribution Licence for the duration of this agreement.

### 15.3 Other representations and warranties

Each party to this agreement represents and warrants that:

- (a) it is incorporated or established and validly existing;
- (b) it has full power, authority and legal right to execute, deliver and perform its obligations under this agreement; and
- (c) that execution of and performance of that party's obligations under this agreement will not amount to a breach of any contractual or other obligation owed by that party to a third party.

### 15.4 No reliance

Except as otherwise provided in clauses 6.3(f) and 15, each party to this agreement acknowledges that in entering into this agreement it has not relied on any representations or warranties about its subject matter.

---

## 16 Notices

### 16.1 Method of Giving Notices

Unless otherwise agreed by the parties, a notice, consent, approval or other communication (each a **Notice**) under this agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail;
- (c) transmitted by facsimile; or
- (d) transmitted electronically, to that person's address, as specified in Item 4 of the Appendix.

## 16.2 Time of receipt of notice

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if prior to 5.00 pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting;
- (c) if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if the transmission report states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day; or
- (d) if transmitted electronically, on the day of transmission if the information technology system of the person giving the notice states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day.

## 16.3 Time of receipt of Invoices

An invoice payable under clause 7 is deemed to have been received when a summary statement of the invoice is delivered as if it were a Notice. The date of deemed receipt of an invoice will be extended by each day that the supporting documentation relating to the invoice is delivered after delivery of the invoice summary statement.

## 16.4 Confirmation of electronic delivery

Without prejudice to the effectiveness of service of a notice transmitted electronically, if a notice is given electronically under any of clauses 7.2(b), 7.9(a), 7.10, 9.7(a)1(A), 9.7(b), 9.7(c), 9.8(c), 12.2, 12.3 and 14.2 the notice must also be sent simultaneously by any one of the means listed in clauses 16.1(a) to (c) (inclusive).

# 17 Confidentiality

## 17.1 General obligation

Subject to clauses 7.10(1), 8, 17.3 and 17.4 and any confidentiality requirement under the Electricity Law, this agreement and all information exchanged between the parties under this agreement or during the negotiations preceding the Commencement Date is confidential to the party who provided it and may not be disclosed to any person except:

- (a) by a party, to:
  - (1) its employees and contractors, and the employees and contractors of any of its related bodies corporate, within the meaning of the Corporations Act, requiring the information for the purposes of this agreement (or any transactions contemplated by it); and
  - (2) its legal and other professional advisers, requiring the information for the purposes of this agreement (or any transactions

contemplated by it) or for the purpose of advising that party in relation thereto;

- (b) with the consent of the party who provided the information;
- (c) if the information is at the time lawfully in the possession of the proposed recipient of the information through sources other than the other party;
- (d)
  - (1) to the extent required by law or any Code or by a lawful requirement of any Regulatory Authority having jurisdiction over a party (whether pursuant to a licence held by that party or otherwise); or
  - (2) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party;
- (e) if required in connection with legal proceedings or other dispute resolution relating to this agreement or for the purpose of advising a party in relation thereto;
- (f) if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or a person to whom it has disclosed the information;
- (g) if the information relates to a Customer, in addition to the circumstances described in paragraphs (a) to (f) of this clause 17.1, the party may disclose that information to any person if the party has received the explicit informed consent in writing of the Customer to do so;
- (h) if disclosure is necessary to ensure the stability of the Distribution System or to protect the safety of personnel or equipment;
- (i) pursuant to, and in accordance with, clauses 8 and 9; or
- (j) to confirm the existence of a use of system agreement between the parties.

For the purposes of this agreement, information is not generally and publicly available merely because it is known to the Commission, the System Operator, another network service provider, a generator or another retailer.

## **17.2 Representatives to keep information confidential**

Subject to clauses 17.3 and 17.4, each party shall procure that its employees and contractors, and the employees and contractors of any of its related bodies corporate, its legal and other professional advisers do not disclose (otherwise than to the party) any information concerning the other party or a Customer obtained under this agreement except in the circumstances specified in clause 17.1, or use the information other than for the purpose for which it was disclosed in accordance with this agreement.

## **17.3 Conditions on disclosure**

- (a) In the case of a disclosure under clause 17.1(d) or 17.1(e), the party proposing to make the disclosure shall inform the proposed recipient of the confidentiality of the information and the party proposing to disclose shall take all reasonable precautions to ensure that the proposed recipient keeps the information confidential.

- (b) If a party is permitted to disclose any confidential information in accordance with this clause 17, the party proposing to disclose shall use reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

#### **17.4 Notice to other Party**

Each party, shall:

- (a) promptly inform the other party of any request received by that party from any person referred to in clause 17(a)(1) to disclose information under that clause;
- (b) inform the other party as soon as reasonably practicable after information is disclosed by the party under clause 17(a)(1); and
- (c) where possible, not disclose any information under clause 17.1(d)(2) or 17.1(e) unless the other party has been informed of the proposed disclosure.

---

## **18 Law and Jurisdiction**

### **18.1 Governing Law**

This agreement is governed by the law in force in the State of Victoria.

### **18.2 Submission to Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

---

## **19 General**

### **19.1 Waiver**

- (a) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### **19.2 Amendment**

This agreement may only be amended or supplemented in writing, executed by the parties in the same manner as the parties executed this agreement. The parties agree to make an amendment to this agreement which is equivalent to any change that is required to be made by the Commission to the Distributor's deemed use of system agreement approved in accordance with the Distributor's Distribution Licence, unless the Distributor otherwise agrees.

### **19.3 Attorneys**

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this agreement.

### **19.4 Severability**

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **19.5 Counterparts**

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### **19.6 Further Assurance**

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

### **19.7 Entire Agreement**

This agreement is the entire agreement of the parties on the subject matter of this agreement.

### **19.8 Assignment**

- (a) Subject to clause 19.8(b) neither party may assign any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- (b) The Distributor may assign this agreement to a person who is the licensee under a Distribution Licence which is related to the Distribution Network.

### **19.9 Remedies Cumulative**

The rights and remedies provided in this agreement do not exclude any rights or remedies provided by law.

### **19.10 Review of Agreement**

The parties acknowledge that the Electricity Law to which this agreement is subject may be the subject of ongoing changes and that those changes may in turn require amendments to be made to this agreement. The parties agree to negotiate in good faith any amendments to this agreement that may be reasonably required

as a consequence of any changes to the Electricity Law or in light of commercial experience.

#### **19.11 No Agency or partnership**

Nothing in this agreement constitutes any agency, partnership or joint venture relationship between the parties.

#### **19.12 Restriction on Authority**

Neither party shall make or give any representation or warranty in relation to the other party or agree to any obligation on behalf of the other party, unless the representation, warranty or obligation has been expressly approved in advance in writing by the other party.

#### **19.13 Costs**

- (a) Each party will bear its own legal and other costs in relation to the negotiation and documentation of their agreement.
- (b) Each party will bear half of any stamp duty payable in respect of this agreement.

#### **19.14 Appendix and Schedules**

The Appendix and Schedules form part of this agreement and in the event of inconsistency, the Appendix and Schedules will prevail over the other terms of this agreement.

## APPENDIX

<b>Item 1: Date of Agreement</b>	
<b>Item 2: Required Credit Support Amount</b> (Clause 7.10)	The amount by which the Distribution Service Charges Liability exceeds the Credit Allowance of the Retailer, as calculated by the Distributor from time to time.
<b>Item 3: Frequency of meter reads</b> (Clause 7.5)	For all Supply Points connected to the Distribution System having a remotely read interval meter – monthly.  For all other Supply Points, once every 3 months or as otherwise reasonably determined by the Distributor.
<b>Item 4: Addresses for Notices (clause 16.1)</b>  <b>Distributor:</b>	<b>Powercor Australia Limited</b>  Manager Customer Experience Locked Bag 14090, Melbourne, Vic 8001 Phone: (03) 9683 4133 Email: anason@powercor.com.au Attention: Adam Nason
<b>Retailer:</b>	[REDACTED]  <b>Phone: (03)</b> <b>Email:</b> <b>Attention:</b>
<b>Item 5: Distributor's faults telephone number</b>	<b>13 24 12</b>  [REDACTED]
<b>Item 6: Credit Allowance</b> (Clause 7.10)	Subject to Clause 7.10(b), an amount equal to the Credit Allowance Percentage of the Retailer or the Guarantor, as the case may be, multiplied by the Maximum Credit Allowance. If the Credit Allowance Percentage is based on the credit rating of the Retailer then the Retailer receives the full Credit Allowance as calculated above.  Where the Credit Allowance Percentage is based on the credit rating of a Guarantor, other than a bank or an insurance company, then the Guarantor receives a Credit Allowance as calculated above. A portion of the Guarantor's Credit Allowance must be allocated to each of the Retailers on behalf of which the

	Guarantor provides a guarantee, provided that such allocation does not cause the Guarantor to exceed its total Credit Allowance. The Retailer must notify the Distributor of the percentages of the Guarantor's Credit Allowance which has been allocated to it.
<b>Item 7: Credit Allowance Percentage (Clause 7.10)</b>	The figure set out in the second or fourth column of Table 1, as the case may be, which corresponds to the Retailer Credit Rating.
<b>Item 8: Retailer Credit Rating (Clause 7.10)</b>	A Standard & Poor's credit rating of the Retailer or the Guarantor or its equivalent from another recognised credit rating agency reasonably acceptable to the Distributor. Where the Retailer or the Guarantor, as the case may be, does not have such a rating, the Dun & Bradstreet Dynamic Risk Score (DRS) will be used. For avoidance of doubt, the 'Retailer Credit Rating' may be the credit rating of the Retailer or the Guarantor determined by the rating agencies described above.
<b>Item 9: Guarantor (Clause 7.10)</b>	Another entity who guarantees (on terms acceptable to the Distributor) the performance of the Retailer's payment obligations under clause 7 of this agreement.
<b>Item 10: Distribution Service Charges Liability</b>	<p>An amount reasonably estimated by the Distributor at the time of a request by the Distributor under clause 7.10(a) or at the date on which the Distributor recalculates the Required Credit Support Amount under clause 7.10(d) or (e) which is equal to the Retailer's average billed and unbilled Distribution Service Charges Liability calculated as follows:</p> $(A \times 2/3) + B + C$ <p>where,</p> <p>A= 90 days forecast monthly billed Distribution Service Charges relating to Customers of the Retailer.</p> <p>B= 90 days forecast quarterly billed Distribution Service Charges relating to Customers of the Retailer.</p> <p>C= Any Distribution Services Charge on which interest must be paid under clause 7.8(c) at the time of the request.</p>
<b>Item 11: Maximum Credit Allowance</b>	An amount equal to 33.33% of the Distributor's total annual Distribution Service Charges revenue from all entities for the year in respect of which Distribution Service Charges revenue was most recently reported by the Distributor to the Commission.



**Table 1:**

<b>Retailer Credit Rating</b>			
Standard & Poor's credit rating or equivalent	Credit Allowance Percentage (per cent)	Dun & Bradstreet Dynamic Risk Score	Credit Allowance Percentage
AAA	100.0	N/A	N/A
AA+, AA, AA-	100.0	N/A	N/A
A+, A, A-	100.0	N/A	N/A
BBB+	90.0	N/A	N/A
BBB	72.0	Minimal	72.0
BBB-	48.0	N/A	N/A
BB+	13.0	Very Low	13.0
BB	7.0	Low	7.0
BB-	4.0	Below average/average	4.0
B+	2.0	Moderate	2.0
B	1.1	High	1.1
B-	0.4	Very High	0.4
CCC, CC, C	0.1	Severe	0.1
SD, D, NR	0.0	N/A	N/A



---

## Schedule 2 – Approved Form of Unconditional Undertaking

(Clause 7.10)

---

At the request of ..... ACN ..... ("the Retailer") and in consideration of ..... ACN ..... ("the Distributor") accepting this undertaking in respect of the contract for the provision of use of system services and other related services ("the Use of System Agreement") ..... ACN ..... ("the Financial Institution") unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Distributor to a maximum aggregate sum of \$..... (.....).

The undertaking is to continue until notification has been received from the Distributor that the sum is no longer required by the Distributor or until this undertaking is returned to the Financial Institution or until payment to the Distributor by the Financial Institution of the whole of the sum or such part as the Distributor may require.

Should the Financial Institution be notified in writing, purporting to be signed by ..... for and on behalf of the Distributor that the Distributor desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Distributor forthwith without reference to the Retailer and notwithstanding any notice given by the Retailer not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Distributor the sum of \$ ..... (.....) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Distributor and thereupon the liability of the Financial Institution hereunder shall immediately cease.

**DATED at ..... this ..... day of .....20.....**

---

### **Schedule 3 - Matters to be notified to Customer by Retailer**

#### **(Clause 11.4)**

Customer obligations under the Electricity Law relating to:

- (1) electric line clearance;
- (2) keeping structures and vehicles clear of electric lines;
- (3) prohibition against unlicensed persons performing work on Electrical Installations;
- (4) restrictions on changes to Customer's maximum demand;
- (5) restrictions on exceeding maximum allocated capacity;
- (6) access rights for meter reading and meter repair, maintenance and installation;
- (7) Distributor's disconnection, interruption and reconnection rights; and
- (8) any matter that may threaten;
  - (A) the health or safety of any person;
  - (B) damage to property; or
  - (C) the integrity or safety of the Distribution System.

---

**Executed as an agreement:**

**Signed for Powercor Australia Ltd**

by its representative:

in the presence of:

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**Signed for**

by its representative:

in the presence of:

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

Date: \_\_\_\_\_