

DIRECT METERING SERVICES - AGREEMENT TERMS

This Agreement is between Origin Energy Retail Limited (ABN 22 078 868 425) trading as “Acumen Metering” (referred to as “us”, “we” or “our”) and the customer specified in the Schedule (referred to as “you” or “your”).

1. THIS AGREEMENT

- 1.1 This Agreement is made up of these Agreement Terms and the Schedule.
- 1.2 Capitalised terms used in this Agreement are defined in clause 22.
- 1.3 To the extent of any inconsistency, these Agreement Terms will prevail over the Schedule.

2. TERM

- 2.1 We must receive a copy of this Agreement signed by you before the Validity Date.
- 2.2 If so, this Agreement starts on the Agreement Date and ends on the End Date unless:
 - (a) you continue to take Services from us after the End Date, and you continue to meet your obligations in clauses 4.1 and 4.2, without entering into a new agreement (see clause 9); or
 - (b) it has been terminated earlier.
- 2.3 If we do not receive a signed copy of this Agreement by the Validity Date, there will be no agreement between us for direct metering services.

3. OUR OBLIGATIONS

- 3.1 During the Supply Term, we agree to supply to you, and you agree to buy from us, the Services.
- 3.2 We are not obliged to provide the Services at a Site:
 - (a) before the Supply Date for that Site; or
 - (b) after the End Date; or
 - (c) during any period of the Supply Term that you are not meeting your obligations in clauses 4.1 or 4.2 in relation to a Site.
- 3.3 We may install equipment at a Site in order to provide the Services. We retain title to that equipment at all times.
- 3.4 Despite anything else in this Agreement, if we consider that performing work at any Site would present a safety risk to any person or property (including a risk of disturbing or coming into contact with any asbestos containing material), then we may suspend that work and the Services until we are reasonably satisfied that you have made the Site safe (including removal of any asbestos containing material).

4. YOUR OBLIGATIONS

- 4.1 On and from 4 December 2017, you appoint us as Metering Coordinator for each Site and each party agrees to do such things as are reasonably within their respective powers to ensure that we are appointed as the Metering Coordinator for each Site.
- 4.2 For Sites with a NMI Meter, at least 1 month before the Proposed Supply Date for a Site and at all times until the End Date you must ensure the requirements in the Rules necessary for us to provide the Services to that Site are met. As at the Agreement Date those requirements are to ensure that our engagement to provide the Services has been registered in MSATS.

- 4.3 For Sites with a Non-NMI Meter, at least 1 month before the Proposed Supply Date for a Site and at all times until the End Date you must ensure that your Retailer for that Site agrees to bill you for the Charges payable under this Agreement for that Site.

- 4.4 You must comply with all our reasonable directions in relation to the protection of any equipment we install at a Site.

- 4.5 You must prevent, and are liable for, any damage to or interference with equipment we install at a Site which is owned or operated by us.

5. RATES AND CHARGES

- 5.1 You must pay the Charges and, if applicable, the VAS Charges.

- 5.2 Where there is a Change of Law we may increase or decrease the Charges to reflect our increased or decreased costs in accordance with this clause 5, and we must do so for a decrease in the Charges unless we consider the Change of Law is unlikely to have a significant impact on the Charges.

- 5.3 We will determine the amount of the increase or decrease of a Charge using reasonable methods of calculation, estimation, allocation or attribution, which may include the use of:
 - (a) estimates and forecasts;
 - (b) methodologies based on an index, industry benchmark, relevant law or regulatory guideline, published or produced by a third party;
 - (c) determinations of suitably qualified independent experts selected by us;
 - (d) averaging methodologies; or
 - (e) a combination of the above.

- 5.4 You agree that we may also change the terms of this Agreement to the extent reasonably required as a result of a Change of Law.
- 5.5 We will give you notice of the changes to the Rates or terms, and the date they will apply from, as a result of Change in Law as soon as practicable. The changes may be applied retrospectively to when the Change of Law took effect.

- 5.6 You must also pay any reasonable costs we incur in connection with:
 - (a) implementing changes in the provision of the Services due to information supplied by you being incorrect or incomplete;
 - (b) the provision of the Services being interrupted or delayed by, or as a result of, any act or omission of you, or because of your requirements, including where we have to revisit a Site or re-schedule the provision of the Services;
 - (c) work we do so that your MI complies with the Rules and the Regulatory Requirements; and
 - (d) training as provided for in clause 7.3.

6. BILLING AND PAYMENT

- 6.1 Subject to the clause 6.2, your Retailer for a Site will bill you for the Charges and any VAS Charges for that Site and you must pay those amounts to your Retailer.
- 6.2 If we have not received payment of the Charges and any VAS Charges for a Site from your Retailer within 2 months of the end of the month in which the Services were provided, then we will bill you for those Charges and any VAS Charges and you must:
- (a) pay the amount owing to us; or
 - (b) if you have paid the relevant Charges and any VAS Charges to your Retailer, provide substantiation of that payment (to our satisfaction, acting reasonably) and provide all reasonable assistance we request to enable us to recover that amount from the Retailer.
- 6.3 We will bill you for any other amounts payable under this Agreement.
- 6.4 If we issue you a bill under this clause 6:
- (a) we will issue you one bill for all Sites, which will be sent to the Address for Accounts;
 - (b) the bill will include:
 - (i) the period for which the bill applies (which is normally one month);
 - (ii) the Charges, VAS Charges (if any) and other amounts payable for that billing period; and
 - (iii) any outstanding amounts from previous bills;
 - (c) you must pay each bill in full no later than the Due Date; and
 - (d) if you fail to pay a bill in full by the Due Date, we may:
 - (i) charge you Interest on the unpaid amount from the Due Date;
 - (ii) refer your bill for collection by a debt collection agency;
 - (iii) recover our costs of collecting the bill from you; and/or
 - (iv) sell the rights to the unpaid amount to a third party who may seek to collect it from you.

7. SITE ACCESS

- 7.1 You must give us and our representatives safe, convenient and unhindered access to a Site as reasonably required for the purposes of this Agreement.
- 7.2 We do not need to give you notice of our intention to enter a Site, but we will give you notice if practicable, except:
- (a) where you have provided permission to access a Site;
 - (b) where entry is during business hours for the purpose of reading, maintaining, inspecting, testing, installing, replacing, repairing or altering a MI; or
 - (c) in the case of an emergency.

7.3 While we are accessing a Site, we and our representatives will comply with any reasonable procedures, including site safety procedures, relating to the Site previously specified to us by you. Where you require us to comply with any such procedures, you must provide:

- (a) us with a written copy of such procedures; and
- (b) training on such procedures to all our representatives accessing the relevant Site.

7.4 You must notify us in writing of any special hazards or danger attaching to a Site.

7.5 You grant us a non-exclusive licence over, and for the use and enjoyment of, those parts of the Site where we install any equipment. This licence:

- (a) will automatically be created on and from the Agreement Date and before any equipment is installed; and
- (b) continues until either we or an authorised third party have removed the equipment from the Site in accordance with this Agreement.

8. TERMINATION

8.1 Subject to the Regulatory Requirements, a party may terminate this Agreement by notice to the other if:

- (a) an insolvency event occurs in respect of the other party;
- (b) the other party is in breach of an obligation under this Agreement and does not remedy such breach within 10 Business Days after notice to do so.

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

- (a) if there are no Sites taking the Services;
- (b) if an event of Force Majeure which has been notified in accordance with clause 11 continues for more than 6 months; or
- (c) after the End Date.

8.3 You may terminate this Agreement in relation to a Site by giving us at least 1 months' notice.

8.4 If, before the End Date, we terminate this Agreement under clause 8.1 or you terminate this Agreement in respect of a Site under clause 8.3, you must pay us the Break Fee by the Due Date on the bill which includes the Break Fee. You acknowledge that the Break Fee represents a genuine pre-estimate of our loss in connection with such early termination.

8.5 We may terminate this Agreement by notice to you in respect of a Site if you have not met your obligations in clause 4.1 or 4.2 (as applicable) before the Proposed Supply Date for that Site.

8.6 This Agreement will automatically terminate if we are no longer permitted to supply the Services to you under the Regulatory Requirements for any reason.

8.7 On termination of this Agreement in respect of one or more Sites and at the End Date you must allow us or any third party authorised by us or under a Regulatory Requirement access to each relevant Site to obtain and remove any equipment owned by us.

9. HOLDING OVER

9.1 If, at a particular Site, you continue to take Services from us after the End Date or after this Agreement ends, and, for Sites with a NMI Meter our engagement to provide the Services is still registered in MSATS, this Agreement and the Rates will continue to apply to that Site, except:

- (a) we may vary the Rates by notice to you; and
- (b) we may vary the terms of this Agreement by notice to you.

9.2 We may vary the Rates and terms under clause 9.1 more than once. We will give you notice at least one month before the variation takes effect.

10. LIABILITY

10.1 You indemnify us against any claim, or from any Liability we incur or suffer, in connection with or arising from this Agreement, relating to:

- (a) your breach of this Agreement;
- (b) your negligence; and
- (c) any damage or interference with equipment we install at a Site which is owned or operated by us.

10.2 We are not liable to you for any Liability in connection with or arising from this Agreement except to the extent such Liability arose directly from our Wilful Default.

10.3 Subject to clauses 10.2, to the extent permitted by law, our aggregate Liability in connection with this Agreement (including for breach of a consumer guarantee under the Competition and Consumer Act 2010) is limited to:

- (a) the replacement of the goods or services or the sale of equivalent goods or services; or
- (b) the payment of the cost of replacing the goods or services, or of acquiring equivalent goods or services.

10.4 Each party must do all things reasonably necessary to mitigate any Liability under this Agreement.

10.5 Without affecting your obligation to pay all of the Charges and other amounts payable by you under this Agreement, neither party is liable to, and must not make a claim against, the other party for any Excluded Loss in connection with or arising from this Agreement.

10.6 You agree that for each indemnity you give in favour of us, you intend to confer a benefit on us and each of our Related Bodies Corporate and you acknowledge that we hold the benefit of each of those indemnities on trust for the benefit of each of our Related Bodies Corporate.

10.7 Any warranty or guarantee required by law to be incorporated into this Agreement is incorporated. Any warranty, guarantee or implied term which can be excluded by law is excluded.

10.8 Both parties will comply with the Regulatory Requirements that apply to them.

11. FORCE MAJEURE

11.1 A party will be excused for any non performance of its obligations under this Agreement (other than an obligation to pay money) during the time and to the

extent that Force Majeure prevents the party from doing so.

11.2 A party must:

- (a) try to remove, overcome or minimise the effects of Force Majeure as soon as it can; and
- (b) give the other party prompt notice of the Force Majeure including details of its expected duration.

11.3 If the effects of such an event are widespread, we may give you prompt notice by making the necessary information available on a 24 hour telephone service promptly after becoming aware of the event.

12. DISPUTE RESOLUTION

12.1 All disputes must be dealt with in accordance with this clause 12.

12.2 The party claiming the dispute must give a written notice to the other party setting out particulars of the dispute (Dispute Notice).

12.3 If for any reason the dispute has not been resolved within 4 weeks after service of the Dispute Notice either party may commence court proceedings.

12.4 Pending the resolution or determination of a dispute, each party must continue to perform our respective obligations under this Agreement.

12.5 Nothing in clause 12 prevents a party from:

- (a) seeking urgent interlocutory or declaratory relief where, in that party's reasonable opinion, that action is necessary to protect that party's rights; or
- (b) terminating this Agreement where it has a right under the Agreement to do so.

13. GST

13.1 In this clause, all terms that are defined in the GST law have the same meaning in this clause.

13.2 The supplier will add the prevailing rate of GST onto the consideration for any taxable supplies made in connection with this Agreement, and the recipient agrees to pay that GST following the receipt of a tax invoice from the supplier or their agent.

13.3 The GST applicable to any taxable supplies made in connection with this Agreement is payable at the same time as the consideration for those supplies.

13.4 Where a party reimburses the other party for an expense or other amount, the reimbursement will be net of any input tax credit the supplier is entitled to claim.

14. VARIATIONS

14.1 Unless otherwise specified in this Agreement, any variations to the terms of this Agreement or any waiver of any rights of any party has no effect unless it is in writing and signed by the parties (in the case of a variation) or the party granting the waiver (in the case of a waiver).

15. ASSIGNMENT

15.1 We may assign, transfer or novate this Agreement to any of our Related Bodies Corporate or any third party by prior notice to you.

15.2 You may only assign, transfer or novate this Agreement with our prior written consent.

16. NOTICES

16.1 A notice or other communication under this Agreement is only effective if:

- (a) in writing and addressed to the person to whom it is given; and
- (b) where we are the recipient, sent by email to our email address specified in the Schedule; or
- (c) where you are the recipient, sent by bill, sent to any Address for Accounts or sent by email to the email address as notified by you to us.

16.2 A notice is given:

- (a) if sent by email – 24 hours after the email was sent, unless the sender receives an automated message that the email was not delivered or knows the email was not delivered or could not be read; or
- (b) if sent by mail - if sent by priority mail, 3 Business Days after posting, or if sent by regular mail, 6 Business Days after posting.

17. LAWS APPLICABLE TO THIS AGREEMENT

17.1 If there is one Site or all Sites are in the same state or territory, this Agreement is governed by the laws in force in the state or territory where the Sites are located.

17.2 If there are Sites in more than one state or territory, this Agreement is governed by the laws in force in Victoria.

17.3 You submit to the non-exclusive jurisdiction of the courts of the place determined in accordance with clauses 17.1 and 17.2

18. CONFIDENTIALITY

18.1 Both parties must keep all Confidential Information confidential for 3 years after this Agreement ends.

18.2 Either party may disclose Confidential Information:

- (a) with the prior written consent of the other party;
- (b) on a confidential basis to its officers, employees, agents, advisers and insurers (or those of a Related Body Corporate) to the extent disclosure is reasonably required;
- (c) if required by Regulatory Requirements, law or applicable stock exchange rules;
- (d) to the Retailer for a Site; or
- (e) to:
 - (i) a bona fide potential purchaser of shares in that party, or all or part of that party's assets; and
 - (ii) the financiers and professional advisors of a potential purchaser described in clause 18.2(e)(i),
on the condition that such purchaser, financiers and professional advisors agree in writing to keep the information confidential.

19. PRIVACY

19.1 Both parties must comply with applicable provisions of the *Privacy Act 1988* (Cth).

20. ANTI-BRIBERY

20.1 You must ensure that you and your representatives comply with all applicable anti-bribery, fraud, secret commission and corruption laws.

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

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

21. GENERAL PROVISIONS

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

21.2 Clauses 7, 8.7, 9, 10, 12, 13, 18 and 19 survives termination or expiry, and other terms of this Agreement will survive termination or expiry of this Agreement where it is necessary for it to do so to enable a party to enforce a right accrued on or before termination or expiry.

21.3 It is not necessary for us to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.

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

22. DEFINITIONS

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

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

Agreement Date means the date you sign this Agreement.

Agreement Terms means this document.

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

Australian Standards means the standards developed and approved by or on behalf of Standards Australia Limited ABN 85 087 326 690 and designated as an "Australian Standard".

Break Fee means the amount specified in the Schedule.

Business Day means a day that is not a Saturday, Sunday or public holiday in the governing jurisdiction, as determined in accordance with clause 17.1 or 17.2.

Change of Law means:

- (a) any Regulatory Requirement or Tax being:
 - (i) introduced, taking effect or commencing; or

(ii) amended or repealed,
in whole or in part after the Agreement Date;

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

- (i) introduced, taking effect or commencing; or
- (ii) amended or repealed,
in whole or in part after the Agreement Date,

that has or will directly or indirectly affect the costs that we have or will incur, in connection with this Agreement, except that a Change of Law does not apply if the event in question relates to income tax as defined in the *Income Tax Assessment Act 1997* (Cth).

Charges means the sum of the Rates for each Meter multiplied by the number of months in a billing period.

Confidential Information means:

- (a) this Agreement and the Schedule; and
- (b) all information a party derives or produces, whether in whole or in part, from the information disclosed under paragraph (a).

Due Date means the date you must pay your bill by as specified on the bill which will be not less than 14 days from the date of the bill.

End Date means the date specified in the Schedule.

Excluded Loss means:

- (a) loss of profit, revenue or anticipated savings;
- (b) loss of, or damage to, reputation, credit rating or good will;
- (c) loss or denial of opportunity;
- (d) loss of access to markets;
- (e) overheads and wasted expenditure;
- (f) financing costs;
- (g) special, incidental or punitive damages; or
- (h) any loss or damage arising from special circumstances that are outside the ordinary course of things,

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

Final Rule Change means the changes to the Rules set out in the final rule change determination made by the Australian Energy Market Commission.

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

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

- (a) is not within the reasonable control of that party;
- (b) could not be prevented, overcome or remedied by the exercise of reasonable effort by that party; and
- (c) results in that party being unable to meet or perform that obligation,

but does not include the failure or inability of a party to pay any amount due and payable under this Agreement.

GST has the meaning in the GST law.

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

Interest means the rate of interest on any day which is the average bid rate for bills having a tenor of 90 days which is displayed on the page of the Reuters Monitor System designated "BBSY" plus 5%, calculated daily, and at our discretion, compounded monthly.

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

MSATS means the system for market settlements and transfers, managed by the Australian Energy Market Operator.

Market Participant, Metering Database, Metering Data Services and **Metering Installation** have the meanings given in the Rules.

MI means a Metering Installation.

MDP Services means the provision of Metering Data Services between a Site and the Metering Database and to parties entitled to that data under the Rules.

Meter means a meter and it may be, or be part of, a NMI Meter or a Non-NMI Meter.

Metering Coordinator has the meaning in the Final Rule Change.

MC Services means the fulfilment of any responsibilities and the meeting of any obligations of a person appointed the role of Metering Coordinator in MSATS.

MP Services means the provision, installation, maintenance, fault rectification and testing (including compliance testing) of a Meter.

NMI has the meaning given in the Rules.

NMI Meter means a Meter which is on a NMI in MSATS.

Non-NMI Meter means a Meter which is not on a NMI in MSATS.

Origin means Origin Energy Retail Limited (ABN 22 078 868 425).

Proposed Supply Date means, for each Site, the date set out in the Schedule.

Rates means the rates set out in the Schedule as amended in accordance with this Agreement.

Regulatory Authority means:

- (a) any government or a governmental, quasi governmental or judicial entity or authority;
- (b) a stock exchange; and

- (c) any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity,

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

Regulatory Requirement means:

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

relevant to a party or the supply, performance, receipt or use of all or part of the Services or any other rights or obligations under this Agreement.

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

Responsible Person has the meaning given in the Rules.

Retailer means:

- (a) for Sites with a NMI Meter, the Market Participant who is Financially Responsible for the Site;
- (b) for Sites with a Non-NMI Meter, the person who sells you the electricity that passes through that Meter.

Rules means the National Electricity Rules.

Schedule means the schedule to these Agreement Terms.

Services means the MC Services, MP Services and the MDP Services.

Site means a site specified in the Schedule. A Site can have either a NMI Meter or a Non-NMI Meter. Sites with a NMI Meter may have multiple meters. Sites with a Non-NMI Meter will have only a single meter. A single physical address may have more than one Site due to the meters located on it.

Supply Date means:

- (a) for each Site with a NMI Meter, the later of:
 - (i) the date from which our engagement is registered in MSATS; and
 - (ii) the Proposed Supply Date; and
- (b) for each Site with a Non-NMI Meter, the day the Meter is installed.

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

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

Validity Date means the date specified in the Schedule.

VAS Charges means the charges for the Value Added Services, which are the sum of the VAS Rates for each Meter multiplied by the number of months in a billing period.

VAS Rates means the amounts the third party charges for the Value Added Services (if any). The VAS Rates as at the Agreement Date are set out in the Schedule.

Value Added Services means services, other than the Services, provided by a third party to you, where you have agreed with that third party that you will pay us or your Retailer for those services.

Wilful Default means with respect to a party:

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

23. INTERPRETATION

23.1 Unless otherwise stated:

- (a) a reference to this Agreement or another document includes any variation or replacement of any of it;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute, code or other law includes regulations and other instruments or directives under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a person includes any type of entity or body, whether or not it is incorporated or has a separate legal identity, and any executor, administrator, successor or permitted assigns;
- (e) a reference to a body (other than a party) which ceases to exist, or whose powers or function are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions;
- (f) specifying anything after the words "include" "including", "for example" or similar expression does not limit what is included;
- (g) the expression "relating to" and similar grammatical expressions includes arising from, concerning or in connection with (whether directly or indirectly);
- (h) a reference to a Liability incurred or suffered by us includes Liabilities of our Related Bodies Corporate relating to the relevant matter;

- (i) a reference to a variation of a Rate includes introducing a new rate.