

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

## 1. THIS AGREEMENT

- 1.1 This Agreement is made up of these Agreement Terms, the Schedule and the Annexures.
- 1.2 Capitalised terms used in this Agreement are defined in clause 38 or, if they relate to the Charges, Annexure 1.
- 1.3 If the Schedule indicates you have elected to take up GreenPower, the GreenPower Annexure will apply.
- 1.4 If the Schedule indicates we have agreed to purchase export electricity from you, the Export Electricity Annexure will apply.
- 1.5 To the extent of any inconsistency, these Agreement Terms will prevail over the Schedule and all Annexures.

## 2. TERM

- 2.1 We must receive a copy of this Agreement signed by you before the Validity Date.
- 2.2 If so, this Agreement starts on the date you sign it and ends on the End Date unless:
  - (a) you continue to take supply from us after the End Date without entering into a new agreement (see clause 24); or
  - (b) it has been terminated earlier.
- 2.3 If we do not receive a signed copy of this Agreement by the Validity Date, there will be no agreement between us.

## 3. SALE OBLIGATIONS

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

## 4. LARGE CUSTOMERS

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

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

## 5. WARRANTIES

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

## 6. DISTRIBUTION SERVICES

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

## 7. CHARGES

- 7.1 You must pay us the Charges and any other amounts payable by you under this Agreement. The Charges are described in Annexure 1.
- 7.2 Unless they are varied in accordance with clauses 8, 10 or 12, the Energy Rates are fixed for the Supply Term.
- 7.3 We may vary the Environmental Rates by notice to you.
- 7.4 Charges based on the quantity of electricity sold to you will be determined by us from readings of the meter located at each Site, except in the circumstances described in clause 7.5. The record of meter readings at a Site is prima facie evidence of the amount of electricity sold to you

unless the circumstances set out in clause 7.5(b) apply or an adjustment is made to relevant data by the Distributor or AEMO.

7.5 If:

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

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

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

## 8. CHANGE OF LAW

8.1 Where there is a Change of Law we may increase or decrease the Charges to reflect our increased or decreased costs in accordance with this clause 8, and we must do so for a decrease in the Charges unless we consider the Change of Law is unlikely to have a significant impact on the Charges.

8.2 We will determine the amount of the increase or decrease of a Charge using reasonable methods of calculation, estimation, allocation or attribution, which may include the use of:

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

8.3 An increase or decrease under clause 8.1 may be applied retrospectively to when the Change of Law took effect.

## 9. ENVIRONMENTAL EXEMPTION

9.1 You must notify us promptly if you are issued an Environmental Exemption and provide us with evidence (to our satisfaction) of that Environmental Exemption.

9.2 If we agree that your Environmental Exemption permits us to reduce our obligations under the relevant Environmental Legislation in respect of the electricity sold to you under this Agreement, we will propose variations to this Agreement to address this. The Environmental Charges will not change until after the variation is agreed in accordance with this clause.

## 10. OTHER RIGHTS TO VARY CHARGES

10.1 If we become Financially Responsible for a Site more than 8 weeks after the Estimated Supply Date and the delay was not due solely to our non

performance of our obligations under this Agreement, we may vary the Energy Rates applicable to that Site.

## 11. NOTICE OF VARIATION

11.1 If we vary any Charges, we will notify you of the variation, the reason for the variation and the date the variation takes effect.

11.2 A variation under clause 12.3 may take effect retrospectively back to and including the Supply Date.

## 12. YOUR CONSUMPTION

12.1 Your Energy Rates are based on:

- (a) your Target Consumption; and
- (b) your Load Profile.

12.2 If we request it, you must provide us with forecasts of your consumption for each Site for up to a year in advance. That forecast must be prepared on a reasonable basis using reasonable assumptions.

12.3 If, acting reasonably and based on available consumption data, we determine that:

- (a) your Load Profile is likely to change, or has changed, materially; or
- (b) the aggregate consumption for all Sites in a Jurisdiction is likely to differ, or has differed, materially from your Target Consumption for that Jurisdiction,

other than as a direct result of you utilising an Origin Product, we may vary your Energy Rates and/or Target Consumption.

12.4 You must notify us promptly if you expect that an event referred to in clause 12.3 will occur.

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

- (a) make further connections to the distribution network for a Site;
- (b) enter into an arrangement with any third party for curtailment of electricity consumption, or load management, at a Site; or
- (c) install electricity generation at a Site.

12.6 You must not on-sell electricity supplied to a Site, except you may do so with our written consent (which will not be unreasonably withheld):

- (a) to a Related Body Corporate; or
- (b) where there is an embedded network at a Site.

## 13. EXPORTED ELECTRICITY

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

- (a) we will not pay or credit you any amount in relation to that exported electricity;
- (b) the amount of electricity sold to you and for which you must pay us or any other Charges under this Agreement will not be reduced by the amount of electricity exported; and

- (c) to the extent permitted by law, you will reimburse us for any Liability we incur or suffer relating to any Regulatory Requirements or other requirements relating to your generation of electricity.

#### **14. DISCONTINUING SUPPLY TO A SITE**

- 14.1 You may request to have supply discontinued to a Site before the End Date if you:
  - (a) no longer require us or any other retailer to sell you electricity at that Site; and
  - (b) give us 6 weeks prior notice of the date on which the Site will be vacated (such notice to also include a forwarding address for future correspondence).
- 14.2 Where supply is discontinued to a Site under clause 14.1:
  - (a) we may charge you a Break Fee under clause 23; and
  - (b) once that Break Fee has been paid, this Agreement will no longer apply to that Site.
- 14.3 If supply is discontinued, or you attempt to discontinue supply, to a Site before the End Date and you do not give us the required notice:
  - (a) you remain liable for all electricity supplied to the Site; and
  - (b) your obligations under this Agreement continue to apply to you until 6 weeks after we receive the required notice or the End Date (whichever occurs first).
- 14.4 Your Target Consumption will not change where supply to a Site is discontinued under clause 14.1 and we do not charge you a Break Fee under clause 14.2(a).

#### **15. BILLING**

- 15.1 We will issue you a bill for each Site, which will be sent to the Address for Accounts.
- 15.2 The bill will include:
  - (a) the period for which the bill applies (which is normally one month);
  - (b) the consumption at the Site for that billing period;
  - (c) the Charges payable for that Site for that billing period;
  - (d) any adjustments to the Charges payable for that billing period or any other billing period in accordance with this Agreement;
  - (e) any outstanding amounts from previous bills; and
  - (f) the Due Date.
- 15.3 If you have a Basic Meter and any Charges are varied during a billing period, we may assume the electricity is consumed at a uniform daily amount for the whole of the billing period and the Charges will be calculated using a pro-rata calculation over the billing period.
- 15.4 If we have overcharged, undercharged or not charged you, we will credit or bill you for these amounts as soon as reasonably practicable after we determine you have been overcharged,

undercharged or not charged, except we will not do this more than 24 months:

- (a) after the date that any undercharges or amounts which were not charged, should have been billed; and
- (b) after the date the overcharge was billed, unless you have disputed your bill within the time specified in clause 17.

- 15.5 The 24 month limit in clause 15.4 will not apply where the undercharge or failure to charge was due to an event that was:
  - (a) outside our control; or
  - (b) caused or contributed to by the actions or omissions of you or a third party.
- 15.6 You must pay each bill in full no later than the Due Date, except in the circumstances set out in clause 17.3.
- 15.7 We may include details of any commission or fees payable by us to a broker or other third party service provider in relation to this Agreement in a bill issued to you under this clause 15.

#### **16. FAILURE TO PAY**

- 16.1 If you fail to pay a bill in full or in accordance with clause 17.3 by the Due Date, we may:
  - (a) apply any security we hold towards payment of the bill;
  - (b) arrange to disconnect the Site to which that bill applies (see clause 21.1(a));
  - (c) charge you Interest on the unpaid amount from the Due Date;
  - (d) refer your bill for collection by a debt collection agency;
  - (e) recover our costs of collecting the bill from you; or
  - (f) sell the rights to the unpaid amount to a third party who may seek to collect it from you.

#### **17. BILL DISPUTES**

- 17.1 If you wish to dispute a bill, you must provide us with a notice setting out why the amount of the bill is incorrect by the Due Date.
- 17.2 We will assess your claim as soon as reasonably practicable and advise you if we consider the original bill was incorrect. If we do not agree with you, the dispute resolution procedures in clause 29 will apply.
- 17.3 If the dispute is not resolved by the Due Date, you must pay by the Due Date the greater of:
  - (a) the undisputed amount; or
  - (b) the average of the last three bills for that Site.
- 17.4 Once the dispute is resolved:
  - (a) if we owe you a refund, we will credit your next bill and subject to clause 17.5, we must pay you Interest on that amount if you notify us to do so in writing within 2 weeks of us applying the credit to your bill; or
  - (b) if you owe us an amount, you must pay it within 2 weeks from the date the dispute is resolved, and you must pay us Interest on that amount,

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

- 17.5 We will not pay you Interest on a refund we owe you under clause 17.4(a) if that refund was due to an event:
- (a) that was outside our control; or
  - (b) caused or contributed to by the actions or omissions of you or a third party.

## 18. SECURITY AND CREDIT

- 18.1 We may require you to pay us a security deposit, or provide us with another form of security, up to the amount we estimate to be the aggregate of your next three bills for all Sites if:
- (a) you fail to pay any three bills, or two consecutive bills, on time; or
  - (b) at any time, we reasonably form the view that your creditworthiness is not satisfactory.
- 18.2 You must comply with our request within 2 weeks of receiving that request.
- 18.3 We will release the security deposit or other security after this Agreement ends and all outstanding amounts you owe us under this Agreement have been paid.

## 19. SITE ACCESS

- 19.1 You must give us, our Representatives, the Distributor, Metering Providers and AEMO safe, convenient and unhindered access to a Site as reasonably required for the purposes of this Agreement. This includes access after this Agreement ends or a Site is removed from this Agreement to remove the meter and any other equipment or disconnect electricity supply.
- 19.2 Neither we, the Distributor or the Metering Provider 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 meter; or
  - (c) in the case of an emergency.
- 19.3 When we access your Site, we will comply with any reasonable procedures, including site safety procedures, previously specified to us by you except in an emergency.

## 20. METERING

- 20.1 Unless we make a different agreement with you, we will arrange on your behalf for metering equipment to be installed and/or Metering Services to be supplied by a Metering Provider at a Site in accordance with the Regulatory Requirement.
- 20.2 Subject to the Regulatory Requirements, we have discretion as to the Metering Provider we appoint and whether we accept your Direct Metering Agreement.

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

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

- (a) we or a Metering Provider visit the Site and determine that it is appropriate to do so to reflect the nature of the Metering Services required at that Site;
- (b) after the date you sign this Agreement, we become aware you have a Direct Metering Agreement for a Site, the Direct Metering Agreement you have ends or is varied, or we revoke our acceptance of your Direct Metering Agreement; or
- (c) the Regulatory Requirements permit you to change the metering arrangements (including the person responsible for metering) and you elect to do so.

- 20.5 If, as a result of a variation under clause 20.4, or where supply to a Site has been discontinued under clause 14, we have to terminate or vary any contract we have entered into with any third party to perform our metering obligations under this Agreement, you will indemnify us for all Liability we incur or suffer in connection with that termination or variation.

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

## 21. DISCONNECTION

- 21.1 We may request the Distributor to disconnect a Site if:
- (a) you do not pay a bill in full or as contemplated by clause 17.3 by the Due Date and any part of that bill remains outstanding 1 week after we give you notice of our intention to disconnect the Site;
  - (b) you fail to comply with clause 18.2;
  - (c) you breach any other provision in this Agreement and do not remedy the breach within 3 weeks of us giving you notice that we will disconnect that Site if you do not do so within that time;
  - (d) you cease to occupy, or carry on business at, that Site;
  - (e) this Agreement is terminated in respect of that Site or in its entirety;
  - (f) you have illegally used electricity at any Site or tampered with a meter; or
  - (g) we are permitted or required to do so by the Regulatory Requirements.
- 21.2 You acknowledge that the Distributor has the power to disconnect, curtail or interrupt supply to a Site for other reasons.

- 21.3 Disconnection of a Site does not automatically terminate this Agreement for that Site.
- 21.4 You agree to indemnify us for any costs, including reasonable administrative costs, that we incur relating to disconnection and any subsequent reconnection of a Site.

## 22. TERMINATION AND SITE CANCELLATION

- 22.1 A party may terminate this Agreement by notice to the other:
- (a) if an insolvency event occurs in respect of the other party; or
  - (b) if the other party is in breach of this Agreement and does not remedy such breach within 3 weeks after notice to do so;
  - (c) if any representation or warranty made by the other party is untrue or misleading (whether by omission or otherwise) when made; or
  - (d) on or after the End Date, on four weeks' notice to the other party.
- 22.2 We may terminate this Agreement (in its entirety) by notice to you:
- (a) if there are no Sites taking electricity;
  - (b) if we reasonably form the view that your creditworthiness is not satisfactory;
  - (c) if an event of Force Majeure which has been notified in accordance with clause 27 continues for more than 6 months;
  - (d) if you are no longer a Large Customer for any Site;
  - (e) if we reasonably form the view that you have provided us with incorrect information; or
  - (f) if we reasonably form the view that there is a manifest error in a Schedule of this Agreement.
- 22.3 We may remove a Site from this Agreement by notice to you:
- (a) if we are entitled to disconnect or have disconnected under clause 21.1;
  - (b) a Distributor has disconnected that Site for any reason;
  - (c) if we reasonably form the view that there is a manifest error in the Schedule relating to that Site;
  - (d) if we reasonably form the view that you have provided us with incorrect information relating to that Site; or
  - (e) if you are no longer a Large Customer at that Site,
- and with effect from the date set out in that notice we will have no obligation to supply electricity to you under this Agreement in respect of that Site and this Agreement will end for that Site in accordance with clause 23.10.
- 22.4 This Agreement will automatically terminate if we are no longer permitted to sell you electricity under the Regulatory Requirements for any reason.

## 23. BREAK FEE

- 23.1 You acknowledge and agree that you have entered into a fixed term agreement with us and if a Break Fee Event occurs prior to the End Date, we may suffer loss. To allow us to recover our genuine pre-estimate of that loss, we may charge you, and you agree to pay, the Break Fee in accordance with this clause 23.
- 23.2 The Break Fee is an amount equal to all of the Energy Charges we estimate we would have received from you for your Unconsumed Load, less the costs (including our costs of purchasing electricity at our Forward Cost of Electricity, our Cost to Serve and Cost to Carry) we estimate we would have incurred to buy and supply that Unconsumed Load to you for the remaining term of the Agreement, in each case referable to Peak Time, Shoulder Time (where applicable) and Off Peak Time.
- 23.3 The Break Fee:
- (a) will be calculated by reference to the period from the date that the relevant Break Fee Event occurs until the End Date; and
  - (b) will never be payable in respect of electricity which is sold, and billed, to you under this Agreement; and
  - (c) will only be calculated in respect of, and be applicable to, Sites affected by the Break Fee Event.
- 23.4 In calculating your Break Fee, we will act reasonably and we will be entitled to use any or all of:
- (a) estimates and forecasts;
  - (b) methodologies based on an index, industry benchmark, relevant law or regulatory guideline, published or produced by a third party;
  - (c) determinations of suitably qualified independent experts selected by us; and
  - (d) averaging methodologies.
- As we manage the purchasing of electricity for our customers on a portfolio basis, some costs we incur and which are included in the calculation of your Break Fee may be allocated across our customers using methodologies we consider appropriate, such as on a proportionate basis across our customers.
- 23.5 As the Break Fee is based on loss we incur due to your Break Fee Event, you acknowledge that the amount of any Break Fee will depend on a range of factors, including:
- (a) the amount of your Unconsumed Load; and
  - (b) the amount of the Forward Cost of Electricity at the time of the Break Fee Event (which may be different to your Energy Rates).
- 23.6 Accordingly, you also acknowledge that, due to the nature of the variables used in calculating your Break Fee, it is possible that your Break Fee could be substantial - particularly if you consume large amounts of electricity and the wholesale cost of electricity is lower at the time of the Break Fee Event from that applying at the time you signed this Agreement.

- 23.7 You may request an estimate of your likely Break Fee for a proposed Break Fee Event. We will give you this estimate within a reasonable time of such request. Any estimated Break Fee will be based on information current at the date we calculate the estimate and, as such, that estimated Break Fee may be different to your actual Break Fee.
- 23.8 You must pay us the Break Fee within 2 weeks of receipt of a bill. The Break Fee will appear on your bill as the 'Combined Break Charge' and will include any amount payable under clause 20.5.
- 23.9 At your request, we will give you a statement setting out how we calculated your Break Fee.
- 23.10 Once you pay us the Break Fee for a Site:
- (a) we will decrease your Target Consumption by the amount of the Unconsumed Load; and
  - (b) this Agreement will no longer apply to that Site.
- 24. HOLDING OVER**
- 24.1 If, at a particular Site, you continue to take Services or Other Services from us after the Supply Term or after this Agreement ends, this Agreement will continue to apply to that Site, except:
- (a) the Energy Rates for that Site will be those notified by us to you to apply for a specified period or, if we do not notify you or the period specified by us has expired, equal to the applicable Default Rate; and
  - (b) we may vary any of the other Charges and the terms of this Agreement by notice to you.
- 24.2 We may vary the Energy Rates, Charges and terms more than once after the Supply Term ends. We will give you notice in accordance with clause 11.1 at least one month before the variation takes effect.
- 25. RISK AND LIABILITY**
- 25.1 Title and risk in the electricity passes to you at the first point of connection at each Site.
- 25.2 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 act or omission by you or your Representatives to the extent we (or our Related Bodies Corporate) have indemnified the Distributor or Meter Provider for that Liability.
- 25.3 If you incur Liability in connection with this Agreement arising in connection with an act or omission of the Distributor or Meter Provider, we are not liable to you except to the extent we recover the Liability from the Distributor or Meter Provider.
- 25.4 Subject to clause 25.3, 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.
- 25.5 Subject to clauses 25.3 and 25.4, 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.
- 25.6 This Agreement does not vary or exclude the operation of:
- (a) section 119 and 120 of the NEL;
  - (b) section 97A of the *Electricity Act 1994 (Qld)*; or
  - (c) section 316 of the National Energy Retail Law.
- 25.7 Each party must do all things reasonably necessary to mitigate any Liability under this Agreement.
- 25.8 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.
- 25.9 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, except for your liability to us under clause 25.2(c) in which case you are liable to us, and we may make a claim for, Excluded Loss.
- 25.10 You must prevent any damage to or interference with equipment (including metering equipment) owned or operated by us, the Distributor or a Metering Provider.
- 25.11 You must comply with the Regulatory Requirements and any other relevant code or law that applies to the sale of Services or Other Services to you.
- 25.12 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.
- 26. PARTNERSHIPS AND TRUSTS**
- 26.1 If you are a partner in a partnership, each partner is jointly and severally liable under this Agreement.
- 26.2 If you enter this Agreement as a trustee you represent and warrant in your own right and as trustee of the Trust, that as at the date of this Agreement and until such time as all your obligations under this Agreement are discharged:
- (a) you are the sole trustee of the Trust;
  - (b) you have the requisite capacity and authority to enter this Agreement on behalf of, and to bind the beneficiaries of, that Trust and to perform all obligations under this Agreement

pursuant to the documents governing that Trust; and

- (c) you have the right to be fully indemnified out of the assets of the Trust in relation to this Agreement and the assets of the Trust are sufficient to satisfy all obligations of the Trust under this Agreement.

## 27. FORCE MAJEURE

- 27.1 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.
- 27.2 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.
- 27.3 If the effect of such an event are widespread, we may give you prompt notice by making the necessary information available on a 24 hour telephone service promptly after becoming aware of the event.

## 28. GST

- 28.1 In this clause, all terms that are defined in the GST law have the same meaning in this clause.
- 28.2 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.
- 28.3 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.
- 28.4 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.

## 29. DISPUTE RESOLUTION

- 29.1 All disputes must be dealt with in accordance with this clause 29.
- 29.2 The party claiming the dispute must give a written notice to the other party setting out particulars of the dispute (**Dispute Notice**).
- 29.3 The dispute must be referred to senior representatives of the parties. The senior representatives must meet (by telephone if not in person) within 2 weeks and negotiate to resolve the dispute.
- 29.4 If for any reason the dispute has not been resolved within 4 weeks after service of the Dispute Notice either party may commence court proceedings.
- 29.5 Pending the resolution or determination of a dispute, each party must continue to perform their respective obligations under this Agreement.
- 29.6 Nothing in clause 29 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.

- 29.7 You indemnify us for any Liability we incur or suffer if you dispute a bill or other matter other than under clause 17 or clause 29 (as applicable).

## 30. CONFIDENTIALITY

- 30.1 Both parties must keep all Confidential Information confidential for 3 years after this Agreement ends.
- 30.2 Either party may disclose Confidential Information:
  - (a) with the other party's prior written consent;
  - (b) on a confidential basis to its officers, employees, agents, advisers and insurers (or those of a Related Body Corporate) to the extent disclosure is reasonably required;
  - (c) if required by Regulatory Requirements, law or applicable stock exchange rules; or
  - (d) to a Related Body Corporate for any reason.
- 30.3 We may request, use and disclose Confidential Information and other information about you to the extent we reasonably consider it is required:
  - (a) to enable us to obtain a credit report on you;
  - (b) in communications with AEMO, any Regulatory Authority or the Distributor, Metering Provider or any service provider we engage to provide the Services or Other Services to you; or
  - (c) if necessary in an emergency situation.
- 30.4 You consent for us to provide the Metering Data for each Site to our Related Bodies Corporate.

## 31. PRIVACY

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

## 32. VARIATIONS TO THE AGREEMENT AND WAIVER

- 32.1 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).
- 32.2 Where this Agreement is varied at your request, you must pay us the Administration Charge to cover our reasonable administration costs.

## 33. ASSIGNMENT

- 33.1 We may assign, transfer or novate this Agreement to any of our Related Bodies Corporate or any third party by prior notice to you.
- 33.2 You may only assign, transfer or novate this Agreement with our prior written consent.

## 34. NOTICES

- 34.1 A notice or other communication under this Agreement is only effective if:
  - (a) in writing and addressed to the person to whom it is given; and

(b) where we are the recipient, sent by pre-paid mail to GPO Box 186 Melbourne Vic 3001 or sent by email to the Origin email address specified in the Schedule; or

(c) where you are the recipient, sent by bill, sent to any Address for Accounts or sent by email to the email address as notified by you to us.

34.2 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.

### 35. LAWS APPLICABLE TO THIS AGREEMENT

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

35.2 If there are Sites in more than one Jurisdiction, this Agreement is governed by the laws in force in Victoria. However, the Regulatory Requirements in a Jurisdiction continue to apply to Sites in that Jurisdiction.

35.3 You submit to the non-exclusive jurisdiction of the courts of the place determined in accordance with clauses 35.1 and 35.2.

### 36. ANTI-BRIBERY

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

36.2 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.

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

### 37. GENERAL PROVISIONS

37.1 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.

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

37.3 Clauses 19.2, 23, 25, 30 and 31 survive termination or expiry of this Agreement. Other terms of this Agreement will survive termination or expiry of this Agreement where it is necessary for it to do so to enable a party to enforce a right accrued on or before termination or expiry.

37.4 It is not necessary for us to incur an expense or make a payment before enforcing a right of

indemnity conferred by this Agreement or to vary the Charges in accordance with this Agreement.

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

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

### 38. DEFINITIONS

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

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

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

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

**Agreement Terms** means this document.

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

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

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

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

**Break Fee Event** means any of the following events:

(a) this Agreement is terminated in its entirety for any reason other than termination under clauses 22.1 (by you), clause 22.2(f) or 22.4;

(b) where supply is discontinued to a Site in accordance with clause 14.1;

(c) we remove a Site and terminate this Agreement in part in relation to that Site in accordance with clause 22.3 other than removal or termination under clause 22.3(c); or

(d) this Agreement no longer applies to a Site for any reason,

before the End Date.

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

**Change of Law** means:

(a) any Regulatory Requirement or Tax being:

(i) introduced, taking effect or commencing; or

(ii) amended or repealed,

in whole or in part after the Agreement Date;



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

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

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

**Confidential Information** means:

- (a) clause 25 of this Agreement, the Schedules and Annexures;
- (b) all information relating to the Charges disclosed or made available to a party by or on behalf of the other party; or
- (c) all information a party derives or produces, whether in whole or in part, from the information disclosed under paragraphs (a) and (b).

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

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

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

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

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

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

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

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

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

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

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

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

**Excluded Loss** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Regulatory Authority** means:

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

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

**Regulatory Requirements** means:

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

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

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

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

**Rules** mean the National Electricity Rules.

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

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

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

**Site** means each site specified in the Schedule, except those sites which have been removed or to which this Agreement no longer applies in accordance with clauses 14.2 or 22.3 are not included.

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

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

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

**Target Consumption** means the quantity of electricity which we anticipate selling you in each Jurisdiction in an Agreement Year as specified in the Schedule.

**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).

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

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

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

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

**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.

### 39. Interpretation

39.1 Unless otherwise stated:

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

## Annexure 1 Charges

The Charges include:

- (a) Energy Charges;
- (b) Environmental Charges;
- (c) Network Charges;
- (d) Regulated Charges;
- (e) Charges relating to Metering Services;
- (f) Administration Charge and billing Charges; and
- (g) Break Fee

### 1. ENERGY CHARGE

**Energy Charge** means the amount you must pay us for your electricity consumption, which is the sum of each Applicable Energy Rate multiplied by the amount of electricity sold to each Site during the Peak Time, Off Peak Time or Shoulder Time (as applicable), except that where you have a Basic Meter the Applicable Energy Rate will always be the Peak Energy Rate.

where:

**Applicable Energy Rate** means the Peak Energy Rate, Shoulder Energy Rate and Off Peak Energy Rate (as applicable and each as specified in the Schedule) multiplied by the relevant Loss Factor, except that where you have a Basic Meter the Applicable Energy Rate will always be the Peak Energy Rate.

**Energy Rate** means the Peak Energy Rate, Shoulder Energy Rate and Off Peak Energy Rate (as applicable and each as specified in the Schedule) which are specified in the Schedule.

**Loss Factor** means the relevant transmission and distribution loss factors (determined in accordance with the Rules).

**Off Peak Time** has the meaning specified in the Schedule.

**Peak Time** has the meaning specified in the Schedule.

**Shoulder Time** has the meaning specified in the Schedule.

### 2. ENVIRONMENTAL CHARGE

**Environmental Charge** means the sum of each Applicable Environmental Rate multiplied by the quantity of electricity sold to each Site in the relevant Jurisdiction.

where:

**Applicable Environmental Rate** means:

- (a) for the EEIS (as defined below), the applicable Environmental Rate; and
- (b) for all other Environmental Products, each applicable Environmental Rate multiplied by the distribution Loss Factor only.

**Environmental Product** means an environmental product or scheme specified below:

| Environmental Product                            | Governing Legislation | Relevant Jurisdiction |
|--|-----------------------|-----------------------|
| Energy Saving Certificates (ESCs)                | ESS Legislation       | NSW                   |
| Victorian Energy Efficiency Certificates (VEECs) | VEET Legislation      | Victoria              |
| Energy Efficiency                                | Energy Efficiency     | ACT                   |

| Improvement Scheme (EEIS)                   | (Cost of Living) Improvement Act 2012 |     |
|---|---------------------------------------|-----|
| Large Scale Generation Certificates (LRECs) | REC Legislation                       | All |
| Small Scale Technology Certificates (SRECs) |                                       |     |

**Environmental Rate** means:

- (a) the rate for the relevant Environmental Product specified in the Schedule (as varied from time to time under this Agreement); or
- (b) if no rate is specified in the Schedule for that Environmental Product, a rate determined by us based on our reasonable forecast of the market price for that product or scheme and our obligations under the governing legislation for that product (as varied from time to time under this Agreement).

### 3. NETWORK CHARGE

**Network Charge** is an amount equal to the costs charged by the Distributor and/or transmission service provider to us in relation to you or your Site.

### 4. REGULATED CHARGE

**Regulated Charge** is the amount payable by us to a Rules Agency (including our market participant fees and ancillary services fees) which will be passed on to you by us based on a fair and reasonable proportion of such costs so incurred by us as between our customers. Even if the amount payable by us is negative (for example, where the Export Electricity Annexure applies), the Regulated Charge will not be payable by us to you.

where:

**Rules Agency** means the Australian Energy Market Commission, Australian Energy Regulator, AEMO or any other entity that administers, or performs any function, under the Rules.

### 5. CHARGES RELATING TO METERING SERVICES

**Instrument Testing Charge** means the charge as specified in the Schedule or if not specified in the Schedule, an amount determined by us based on our reasonable estimate of our costs relating to Instrument Testing across our customers.

**Metering Charge** means the annual amount specified in the Schedule, or varied by us under clause 20.4, calculated as a daily amount which is payable monthly and any other costs charged by the Metering Provider to us in relation to you or your Site.

**Metering Compliance Charge** means amounts, which we are charged or we incur, other than an amount included under another Charge, in connection with meeting our metering obligations under the Regulatory Requirements as well as our reasonable administrative costs.

**Supplementary Metering Charge** means the monthly amount specified in the Schedule which is payable where you have a DMA for a Site and we have accepted that DMA in accordance with clause 20.2.

**VAS Charge** means the charge for value added services set out in your Direct Metering Agreement.

### 6. ADMINISTRATION CHARGE AND BILLING CHARGES

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**Administration Charge** means \$300 (excluding GST) per Site.

**Other Charges** means any amounts which we are charged or we incur (other than an amount included under another Charge) in connection with your payment of a bill, including any merchant fees arising from payment by credit card or from a similar facility.

**Service Charge** means the charge as specified in the Schedule which relates to the provision of our general account management services under the Agreement.

**7. BREAK FEE**

**Break Fee** means an amount payable by you under clause 23.1