

# Terms and Conditions

## 1. Introduction

This Contract sets out the terms on which EnergyAustralia will sell electricity to the Customer at the Connection Points.

## 2. Sale and Purchase of Electricity

- (a) EnergyAustralia agrees to sell to the Customer, and the Customer agrees to purchase from EnergyAustralia, electricity supplied to the Connection Points, in accordance with the terms of this Contract.
- (b) In order to sell electricity to the Customer at a Connection Point, EnergyAustralia will:
  - (i) become Financially Responsible for the Connection Point;
  - (ii) pay any Market Charges to the Market Operator;
  - (iii) arrange and pay for Network Services for the Connection Point (unless the Customer makes its own arrangements); and
  - (iv) arrange and pay for Connection Services and Metering Services for the Connection Point (unless the Customer makes its own arrangements).
- (c) EnergyAustralia will not connect the Customer's Premises to the Network or supply, deliver or convey electricity to a Connection Point. EnergyAustralia will arrange for the relevant Network Operator to provide these Connection Services and Network Services.
- (d) Network Services may be subject to fluctuations or distortions (in voltage magnitude, voltage waveform or frequency) or interruptions. EnergyAustralia cannot (in its arrangements with Network Operators or otherwise) control the continuity of Network Services or the quality characteristics of electricity supply.
- (e) If the Customer requires increased security of electricity supply, it should discuss the possible options with EnergyAustralia as soon as practicable.

## 3. Term

This Contract commences on the Commencement Date and, subject to clause 10.2, expires on the Expiry Date.

## 4. Commencement of Sales

- (a) If EnergyAustralia is already Financially Responsible for a Connection Point on the Commencement Date, the terms of this Contract will apply to the sale of electricity at that Connection Point on and from the Start Date.
- (b) If EnergyAustralia is not already Financially Responsible for a Connection Point on the Commencement Date, EnergyAustralia will sell electricity to the Customer at a Connection Point once the Transfer Requirements have been met and it becomes Financially Responsible for that Connection Point.
- (c) EnergyAustralia will use its best endeavours to meet the Transfer Requirements for each Connection Point once EnergyAustralia has been provided with any security specified in the Schedule and it is satisfied that:
  - (i) the Customer owns or is entitled to occupy the relevant Premises;

- (ii) the Customer is not a Small Electricity Customer;
- (iii) the Customer has a current Connection Contract;
- (iv) appropriate Metering Services and a Metering Data Provider have been arranged; and
- (v) the Customer has a satisfactory credit assessment on the Start Date and if not, the Customer has provided security as requested by EnergyAustralia under clause 7.1(c) before the Start Date.

- (d) EnergyAustralia is under no obligation to sell electricity under this Contract if by the Start Date the Customer fails to satisfy any of the conditions under clause 4(c).

## 5. Charges

### 5.1 Charges Generally

- (a) The Customer must pay the Charges for each Connection Point. The Charges may comprise fixed amounts, amounts calculated as a daily or other periodic rate, amounts calculated as a rate for the electricity consumed or demand recorded at the relevant Connection Point, or any combination of the above.
- (b) Some Charges may be based on:
  - (i) EnergyAustralia's reasonable estimation of its relevant costs (where those costs are not known in advance); and/or
  - (ii) EnergyAustralia's reasonable allocation of those costs across its customers (where those costs are incurred in respect of multiple customers or connection points); and/or
  - (iii) EnergyAustralia's reasonable estimation of Charges and reasonable administration costs when the Customer requires a Meter upgrade, installation of a new Meter or a Meter transfer after the Start Date of this Contract.

EnergyAustralia will regularly review the basis of any estimates and allocations used in determining such Charges, revise the rates of such Charges and endeavour to only recover EnergyAustralia's actual costs. However, EnergyAustralia will not revise Charges retrospectively (other than in connection with a change in EnergyAustralia's REE Costs) or compensate the Customer for any over-estimation during a period.

- (c) Pursuant to clause 18, EnergyAustralia may, at its discretion, charge the Customer for any copy bills, meter data reports and other ad hoc requests from the Customer that are not covered under this Contract at EnergyAustralia's reasonable estimation of the relevant costs that may vary from time to time.

### 5.2 Varying Charges

- (a) Subject to paragraph (b) of this clause, the Energy Charges and Environmental Charges (if any) applying to a Connection Point at the Commencement Date are set out in the Schedule.
- (b) EnergyAustralia may adjust the Energy Charges (including the rate of any Energy Charges) or introduce a new Charge (including a Carbon

Scheme Charge) at any time prior to the Expiry Date if:

- (i) there is a Change in Law, by an amount necessary to recover all of EnergyAustralia's costs arising as a direct or indirect result of the Change in Law, including if such Change in Law occurs or takes effect between the Commencement Date and the Start Date; and/or
  - (ii) the Customer requires a Meter upgrade, or the Customer has a new Meter installed after the Start Date and the Customer is required to be billed, on an actual or estimated basis as determined by EnergyAustralia; or
  - (iii) if the Customer fails the credit assessment conducted by EnergyAustralia, and/or the Customer fails to provide security or parent company guarantee as determined by EnergyAustralia.
- (c) Subject to any capped or fixed Environmental Charges set out in the Schedule, EnergyAustralia may adjust the Environmental Charges (including the rate of any Environmental Charges) at any time prior to the Expiry Date by an amount necessary to recover all of EnergyAustralia's Environmental Costs arising as a direct or indirect result of selling electricity to the Customer at the Connection Points.
- (d) Where:
- (i) any component of the Environmental Charges is based on EnergyAustralia's forecast of any of its Environmental Costs; and
  - (ii) EnergyAustralia's relevant actual Environmental Costs materially differ from the amount forecast,
- then EnergyAustralia must factor that difference into EnergyAustralia's forecast of any of the relevant Environmental Costs for the next forecast period.
- (e) The Customer acknowledges that all other Charges generally represent costs incurred by EnergyAustralia from third parties in order to sell electricity to the Customer at the Connection Points. These costs, and the Charges required to recover those costs, may change from time to time. EnergyAustralia will pass through all such charges to the Customer without applying any mark up or margin (other than to recover reasonable administrative costs) where it is reasonably practical to do so.

### **5.3 Goods and Services Tax**

- (a) Unless expressly stated otherwise, all amounts under this Contract are stated as GST exclusive amounts.
- (b) If any GST is or becomes payable in respect of a Taxable Supply of goods or services under this Contract, the Charges payable by the Customer for that Taxable Supply of goods or services will be increased by an amount equal to the GST payable.
- (c) EnergyAustralia must provide the Customer with a Tax Invoice in respect of any Taxable Supply under this Contract.

## **6. Invoices and Payment**

### **6.1 Invoices**

- (a) EnergyAustralia will prepare and forward invoices to the Customer's nominated address set out in the Schedule monthly on a calendar month basis. An invoice may be in respect of one or more Connection Points.

- (b) The due date for payment of an invoice will be set by reference to the payment terms set out in the Schedule.

### **6.2 Contents of Invoices**

Each invoice prepared by EnergyAustralia must include:

- (a) the period for which the invoice applies;
- (b) the Charges payable for each Connection Point for the period;
- (c) sufficient information to enable the Customer to verify the Charges;
- (d) a statement that it is a Tax Invoice and the amount of GST payable;
- (e) the due date for payment; and
- (f) payment methods.

### **6.3 Payment Terms**

- (a) The Customer must pay EnergyAustralia the Charges set out in an invoice by the due date for payment.
- (b) A payment due on a day that is not a Business Day shall be paid on the next Business Day.
- (c) The Customer will only be considered to have made a payment once EnergyAustralia, or an agent authorised to accept payments on behalf of EnergyAustralia, receives the payment in cleared funds.
- (d) EnergyAustralia may charge the Customer any credit card fees it incurs in connection with the payment of an invoice paid by credit card.
- (e) EnergyAustralia may nominate a required payment method or change payment methods from time to time under this Contract.

### **6.4 Invoice Disputes and Errors**

- (a) If the Customer disputes the amount of an invoice, the Customer must:
  - (i) provide EnergyAustralia with written notice of the amount in dispute and the reasons for the dispute as soon as possible; and
  - (ii) if the dispute is not resolved before the due date for payment of the relevant invoice, pay EnergyAustralia (by the due date for payment) the greater of the undisputed amount of the invoice and the average of the Customer's last three invoices for the relevant Connection Points.
- (b) If EnergyAustralia believes there is an error in an invoice, or receives information relevant to an invoice after sending it to the Customer, EnergyAustralia shall adjust the invoice from the time when the error occurred (whether paid or not) and send a replacement or adjustment invoice to the Customer.

### **6.5 Interest**

- (a) If the Customer does not pay an invoice in full (or any lesser amount permitted by clause 6.4(a)) by the due date for payment, then in addition to any other right it may have under this Contract, EnergyAustralia may require the Customer to pay interest on the unpaid amount and compensate EnergyAustralia for any costs incurred in recovering the unpaid amount.
- (b) Interest on outstanding amounts will accrue on a daily basis from the due date for payment until the date EnergyAustralia receives payment in full.
- (c) Interest will be calculated at the rate prescribed (at the relevant date) under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* for paying interest on a judgment debt, plus 5%.

## **7. Security**

### **7.1 Provision and Use of Security**

- (a) EnergyAustralia may, at any time of this Contract, conduct a credit assessment of the Customer.
- (b) The Customer must provide EnergyAustralia with the security (if any) set out in the Schedule. Such security may include a parent company guarantee.
- (c) EnergyAustralia may also require security, or additional security, from time to time if:
  - (i) the Customer fails to pay two consecutive invoices for a Connection Point by the due date for payment;
  - (ii) the Customer fails to pay three invoices for a Connection Point by the due date for payment within any 12 month period;
  - (iii) EnergyAustralia considers that the Customer, having a satisfactory credit assessment on the Commencement Date, ceases to have a satisfactory credit assessment prior to the Start Date or at any time during the term of this Contract; or
  - (iv) any provider of credit support for the Customer ceases to have an Approved Rating.
- (d) EnergyAustralia may access any security at any time in order to satisfy (or partially satisfy) any outstanding obligation of the Customer under this Contract.
- (e) If EnergyAustralia accesses any security, it may require the Customer to provide any top-up security necessary to restore the security to the required amount.
- (f) If any security, additional or top-up security is required, EnergyAustralia must provide the Customer with at least 10 Business Days notice of the amount required and the date by which it must be provided.
- (g) Any security provided must be in a form acceptable to EnergyAustralia. No interest will be payable by EnergyAustralia on any cash security it holds.
- (h) Any costs incurred in providing the security shall be borne by the Customer.
- (i) The Customer must provide EnergyAustralia with all assistance and information reasonably requested by EnergyAustralia in conducting a credit assessment for the duration of the Contract.

### **7.2 Return of Security**

- (a) EnergyAustralia must refund or return any security to the Customer within a reasonable period following termination of this Contract, but only if another electricity retailer has become Financially Responsible for the Connection Points and the Customer has paid EnergyAustralia all amounts owing under this Contract.
- (b) EnergyAustralia will not be required to refund or return any security on a transfer or assignment by the Customer of this Contract, unless and until the relevant transferee or assignee has provided EnergyAustralia with an acceptable replacement security.

## **8. Metering**

### **8.1 Responsible Person**

Under the Metering Rules, one person must assume responsibility for the metering arrangements at each Connection Point (the Responsible Person). The Responsible Person will generally be EnergyAustralia unless the Customer elects to become the Responsible

Person and is entitled to do so under the Rules. The Responsible Person must:

- (a) ensure that a registered Metering Provider installs and maintains a Meter at each Connection Point; and
- (b) arrange for the Meter at the Connection Point to be read at appropriate intervals by a Metering Data Provider.

### **8.2 Meter Accuracy and Testing**

- (a) Each party must notify the other party as soon as possible if it suspects that a Meter at a Connection Point is or may be defective, damaged or operating inaccurately (i.e. not operating within the specifications set out in the Metering Rules).
- (b) The party who is not the Responsible Person may, at any time by notice, require the Responsible Person to test a Meter at a Connection Point.
- (c) The Responsible Person must arrange to have a Meter tested as soon as practicable if it receives a notice from the other party under clauses 8.2 (a) or (b) or if it believes the Meter is not operating within the specifications set out in the Metering Rules.
- (d) If testing reveals a Meter is operating within the specifications set out in the Metering Rules, the person requiring the test must meet the cost of testing the Meter.
- (e) If testing reveals a Meter is not operating within the specifications set out in the Metering Rules, the Responsible Person must meet the cost of testing the Meter.
- (f) The Responsible Person must replace or repair a Meter that is not operating within the specifications set out in the Metering Rules.
- (g) EnergyAustralia must make an appropriate adjustment in the Customer's next invoice if testing reveals that a Meter is not operating within the specifications set out in the Metering Rules. However, EnergyAustralia is not required to adjust the Customer's invoices to the extent that the Customer or any third party caused the relevant inaccuracy and the adjustment would cause EnergyAustralia loss (after EnergyAustralia has used all reasonable endeavours to mitigate its loss).

### **8.3 Estimations**

- (a) Where circumstances prevent an accurate Meter reading, the Responsible Person may estimate electricity consumption and demand at a Connection Point. The Responsible Person must use a basis of estimation set out in the Metering Rules or generally accepted in the electricity industry.
- (b) Where possible, EnergyAustralia must reconcile Charges based on an estimation of electricity consumption with electricity consumption recorded by the next available Meter reading. An appropriate adjustment must be made in the Customer's next invoice.

### **8.4 Customer Obligations Regarding Meters**

The Customer must:

- (a) provide a suitable and safe location for installing a Meter at each Connection Point;
- (b) provide access to each Meter at all reasonable times to any employee, agent, contractor or other authorised personnel of EnergyAustralia or any Metering Provider;
- (c) ensure the proper care and custody of each Meter, not damage or interfere in any way with a Meter or permit any electricity consumption at a Connection Point that is not recorded by a Meter;

- (d) where a Meter is not owned by the Customer, not mortgage, charge or otherwise deal inconsistently with the rights of the owner of that Meter; and
- (e) notify EnergyAustralia in advance if the Connection Point shall be modified due to the installation of a solar photovoltaic generator.

### 8.5 Changing Meters

If, during the term of this Contract:

- (a) the Customer's electricity consumption or demand changes materially;
- (b) the basis for calculating Network Charges is varied;
- (c) the requirements of the Metering Rules are amended, or
- (d) the Customer installs a solar photovoltaic generator and, as a result, needs to modify the Connection Point, or
- (e) the Customer requires a Meter upgrade

the Responsible Person shall arrange installation of a further or replacement Meter at a Connection Point. If EnergyAustralia is the Responsible Person, the Customer must meet EnergyAustralia's reasonable costs of installing and maintaining the relevant Meter and pay any adjusted Metering Charges until the Meter is installed.

### 8.6 Unmetered Supply

Nothing in clauses 8.1 to 8.5 will apply to any Connection Point classified as an unmetered connection point (as defined in the Rules). The parties acknowledge that the Responsible Person shall calculate the electricity consumption at such Connection Point as a type 7 metering installation in accordance with the Rules and any applicable Metering Rules.

## 9. Disconnection and Reconnection

### 9.1 Grounds for Disconnection

EnergyAustralia may request the relevant Network Operator to disconnect a Connection Point:

- (a) if the Customer has failed to pay any Charges by the due date for payment (including interest for late payments) and EnergyAustralia has provided at least 10 Business Days' notice of that default to the Customer;
- (b) if the Customer has breached any other provision of this Contract and has not remedied that breach within any reasonable period notified by EnergyAustralia;
- (c) if the Customer fails to provide the security in accordance with clause 7;
- (d) if EnergyAustralia reasonably believes that the Customer no longer has a current Connection Contract;
- (e) to protect the Network and in the interests of other customers;
- (f) in the circumstances of Force Majeure Event; or
- (g) pursuant to any right or obligation at law.

### 9.2 Disconnection and Termination

Disconnection of a Connection Point, for any reason, does not constitute termination of this Contract in respect of that Connection Point, nor will it prevent EnergyAustralia from exercising any other rights it may have under this Contract.

### 9.3 Vacation of the Premises

- (a) The Customer must notify EnergyAustralia in writing about its intention to vacate the Premises. Such notification shall be provided to EnergyAustralia at least 30 days before Customer's proposed date of disconnection or vacation of the Premises.
- (b) The Customer must ensure that the Premises are safe and secure and provide unrestricted access to

the Meter at each Connection Point during business hours.

- (c) The Customer is liable for all Charges up to the date of disconnection, or where applicable, the date that the new occupant enters into a new retail electricity agreement. The Early Termination Charges may also apply pursuant to clause 10.6.
- (d) EnergyAustralia shall apply best endeavours to finalise the disconnection within the required timeframe, however the Customer remains liable for the ongoing Charges until the disconnection occurs.
- (e) The Customer may authorise EnergyAustralia to release details of the Charges of this Contract to the new occupant of the Premises.

### 9.4 Charges

EnergyAustralia may charge the Customer for any cost it incurs in arranging disconnection of a Connection Point (even if the relevant Premises are not actually disconnected from the relevant Network).

### 9.5 Reconnection

EnergyAustralia may arrange for reconnection of a Connection Point once it is satisfied that the grounds for disconnection no longer apply. The Customer must pay any costs incurred by EnergyAustralia in arranging reconnection.

## 10. Termination

### 10.1 Rights of Termination

This Contract can be terminated by:

- (a) the Customer entering into an arrangement for another electricity retailer to become Financially Responsible for a Connection Point;
- (b) notice from EnergyAustralia to the Customer if:
  - (i) a Connection Point is disconnected or EnergyAustralia has grounds for disconnection of a Connection Point under clause 9.1;
  - (ii) the Customer becomes insolvent, deregistered or breaches any material provision of this Contract and has not remedied that breach within any reasonable period notified by EnergyAustralia; or
  - (iii) EnergyAustralia (acting reasonably) believes the Customer has provided EnergyAustralia with false or misleading information concerning a material aspect of this Contract, including information regarding the ownership or occupation of the Premises, the Customer's electricity consumption or the Customer's credit position; or
  - (iv) the Customer fails credit assessment conducted by EnergyAustralia and/or does not provide security or parent company guarantee;
- (c) notice from the Customer to EnergyAustralia if EnergyAustralia becomes insolvent, deregistered or breaches any material provision of this Contract and has not remedied that breach within any reasonable period notified by the Customer.

All notices under this clause 10.1 shall be provided in accordance with clause 17.2.

### 10.2 Run Off Period

- (a) Notwithstanding the termination or expiry of this Contract, EnergyAustralia will continue to sell the Customer electricity consumed at the Connection Points on the terms of this Contract until another electricity retailer becomes Financially Responsible for the relevant Connection Points (the Run Off Period). The Customer must pay EnergyAustralia any Charges and otherwise

continue to comply with the terms of this Contract during any Run Off Period.

- (b) During any Run Off Period, Energy Charges and Environmental Charges will be calculated at a Default Rate.

### 10.3 Post Expiry New Contract Offer

- (a) This clause will only apply if the Customer:
- (i) has, at the Commencement Date, an Estimated Load of less than 500MWh in any contract year; or
  - (ii) at any stage after the Commencement Date, in EnergyAustralia's reasonable opinion, the Customer's aggregate consumption of electricity at the Connection Points in any Contract Year will be less than 500MWh.
- (b) EnergyAustralia may, by providing the Customer with notice at least 30 days (and not more than 60 days) prior to the Expiry Date, propose a replacement retail electricity contract (New Contract) for some or all of the Connection Points following the Expiry Date (an Offer).
- (c) An Offer must include the terms and conditions of the New Contract, the term of the New Contract, the Connection Points to which the New Contract will apply and the charges applicable to those Connection Points.
- (d) The Customer will be deemed to have accepted an Offer made in accordance with this clause if it has not rejected the Offer by written notice to EnergyAustralia within 14 days after receiving this Offer. A New Contract will be deemed to commence on the Start Date set out in the Offer (which may not be earlier than the Expiry Date).
- (e) If the Customer:
- (i) rejects the Offer; and
  - (ii) does not accept a New Contract or another contract with EnergyAustralia; and
  - (iii) does not transfer the Connection Points to another electricity retailer in accordance with the Transfer Requirements

the Customer will, after the Expiry Date, pay the Default Rate pursuant to clause 10.2.

### 10.4 Retailer of Last Resort Event

If a Last Resort Event occurs in respect of a Connection Point:

- (a) EnergyAustralia must provide the Customer's name, billing address and national metering identifier for the relevant Connection Point to the applicable Retailer of Last Resort within the timeframe required by the laws of the relevant Jurisdiction; and
- (b) this Contract will automatically terminate in respect of such Connection Point.

### 10.5 Preservation of Rights

On the expiry or termination of this Contract, each party will retain any rights it may have against the other for any past breach of the Contract or in respect of any amounts payable to it under this Contract.

### 10.6 Early Termination Charges

- (a) Unless the Customer and EnergyAustralia agree otherwise in writing, if this Contract is terminated pursuant to clauses 10.1(a) or (b), the Customer shall pay to EnergyAustralia Early Termination Charges.
- (b) Early Termination Charges shall be applied to the Contract term pursuant to clause 10.3.

## 11. Multiple Connection Points

### 11.1 Adding Connection Points

If the parties agree to add further Connection Points to this Contract, EnergyAustralia must amend the Schedule to incorporate those new Connection Points and the agreed Charges and other provisions applying to those Connection Points.

### 11.2 Removing Connection Points

If the parties agree to remove Connection Points from this Contract, or this Contract is terminated in respect of some Connection Points only, EnergyAustralia must amend the Schedule to remove those Connection Points and the Charges and other provisions applying only to those Connection Points.

### 11.3 Disconnection and Termination

Where this Contract applies to multiple Connection Points, clauses 9 and 10 apply to each of those Connection Points severally. One or more Connection Points may be disconnected under clause 9, and this Contract may be terminated in respect of one or more Connection Points under clause 10, without affecting the continued application of this Contract to any other Connection Points.

## 12. Force Majeure

- (a) If a Force Majeure Event occurs and prevents a party (the Affected Party) from performing any of its obligations under this Contract, the Affected Party must notify the other party as soon as possible of the nature of the Force Majeure Event, the time of its commencement and likely duration and the extent to which the Affected Party is prevented from performing its obligations under this Contract.
- (b) An Affected Party's obligations under this Contract are suspended to the extent that the Affected Party is prevented from performing them by a Force Majeure Event. However, a Force Majeure Event will not suspend any obligation of an Affected Party to make any payment to the other party in accordance with this Contract and Schedule.
- (c) An Affected Party must endeavour to overcome the effects of a Force Majeure Event, but nothing in this clause will require the Affected Party to settle any industrial dispute.
- (d) Performance of an Affected Party's obligations must recommence once the relevant Force Majeure Event has been rectified or ceases to exist.

## 13. Limitation of EnergyAustralia's Liability

- (a) EnergyAustralia has no Liability for any loss or damage the Customer suffers arising as a consequence of, or in connection with:
- (i) the control or use of electricity at the Premises;
  - (ii) the disconnection of any Premises;
  - (iii) any fluctuation or distortion (in voltage magnitude, voltage waveform or frequency) or interruption in Network Services; or
  - (iv) Network Services, Connection Services or the acts or omissions of a Network Operator or any third party,
- unless and to the extent that the Customer's loss or damage is directly caused by a breach of this Contract by EnergyAustralia or by the wilful or negligent act or omission of EnergyAustralia.
- (b) EnergyAustralia has no Liability to the Customer for:
- (i) any indirect or consequential losses or damages of any kind; or

- (ii) any Economic Loss.
- (c) To the extent that EnergyAustralia has any Liability to the Customer, EnergyAustralia's Liability is limited, for all claims the Customer makes in any one calendar year in aggregate, to \$10,000.
- (d) The Customer indemnifies EnergyAustralia against:
  - (i) any liability incurred or damage suffered by EnergyAustralia or any other person claiming against EnergyAustralia, directly or indirectly resulting from or arising out of or in connection with the sale of electricity to the Customer under this Contract other than as a result of the breach of this Contract, negligence or wilful misconduct by EnergyAustralia; and
  - (ii) any losses, fines, penalties, charges, costs, fees or other amounts that EnergyAustralia may be required to pay or otherwise becomes liable or responsible for, due to the Customer not complying with any of its obligations under this Contract.
- (e) If any condition or warranty is implied into this Contract under the *Competition and Consumer Act 2010 (Cth)*, then EnergyAustralia's Liability (if any) for breach of that condition or warranty in connection with any goods or services supplied or to be supplied by EnergyAustralia under this Contract (that are not of a kind ordinarily acquired for personal, domestic or household consumption), is limited, as far as the law permits and at EnergyAustralia's option, to resupplying the goods or services or paying for their resupply.
- (f) Nothing in this Contract is to be taken to exclude, restrict or modify any condition or warranty that EnergyAustralia is prohibited by law from excluding, restricting or modifying. All other conditions and warranties, whether or not implied by law, are excluded.

## **14. Dispute Resolution**

### **14.1 Notice of Dispute**

- (a) A party claiming that a dispute has arisen must serve written notice of the dispute to the other party's representative. The written notice must specify that it is a notice given under this Contract and give full particulars of the nature and extent of the dispute.
- (b) If a dispute cannot be settled by negotiation within 20 Business Days after commencing negotiation, then either party shall give written notice to the senior management of the other party declaring that a dispute exists. The notice must set out the details of the dispute and the steps taken to resolve the dispute.
- (c) The senior management, or their nominees, shall meet within 10 Business Days of the dispute being declared and shall use their reasonable endeavours to resolve the dispute.
- (d) Neither party shall commence legal proceedings concerning a matter in dispute (other than for the purpose of seeking urgent injunction or declaratory relief) unless the parties have attempted to resolve the dispute in accordance with clauses 14.1(a), (b) and (c).

### **14.2 Continuing Obligations**

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Contract.

## **14.3 Costs**

The parties must bear their own costs in relation to any disputes under this Contract.

## **15. Use of Information**

### **15.1 Confidentiality**

The Customer and EnergyAustralia shall not disclose any Confidential Information to any third party until 3 years following the expiry or termination of this Contract.

### **15.2 Permitted Disclosures**

- (a) Nothing in this clause will prevent the Customer and EnergyAustralia disclosing Confidential Information in circumstances where disclosure is:
  - (i) required by law or under the Rules;
  - (ii) required for the parties to carry out their obligations or exercise their rights under this Contract;
  - (iii) to the party's officers, employees, agents, contractors and related bodies corporate (limited to the extent those persons are required to have access to such Confidential Information);
  - (iv) to potential buyers of the Customer's business or potential assignees of this Contract;
  - (v) required by a recognised stock exchange of which either party is a member;
  - (vi) to the parties legal or other professional advisers (including a broker) appointed to procure an electricity supply on behalf of the Customer;
  - (vii) new occupant of the Premises if authorised by the Customer; or
  - (viii) with the prior written consent of either party.
- (b) The Customer and EnergyAustralia will be responsible for the actions of its officers, employees, agents, contractors and advisers and must ensure that those persons comply with the obligations under this clause.
- (c) The Customer and EnergyAustralia must immediately notify the other party of any actual or potential breach of confidentiality, disclosure or unauthorised use of the Confidential Information, and take all steps to prevent or stop such breach.

### **15.3 Personal Information**

- (a) EnergyAustralia may collect and disclose personal information (as defined in the *Privacy Act 1988 (Cth)*) about the Customer in accordance with its Privacy Policy, available at [www.energyaustralia.com.au](http://www.energyaustralia.com.au), and in accordance with the Privacy Statement attached at Appendix A.
- (b) EnergyAustralia may also disclose personal information about the Customer where disclosure is:
  - (i) required to verify the creditworthiness of the Customer or for the purposes of recovering any amounts owed by the Customer under this Contract; and
  - (ii) required for EnergyAustralia to carry out its obligations or exercise its rights under this Contract.

## **16. Consumption and Demand Levels**

### **16.1 Application**

This clause 16 will apply only if the Customer:

- (a) has, at the Commencement Date, an Estimated Load of more than 5GWh in any contract year; or
- (b) at any stage after the Commencement Date, in EnergyAustralia's reasonable opinion, the

Customer's aggregate consumption of electricity at the Connection Points in any Contract Year will be more than 5GWh.

### 16.2 Estimated Load

- (a) EnergyAustralia has calculated the Energy Charges on the basis of the Estimated Load for each Jurisdiction.
- (b) Unless expressly agreed by the parties, the Estimated Load does not vary as a result of the addition or removal of Connection Points under clause 11.
- (c) The Customer must notify EnergyAustralia as soon as possible after it becomes aware that its aggregate electricity consumption at the Connection Points in a Jurisdiction may, in any Contract Year, be less than the relevant Minimum Load or be greater than the relevant Maximum Load.

### 16.3 Minimum Consumption

- (a) If the Customer's aggregate electricity consumption at the Connection Points in a Jurisdiction in any Contract Year is less than the relevant Minimum Load, then in addition to paying the Charges for that electricity consumption, the Customer must also pay EnergyAustralia any Shortfall Charges EnergyAustralia may impose.
- (b) EnergyAustralia will use reasonable endeavours to reduce any relevant Minimum Load to accommodate a reduction in the Customer's electricity consumption caused by a Force Majeure Event.
- (c) If the Shortfall Charges are a negative amount, the Shortfall Charges will be deemed to be zero.
- (d) Subject to clause 16.3(a), the Shortfall Charges shall be calculated as specified under clause 19.

### 16.4 Maximum Consumption

If the Customer's aggregate electricity consumption at the Connection Points in a Jurisdiction in any Contract Year is greater than the relevant Maximum Load, then in addition to paying the Charges for that electricity consumption, the Customer must also pay EnergyAustralia any Excess Charges EnergyAustralia may impose. The Excess Charges shall be calculated in accordance with the formula provided under clause 19.

### 16.5 Payments

EnergyAustralia will use reasonable endeavours to calculate the amount (if any) owed by the Customer under this clause 16 at the end of each Contract Year and at the termination of this Contract and include such amount on the Customer's next or final invoice.

## 17. Other Matters

### 17.1 Connection Arrangements

The Customer must obtain the prior approval of EnergyAustralia to:

- (a) on-sell any electricity supplied to a Connection Point;
- (b) make a further connection between a Premises and a Network; or
- (c) generate electricity at a Connection Point so that the Customer's electricity consumption profile at that Connection Point is materially changed.

### 17.2 Notices

- (a) Notices under this Contract must be in writing and given by hand or sent by facsimile, email or by mail to the facsimile numbers, email addresses or addresses of EnergyAustralia and the Customer specified in the Schedule or in any other manner agreed by the parties.
- (b) A notice sent in accordance with this clause will be deemed received by the recipient:

- (i) in the case of delivery by hand, on the date of delivery;
  - (ii) in the case of a notice sent by facsimile, on the date indicated on the relevant facsimile confirmation receipt;
  - (iii) in the case of email, the date when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; and
  - (iv) in the case of a notice sent by letter, on the date three Business Days after the date of posting.
- (c) Any change in the address or any notice details of a party specified in the Schedule must be advised in writing to the other party (and the Schedule will be deemed amended accordingly).

### 17.3 Transfer of Rights and Obligations

- (a) The Customer shall only transfer its rights and obligations under this Contract with EnergyAustralia's prior written consent. EnergyAustralia may require that reasonable conditions be met before providing its consent.
- (b) The Customer hereby grants its unconditional consent to the transfer by EnergyAustralia of any or all of its rights or obligations under this Contract to a party holding all authorisations required to become Financially Responsible for the relevant Connection Points.

### 17.4 Relevant Law

- (a) The laws of Victoria govern this Contract and each party submits to the jurisdiction of the courts of Victoria.
- (b) The parties acknowledge that the laws of a Jurisdiction may impose certain requirements on the form or content of contracts with electricity consumers within the Jurisdiction. To the extent that this Contract is inconsistent with such laws, the terms of this Contract will be deemed amended for any Connection Points to which those laws apply, to the extent necessary to comply with those laws.
- (c) If the laws of Jurisdiction impose additional Charges or implement any change to the Charges specified in the Schedule, EnergyAustralia will notify the Customer of such changes in Jurisdiction and invoices will be adjusted accordingly.

### 17.5 Interpretation and General

- (a) In this Contract a reference to:
  - (i) any law will be read as a reference to that law as amended, consolidated, supplemented or replaced and any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
  - (ii) a document includes any variation or replacement of it;
  - (iii) a person, includes an individual, firm, body corporate, an unincorporated association or an authority; and
  - (iv) the words "include", "includes" and "including" means "including without limitation".
- (b) If a provision of this Contract is invalid or unenforceable in a Jurisdiction:
  - (i) it is to be read down or severed in that Jurisdiction to the extent of the invalidity or unenforceability; and

- (ii) it does not affect the validity or enforceability of that provision in any other Jurisdiction or of the remaining provisions.
- (c) A waiver by a party of a provision or a right under this Contract is binding on that party only if it is given in writing. A failure by a party to exercise a right, or a delay in exercising a right, does not operate as a waiver of that right or otherwise prevent the party exercising that right.
- (d) This Contract may be executed in counterparts. All counterparts together will be taken to constitute one instrument.
- (e) This Contract, together with the Schedule and any documents referred to in this Contract, is the entire agreement of the parties about the subject matter of this Contract and supersedes any prior representations, negotiations, arrangements, understandings or agreements and all other communications.
- (g) The Schedule will prevail over these terms and conditions to the extent of any inconsistency.
- (h) Any words used in this Contract and not otherwise defined in clause 19 will bear the meaning (if any) set out in the Rules.

#### 18. Web Portal Access

- (a) The Customer has access to the EnergyAustralia's online energy management portal (the Web Portal), which provides access to the Customer's electricity invoices, Meter data and site statements, via a username and password.
- (b) The Customer acknowledges that EnergyAustralia owns the data used to create the invoices, Meter data and site statements. The Customer must only use and reproduce the invoices, Meter data and site statements accessed via the Web Portal in accordance with this Contract.
- (c) The invoices, Meter data and site statements accessed by the Customer via the Web Portal contain Confidential Information. The Customer must keep its Web Portal username and password safe and not allow it to be shared with or used by a third party unless that third party is acting as an agent of, a broker or service provider to the Customer. Only the Customer may change its Web Portal password.
- (d) The Customer must notify EnergyAustralia in writing:
  - (i) when a third party acting as an agent, a broker or service provider to the Customer is required to have access to the Web Portal at any time during the term of this Contract; and
  - (ii) when Web Portal access to a third party acting as an agent, a broker or service provider to the Customer shall be ceased at any time during the term of this Contract.
- (e) The Customer indemnifies EnergyAustralia and its contractors and service providers against any loss or damages which they might suffer, or be liable for, as a result of any unauthorised use of the Customer's Web Portal username and password, howsoever caused.
- (f) EnergyAustralia does not warrant that the Customer's access to the Web Portal will be continuous and fault free. The Customer must notify EnergyAustralia of any loss of, or fault in, access to the Web Portal.

- (g) EnergyAustralia has no liability to the Customer arising out of the Customer's use of, or reliance on, any information accessed by it via the Web Portal.
- (h) EnergyAustralia may terminate the Customer's access to the Web Portal if the Customer does not comply with any provisions under this clause 18.
- (i) In this clause, Customer includes employees, contractors of the Customer, and any third party authorised by the Customer.

#### 19. Definitions

Any word capitalised will have the meaning set out below:

**Approved Rating** – a rating of BBB or greater by Standard and Poors or an equivalent rating by a rating agency of similar status.

**Business Day** – a day other than Saturdays, Sundays and public holidays in the major city where the Connection Point or Connection Points are located.

**Carbon Scheme** - any statutory fixed or cap and trade emissions trading scheme (or, to the extent that a carbon tax constitutes a Carbon Scheme, the carbon tax) for the management of greenhouse gas emissions or concentrations.

**Carbon Scheme Charge** – any charges incurred or charged by EnergyAustralia in complying with a Carbon Scheme, and provide for the full recovery of EnergyAustralia's costs in connection with its obligations under a Carbon Scheme.

#### Change In Law –

- (a) any law, regulation, rule, code or sub-code being introduced, amended or repealed in whole or in part after the Commencement Date;
- (b) any new or increased tax, fee or charge (including any carbon tax) imposed on EnergyAustralia after the Commencement Date in relation to the purchase of electricity by EnergyAustralia for sale to the Customer or the purchase by the Customer of electricity and/or any other goods or services from EnergyAustralia;
- (c) any new or increased tax, fee or charge (including any carbon tax), fee or charge imposed on any other person after the Commencement Date and having the effect of increasing the cost of electricity and/or any other goods or services purchased by EnergyAustralia for sale to the Customer, or the amounts payable by EnergyAustralia under any hedge contract;
- (d) the imposition of any tax or change in the rate or way any tax is calculated which results EnergyAustralia being required to pay an amount that it would not otherwise be required to pay, or a change in the amount that EnergyAustralia is required to pay under the law that applied at the date of this Contract;
- (e) any law, or mandatory or voluntary scheme being introduced, amended or repealed in whole or in part after the Commencement Date which relates to the emission of carbon, carbon compounds, greenhouse gases or greenhouse precursor gases into the atmosphere or is for the purpose of encouraging the generation of electricity from 'renewable' or 'green' energy sources or deterring the generation of electricity from 'non-renewable' or 'non-green' energy sources.

**Charges** – all Connection Services Charges, Early Termination Charges, Energy Charges, Environmental Charges, Market Charges, Metering Charges, Network Charges, the Supply Charge, Carbon Scheme Charge, and other amounts set out in the Schedule or payable by the Customer under this Contract.



**Commencement Date** – the date EnergyAustralia receives an executed Schedule from the Customer.

**Confidential Information** – the Energy Charges, Environmental Charges, information about the terms or effect of this Contract and any other information exchanged between the parties that is expressly identified as confidential, but does not include any information within the public domain (other than as a result of a breach of clause 15).

**Connection Contract** – a connection contract or supply and connection contract between the Customer and a Network Operator in relation to the connection of any Premises to a Network and/or the delivery, supply or conveyance of electricity across the Network.

**Connection Point** – the point at which a Premises is connected to a Network.

**Connection Services** – connection of any Premises to a Network, any increase in the capacity of a connection, maintenance of capacity and other related services.

**Connection Services Charges** – any charges incurred or charged by EnergyAustralia in arranging Connection Services.

**Contract** – the terms and conditions of this retail electricity contract together with the Schedule.

**Contract Year** – a continuous period of 12 months commencing on the Start Date or the anniversary of the Start Date (as applicable). If the period between the start of a Contract Year and the termination or expiry of this Contract is less than 12 months, that period will be deemed a Contract Year and any Estimated Load for that Contract Year pro-rated accordingly.

**Customer** – the person whose details are set out in the Schedule as a party to this Contract.

**Default Rate** – in the case of:

- (a) Energy Charges for a Connection Point, is a rate or rates set by EnergyAustralia (and amended) from time to time, being the rate EnergyAustralia reasonably determines is necessary to recover its costs of acquiring electricity in the NEM, plus a reasonable margin; and
- (b) Environmental Charges for a connection point, is a rate or rates set by EnergyAustralia (and amended) from time to time, being the rate EnergyAustralia reasonably determines is necessary to recover its Environmental Costs associated with the electricity supplied to the Connection Point, plus EnergyAustralia's reasonable administrative costs.

**Early Termination Charges** – EnergyAustralia's reasonable Charges incurred as a direct result of the termination of this Contract prior to the Expiry Date. These Early Termination Charges are calculated using Peak, Shoulder and Off-Peak Energy Charges specified in the Schedule, for the aggregated electricity consumption under the Contract for the relevant Contract Year.

Early Termination Charges may include outstanding Metering Charges and reasonable administration fee as determined by EnergyAustralia (if any) associated with termination of this Contract prior to the Expiry date.

**Economic Loss** – loss other than damage to physical property of the Customer, and includes corruption of data losses, business interruption losses and loss of profits.

**EnergyAustralia** – EnergyAustralia Pty Ltd (ABN 99 086 014 968) of Level 33, 385 Bourke Street, Melbourne, Victoria, 3000.

**Energy Charges** – charges for the consumption of electricity by the Customer at a Connection Point as set out in the Schedule, multiplied by any applicable Loss Factor.

**Environmental Charges** – charges that provide for the full recovery of EnergyAustralia's Environmental Costs (which may include EnergyAustralia's reasonable

forecast of any component of those Environmental Costs).

**Environmental Costs** – any costs or charges incurred, or likely to be incurred, by EnergyAustralia:

- (a) in complying with its Environmental Obligations, including the costs of creating or acquiring Environmental Credits;
- (b) in failing to surrender the required number of Environmental Credits for any period for any reason, including the Tax Adjusted Legislative Charge; or
- (c) in mitigating or reducing EnergyAustralia's Environmental Obligations or the costs associated with EnergyAustralia's Environmental Obligations.

**Environmental Credits** – any permits, permissions, allowances or instruments recognised under international, national or state legislation and able to be surrendered by EnergyAustralia to meet its Environmental Obligations.

**Environmental Obligations** – any obligations imposed on or commitments made by EnergyAustralia for the direct or indirect purposes of:

- (a) reducing levels of greenhouse gas emissions or any other environmental benefit;
- (b) increasing the uptake of renewable electricity;
- (c) reducing electricity consumption; or
- (d) encouraging efficiency of electricity usage by consumers.

**Estimated Load** – the estimated load (if any) for the Connection Points in a Jurisdiction set out in the Schedule for each Contract Year.

**Excess Charges** – the amount calculated for each Jurisdiction in accordance with the following formula:

$$EC = (AC - AEL) \times CP$$

where:

EC = Excess Charges

AC = actual aggregate electricity consumption under the Contract for the relevant Contract Year (in MWh)

AEL = Maximum Load (in MWh) for the relevant Contract Year

CP = \$10.00 per MWh

**Expiry Date** – the date specified as such in the Schedule.

**Financially Responsible** – where an electricity retailer is recognised by the Market Operator as the party responsible for the wholesale purchase of electricity consumed at a Connection Point.

**Force Majeure Event** – means an event beyond the reasonable control of the affected party and not reasonably capable of being prevented by the affected party.

**GST** – has the meaning set out in the *GST Act*.

**GST Act** – the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Jurisdiction** – in relation to a Connection Point, the State or Territory of Australia in which that Connection Point is situated.

**Last Resort Event** – an event affecting EnergyAustralia that triggers the operation of the relevant Jurisdiction's retailer of last resort arrangements with respect to EnergyAustralia's sale of electricity to the Customer at a Connection Point.

**Liability** – a liability under contract, tort (including negligence) or any other basis, including where caused by that party's negligent or wilful act or omission.

**Loss Factor** – the combined transmission and/or distribution loss factors applicable to a Connection Point.

**Market Charges** – any NEM participant fees, ancillary services fees or other NEM charges or levies incurred by EnergyAustralia in selling electricity at a Connection Point.

**Market Operation Rules** – any rules or other requirements in a Jurisdiction relating to the sale of electricity, including where relevant, the terms of any use of system, coordination or other agreement entered into by EnergyAustralia with a Network Operator.

**Market Operator** – the party responsible for the operation of the NEM in accordance with the Rules.

**Maximum Load** – the amount determined by multiplying the Estimated Load for a Jurisdiction by the Maximum Percentage.

**Maximum Percentage** – the percentage set out in the Schedule.

**Meter** – a device complying with the Metering Rules for measuring and recording consumption of electricity and any current transformer as defined in the Rules, voltage transformer as defined in the Rules, kVA demand meter, communications device or other associated equipment.

**Metering Charges** – the Meter provision, Meter reading, Metering Data Provider and other Meter-related charges incurred or charged by EnergyAustralia in selling Electricity or arranging Metering Services for a connection Point or facilitating the Customer's Metering Provider, including any special meter reads.

**Metering Data Provider** – a metering data provider accredited pursuant to the Metering Rules.

**Metering Provider** – the provider of Metering Services to that Connection Point under the Metering Rules.

**Metering Rules** – any applicable legislation, regulation or published Network Operator requirement as to the Meter and Metering Services required at a Connection Point.

**Metering Services** – the Meters and other related services provided in respect of a Connection Point, including installing, maintaining, calibrating, testing and reading of Meters, calculation of the electricity consumption at a Connection Point for type 7 metering installations, verifying and forwarding data and any Metering Data Provider requirements.

**Minimum Load** – the amount determined by multiplying the Estimated Load for a Jurisdiction by the Minimum Percentage.

**Minimum Percentage** – the percentage set out in the Schedule.

**NEM** – the National Electricity Market.

**Network** – an electricity distribution network.

**Network Charges** – electricity transmission and distribution network charges and any other charges imposed by a Network Operator for Network Services.

**Network Operator** – the person owning or controlling the Network to which a Premises is connected at a Connection Point.

**Network Services** – the operation, maintenance and control of a Network and the supply, delivery or conveyance of electricity across a Network (and includes any such services in relation to a transmission network).

**Premises** – a site specified in the Schedule.

**Privacy Policy** – EnergyAustralia's privacy policy.

**REE Act** – the *Renewable Energy (Electricity) Act 2000 (Cth)* and related legislation and regulations each as amended from time to time.

**REE Costs** – EnergyAustralia's Environmental Costs in connection with its obligations under the REE Act and the VEET Act.

**Responsible Person** – has the meaning defined under the Rules.

**Retailer Of Last Resort** – the entity appointed under the relevant Jurisdiction's retailer of last resort

arrangements to supply electricity to the Customer at a Connection Point following the occurrence of a Last Resort Event.

**Rules** – the National Electricity Rules under the *National Electricity Law*.

**Run Off Period** – the period referred to in clause 10.2(a) of this Contract.

**Schedule** – the document entitled Schedule – Business Sales Retail Electricity Contract.

**Shortfall Charges** – the amount calculated for each Jurisdiction in accordance with the following formula:

$$SC = (AEL - AC) \times (CP - PP)$$

where:

SC = Shortfall Charges

AEL = Minimum Load (in MWh) for the relevant Contract Year

AC = actual aggregate electricity consumption under the Contract for the relevant Contract Year (in MWh)

CP = the volume weighted average Energy Charge per MWh of electricity for the relevant Contract Year

PP = the volume weighted average regional reference price of electricity for the region which the Connection Point is located for the relevant Contract Year

**Small Electricity Customer** – a person who consumes electricity at a rate less than that prescribed by the laws of the Jurisdiction for the contestable sale of electricity or for whom the laws of the Jurisdiction require certain terms and conditions in any contract for the purchase of electricity.

**Start Date** – the date set out in the Schedule.

**Supply Charge** – the supply charge (if any) set out in the Schedule.

**Tax Adjusted Legislative Charge** has the meaning given to the term in the REE Act.

**Tax Invoice** – has the meaning set out in the GST Act.

**Taxable Supply** – has the meaning set out in the GST Act.

**Transfer Requirements** – any requirement for the transfer of financial responsibility between electricity retailers, including any Market Operation Rules, NEM Metering and Administration System and Retail Transfer Procedures and Metering Rules.

**VEET Act** – the *Victorian Energy Efficiency Target Act 2007 (Vic)* and related legislation and regulations each as amended from time to time.

## APPENDIX A

### PRIVACY STATEMENT

EnergyAustralia Pty Ltd collects personal information (**Information**) to assist in facilitating the sale and supply of electricity under this Contract. EnergyAustralia may disclose the Information to its related bodies corporate, contractors and suppliers (such as information technology providers) for the purposes set out in its Privacy Policy and this Privacy Statement.

If the Customer does not provide the Information requested, EnergyAustralia may not be able to finalise this Contract.

Some of EnergyAustralia's contractors and suppliers to whom the Information may be disclosed are located overseas, including in India and New Zealand.

If the Customer has any concerns or queries about the way any personal information provided is managed by EnergyAustralia, the Customer shall contact EnergyAustralia at:

The Privacy Officer  
EnergyAustralia  
Locked Bag 14060  
Melbourne City Mail Centre 8001

EnergyAustralia's Privacy Policy is available at [energyaustralia.com.au](http://energyaustralia.com.au). EnergyAustralia's Privacy Policy contains information about how the Customer can gain access to or seek correction of personal information that held about the Customer. It also contains information about how a privacy complaint may be made and how EnergyAustralia will deal with it.