

## QUEENSLAND DEFAULT COORDINATION AGREEMENT

AGREEMENT dated .....

**BETWEEN**     *(insert name)*    **ABN** *(insert ABN)*    **of** *(insert address)*  
                  **(‘Distributor’)**

**AND**           *(insert name)*    **ABN** *(insert ABN)*    **of** *(insert address)*  
                  **(‘Retailer’)**

### BACKGROUND

- A.     The Distributor is the holder of a *distribution authority* and the Retailer is the holder of a *retail authority*.
- B.     The Retailer wishes to sell electricity to *customers*.
- C.     The Distributor and the Retailer have agreed that, in order to avoid duplication, encourage efficiency and streamline their respective relationship with *customers*, the Distributor and the Retailer will coordinate with each other the performance of certain of their functions and obligations under *applicable law*.
- D.     This Agreement sets out:
  - (a)    the respective rights and obligations of the Distributor and the Retailer concerning the discharge by one party of certain of the other party’s functions and obligations to each *customer* under *applicable law*; and
  - (b)    the communication protocols between the Distributor and the Retailer which apply in respect of their functions and obligations in respect of *customers*.

**THE PARTIES AGREE** as follows:

### 1. DEFINITION AND INTERPRETATION

#### 1.1 Defined Terms

In this Agreement, unless the context otherwise requires, defined terms are italicised and are:

**‘Act’** means the *Electricity Act 1994* (Qld) and all regulations, notices, orders and other statutory instruments made or issued under that *Act* from time to time;

**‘AEMO’** means the Australian Energy Market Operator (ACN 072 010 327);

'**applicable law**' means the *National Electricity Rules*, the *Act*, the *Electricity Regulation 2006* (Qld), the *Electrical Safety Act 2002* (Qld), the *Electrical Safety Regulation 2002* (Qld), the *Electricity Industry Code* and any other legislation, industry codes, authorities, or regulations with which the Distributor or the Retailer must comply in relation to:

- (a) the *customer's connection* to the *supply network*;
- (b) the maintenance of that *connection*;
- (c) the supply of electricity to a *customer* via a *connection point*; or
- (d) the sale of electricity by the Retailer to that *customer*;

'**B2B Procedures**' means the procedures under the *National Electricity Rules* or as otherwise agreed between the parties, prescribing the content of, the processes for, and the information to be provided to support communications between the Distributor and the Retailer relating to a *customer* or supply of electricity to a *customer*;

'**bank bill rate**' in respect of any day means:

- (a) the Bank Bill Swap Reference Rate for 30 days on that day (or if not a *business day*, then the previous *business day*) published in the *Australian Financial Review*;
- (b) if the Bank Bill Swap Reference Rate referred to in paragraph (a) is not available, the rate percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the then current bill market, and in default of agreement within 14 days, the rate determined in accordance with the procedure in clause 17;

'**billing period**' means a calendar month or as otherwise agreed by the parties;

'**business day**' means a day other than a Saturday or a Sunday or a Queensland wide public holiday (as appointed under the *Holidays Act 1983* (Qld));

'**CATS**' means Consumer Administration and Transfer Solution operated by *AEMO* and forming part of *MSATS*;

'**Claim**' means a claim, action, proceeding, loss, liability, cost or expense whether arising in contract, tort (including negligence), equity or otherwise in respect of an event occurring after the date of this Agreement;

'**commencement date**' means the date of this Agreement;

'**Confidential Information**' has the meaning given in clause 22.1;

'**connection point**' has the same meaning as in the *Act*;

'**connection contract**' has the same meaning as in the *Act*;

'**customer**' means a customer as defined in the *Act* and to whom this Agreement applies under clause 6;

'**customer connection services**' has the same meaning as in the *Act*;

'**default rate**' means, at any time, the *bank bill rate* plus 2 per cent per annum;

'**dispose**' means assign, transfer, lease, sub-lease, licence or otherwise dispose of any legal or equitable estate (either in whole or in part) whether by sale, lease, licence, declaration or creation of trust or otherwise;

'**distribution authority**' means the distribution authority issued to the Distributor under the *Act*;

'**distributor charges**' means the *GST* inclusive charges:

- (a) set out in the *price list* from time to time; or
- (b) that a Distributor may otherwise recover under *applicable law* or the relevant *connection contract*, in relation to a *customer* for the provision of *customer connection services*,

but excludes any amount payable by that *customer* to the Distributor on account of *augmentations* or *extensions*;

'**Economic Regulator**' means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997 (Qld)* or the person or persons which succeed that authority in regulating *distributor charges*;

'**Electricity Industry Code**' means the Electricity Industry Code made under the *Act*;

'**emergency**' means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the supply network or transmission grid, in the state of Queensland or which destroys or damages, or threatens to destroy or damage, any property in the state of Queensland;

'**force majeure event**' means, with respect to any party, any event or circumstances which are not within the reasonable control of that party;

'**GST**' has the meaning it has in the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*;

'**GST law**' has the meaning it has in the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*;

'**Guaranteed Service Levels**' or '**GSLs**' has the same meaning given to the term guaranteed service level in the *Electricity Industry Code*;

'**Independent Expert**' shall have the meaning in clause 17.4(a);

'**MSATS**' means the Market Settlements and Transfer Solution system operated by *AEMO*;

**'NEM Representative'** means a related body corporate of the Retailer which is registered as a *market customer* with AEMO and which, directly or indirectly, on-sells electricity to the Retailer for sale to *customers*, as notified by the Retailer to the Distributor from time to time under clause 5.5.

**'NMI'** means National Metering Identifier assigned to a metering installation at a *customer's premises*;

**'National Electricity Law'** has the meaning given under the *Electricity National Scheme (Queensland) Act 1997* (Qld);

**'National Electricity Rules'** means the rules made under the *National Electricity Law* applied as a law of Queensland;

**'Operational Procedures'** means the document as published from time to time by the Distributor detailing the operational parameters for processes and interactions which are to be adopted by the Distributor and the Retailer to give effect to the parties' obligations under the Agreement, *B2B Procedures* and *applicable law*.

**'premises'** means the address at which *customer connection services* are provided to a *customer*;

**'price list'** means the list approved by the *Economic Regulator* and published by the Distributor from time to time setting out the *distributor charges* and the relevant conditions attaching to the *distributor charges* applying from time to time;

**'Regulator'** has the same meaning as in the *Act*;

**'related body corporate'** has the same meaning as in the *Corporations Act 2001* (Cwlth).

**'retail authority'** means the retail authority issued to the Retailer under the *Act*;

**'retail contract'** has the same meaning as in the *Act*;

**'Service Order Request'** means the Retailer's service request raised in accordance with:

- (a) the "B2B Procedures (Service Order Process)" as applicable to Queensland, or
- (b) an agreement between the parties in accordance with clause 7.2A.4(k) of the *National Electricity Rules*;

**'standard connection contract'** has the same meaning as in the *Act*;

**'statement of charges'** means a statement (which may be electronic) prepared by the Distributor for the Retailer under clause 7.1;

**'supply network'** means the *distribution network* operated by the Distributor under its *distribution authority*;

**'Tax Invoice'** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth);

'Taxable Supply' has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*.

## 1.2 National Electricity Rules Definitions

Deleted: 'undertaking' shall have the meaning in clause 12.2.4

In this Agreement, unless the context otherwise requires words appearing in italics (but not including words appearing in italics as Act titles) and not defined in clause 1.1 of this Agreement have the meaning given to them in the *National Electricity Rules*.

## 1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to any *applicable law* includes any consolidations, modifications (statutory or otherwise) or re-enactment of, or any regulatory provision substituted for, that *applicable law*;
- (b) a reference to any party to this Agreement includes that party's successors and permitted assignees;
- (c) words indicating the singular include the plural and vice versa and words importing one gender include all other genders;
- (d) other grammatical forms of words or phrase defined in this Agreement will have a corresponding meaning;
- (e) headings are for convenience only and do not affect the interpretation of this Agreement;
- (f) a reference to a person includes a firm, body corporate, unincorporated association or authority whether or not it comprises a separate legal entity;
- (g) a reference to a clause is a reference to a clause of this Agreement;
- (h) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document;
- (i) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail;
- (j) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (k) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

Deleted: Seventh

- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to *dollars* and \$ is to Australian currency;
- (o) mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included;
- (p) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it; and
- (q) a reference to time is a reference to Queensland time.

#### **1.4 Consents or approval**

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

#### **1.5 Inconsistency with applicable law**

In the event of any inconsistency between the provisions of this Agreement and the provisions of any *applicable law*, the provisions of that *applicable law* will prevail to the extent of that inconsistency.

### **2. CONSIDERATION AND TERM**

#### **2.1 Consideration**

In consideration of each party agreeing to assist in discharging certain of the other party's functions and obligations to the *customer* under *applicable law* and to be bound by the limits on liability contained in this Agreement the parties agree to mutually perform the obligations set out in this Agreement.

#### **2.2 Term**

This Agreement will commence on the *commencement date* and will continue until terminated in accordance with clause 13.

### **3. OBLIGATIONS CONCERNING SERVICE ORDER REQUESTS**

#### **3.1 Parties to Comply**

The parties must comply with any obligations under *applicable law* and the *B2B Procedures* related to the initiation and completion of *Service Order Requests*.

### 3.2 Inaccuracies

The Retailer will use reasonable endeavours to ensure that accurate information is provided by the Retailer to the Distributor for the purposes of the Distributor carrying out a *Service Order Request*.

### 3.3 Refusal to Sell or Connect

Neither party will be liable to the other as a consequence of refusing to sell electricity to a *customer* or *connect* or reconnect a *customer's connection point* to the *supply network* if the preconditions it is entitled to impose under *applicable law*, the *customer's connection contract* or the *customer's retail contract*, have been communicated to the other party or the *customer* and those preconditions have not been satisfied.

### 3.4 Attempt to Carry Out a Service Order Request

If the Distributor attempts to carry out a *Service Order Request* as requested by the Retailer, but through any act or omission of the *customer* is unable to complete the *Service Order Request*, the Distributor will still be entitled to charge the fee associated with the *Service Order Request*.

## 4. PROVISION OF INFORMATION TO CUSTOMERS

If the Distributor or Retailer receives a request from a *customer* for documentation or information required to be provided by the other party under any *applicable law*, the party receiving the request must promptly:

- (a) refer the *customer* to the other party; or
- (b) notify the other party of the *customer's* request.

## 5. COMMUNICATIONS REGARDING CUSTOMERS AND SYSTEMS DATA

### 5.1 Answering Fault Calls

- (a) Subject to clauses 5.1(c), (e) and (f), if a *customer* contacts the Retailer by telephone about a fault or an unplanned interruption in the Distributor's *supply network*, the Retailer must:
  - (i) transfer the *customer* to the Distributor's fault telephone number if communication systems are technically capable of identifying the area from which the telephone call was made by the *customer* upon transfer of the call; or
  - (ii) if 5.1(a)(i) does not apply, refer the *customer* to the Distributor's fault telephone number.
- (b) The Retailer must not handle, deal with or advise on a *customer's* enquiry regarding a fault other than to the extent that it is permitted to provide information to the *customer* in the circumstances described in clause 5.1(c).

- (c) If the Retailer:
- (i) is informed by the *customer* that the *customer* has been unable to contact the Distributor through the Distributor's fault telephone number; or
  - (ii) believes on reasonable grounds that the Distributor's fault telephone number is not properly functioning,

then the Retailer may provide the *customer* with the information regarding the fault that has been made available to the Retailer by the Distributor in accordance with clause 5.2. The Retailer must not provide any other information regarding the fault to the *customer*.

In circumstances where the Retailer provides information to the *customer* in accordance with clause 5.1(c), the Retailer must request the customer to contact the Distributor regarding the fault or unplanned interruption, to facilitate its timely resolution.

- (d) The Distributor will provide to the Retailer a contact telephone number which the Retailer must publish on its *customers'* accounts as the fault telephone number.
- (e) The Distributor will provide to the Retailer a contact telephone number for *emergencies* which the Retailer must publish on its *customers'* accounts as the emergency number. If the fault identified by the *customer* relates to an *emergency*, the Retailer must transfer the *customer* to the telephone number provided by the Distributor to the Retailer for *emergencies*.
- (f) Nothing contained in this clause affects the particular arrangements between the Distributor, the Retailer and any *customer* regarding notification of and dealing with faults and interruptions and in particular, the Retailer must not submit a Service Order Request in relation to faults and *emergencies*.

## 5.2 Information Concerning Faults and Unplanned Interruptions

- (a) The Distributor must make available to the Retailer information regarding faults or unplanned interruptions which the Distributor is required to provide to a *customer* under the *standard connection contract* within the same time period as the information is required to be provided by the Distributor to the *customer* under *standard connection contract*.
- (b) Any information described in clause 5.2(a) is not required to distinguish between faults affecting a *customer* and faults affecting customers of other retailers.

## 5.3 Information for Planned Interruptions

- (a) The notification which the Distributor sends out to *customers* notifying them of any planned interruptions must bear the Distributor's contact details and should state that any enquiries regarding planned interruptions should be directed to the Distributor.
- (b) The Distributor must make available to the Retailer information which the Distributor is required to provide to the *customer* under *applicable law* in respect

of planned interruptions within the same time period as the information is to be provided by the Distributor to the *customer* under *applicable law*.

- (c) If a *customer* contacts the Retailer about a planned interruption requested or proposed by a Distributor, the Retailer must:
  - (i) subject to paragraph (ii), refer the *customer* to the Distributor; or
  - (ii) where the *customer* informs the Retailer that it declines to contact or (where appropriate) be transferred to the Distributor, deal with the *customer* itself.
- (d) Any information made available to the Retailer in accordance with clause 5.3(b) in respect of planned interruptions:
  - (i) must include information regarding the area in which the planned interruption is to occur; and
  - (ii) is not required to distinguish between planned interruptions affecting a *customer* and planned interruptions affecting customers of other retailers.

#### **5.4 Other information**

- (a) If a *customer* contacts the Retailer about an issue relating to the *supply network* or the *customer connection services*, the Retailer must refer the *customer* to the Distributor.
- (b) If a *customer* of the Retailer contacts the Distributor about an issue relating to the sale of electricity, the Distributor must refer the *customer* to the Retailer.

#### **5.5 NEM Representative**

If the Retailer is not a *market customer*, it must notify the Distributor of its *NEM Representative*. The Retailer must notify the Distributor of any change in the identity of its *NEM Representative* as soon as practicable after the change.

### **6. ADDITIONS AND DELETIONS OF CUSTOMERS**

#### **6.1 Commence to apply**

This Agreement will commence to apply in relation to a *customer* for a *connection point* as follows:

- (a) where that *customer* does not have a *retail contract* with the Retailer as at the *commencement date*, on the earlier of:
  - (i) the date on which that *customer* makes an application or request to the Retailer for *connection*;
  - (ii) the commencement of that *customer's retail contract* with the Retailer for that *connection point*; and
  - (iii) the date on which the Distributor is notified through *CATS* that the Retailer is *financially responsible* for that *customer's connection point*;

- (b) where that *customer* does have a *retail contract* with the Retailer as at the date of this Agreement, on the date of this Agreement.

## 6.2 Cease to apply

This Agreement will cease to apply in relation to a particular *customer* for a *connection point* on the earlier of the date on which:

- (a) the *customer's retail contract* with the Retailer for that *connection point* ends and is not replaced with another *retail contract*;
- (b) the Distributor is notified through CATS that the Retailer or its *NEM Representative* ceases to be *financially responsible* for that *customer's connection point*; and
- (c) the *connection contract* between the Distributor and *customer* ends and is not replaced with another *connection contract*.

## 7. BILLING

### 7.1 Billing notice

Unless otherwise agreed between the parties, the Distributor shall issue to the Retailer a *statement of charges* by no later than the 10th *business day* of each *billing period* in respect of the previous *billing period*. The *statement of charges* will contain:

- (a) the *distributor charges* for the *customer connection services*:
  - (i) provided to the Retailer's *customers* under their *connection contracts* with the Distributor;
  - (ii) arranged as a consequence of the *customer* contacting the Retailer to request *customer connection services* from the Distributor and the Retailer notifying the Distributor of the *customer's* request; and
  - (iii) that the *customer* has requested and for which the *customer* has agreed, either impliedly by operation of law or explicitly, to pay;
- (b) any interest or other charges that the Distributor may recover from the Retailer under this Agreement or from the *customer* under *applicable law* or the relevant *connection contract*; and
- (c) the information required by *applicable law*, the *standard connection contract* and such other information agreed between the parties.

### 7.2 Metering data

Where the *distributor charges* are to be determined by reference to *metering data* or other metering information, the Distributor shall use:

- (a) *metering data* or other metering information; or

- (b) if *metering data* or other metering information is not available, an estimating system established in accordance with the *applicable law*,

in respect of each *customer's connection point* for the *billing period*.

### 7.3 Contents of statement of charges

Subject to the *applicable law* and the availability of data, a *statement of charges* issued by the Distributor to the Retailer shall be a single invoice for the *billing period* stating the amounts payable by the Retailer and may:

- (a) be in respect of all or some of the Retailer's *customers*;
- (b) be for one or more *customer connection services*;
- (c) include an amount based on any transmission connection or use of system charges incurred in accordance with *applicable law* and other amount charged to the *customer* by the Distributor in accordance with *applicable law* or the relevant *connection contract*;
- (d) be in respect of the whole or part of one or more *billing periods* depending upon when the *customer* first started to buy electricity from the Retailer; and
- (e) be in respect of a claim that has previously been made, to reflect revised information, substituted data, or other adjustments.

### 7.4 Applicable prices

The Distributor must provide to the Retailer and publish in the public domain, its *price list* applying at the *commencement date* and thereafter whenever it is changed. The Distributor shall provide the Retailer with notice:

- (a) of any proposed structural changes to the *price list*, at the time an application for structural change is made to the *Economic Regulator*; and
- (b) of any other changes to the *price list*; which notice must be reasonable taking into account the nature and scope of those changes.

In any event, the Distributor shall provide the Retailer with notice no later than two days after approval of the changes by the *Economic Regulator*.

### 7.5 Network Tariff Codes

The Retailer may apply to the Distributor for a change to the network tariff code assigned to a *NMI* for which the Retailer is *financially responsible*. If the Distributor, acting reasonably, agrees that the network tariff code proposed by the Retailer is applicable to the *NMI*, the Distributor will make the necessary change in accordance with *CATS Procedures* within *MSATS*. The Distributor will provide the Retailer with a reason for any rejection of an application to change the network tariff code applicable to a *NMI*.

Subject to clause 7.6, a Retailer may not make another request to change the network tariff code assigned to a *NMI* until a period of 12 months has elapsed from the previous request.

## 7.6 Information from customers

- (a) A party must notify the other party as soon as possible if it:
- (i) receives a request from a *customer* to transfer from one network or retail tariff code to another; or
  - (ii) is informed by a *customer* of a change in use of the *premises* or pattern of usage at the *premises*,

which may result in the *customer* no longer satisfying the conditions relating to the current network or retail tariff code applying to that *customer* or which may result in a change to any metering equipment installed at the *premises*.

- (b) The Distributor must inform the Retailer within 5 business days of issuing or receiving such notice, of action taken in relation to the notice including whether or not it has transferred the customer's network tariff code to another network tariff code.

## 7.7 Provide all information

The Distributor must provide to the Retailer all necessary billing information and data that the Retailer reasonably requests, to comply with its obligations under *applicable law*, relating to:

- (a) the issuing of bills;
- (b) the contents of bills;
- (c) the provision of billing data to *customers*.

## 7.8 Sufficient information

Each *statement of charges* issued by the Distributor to the Retailer must contain sufficient information so as to enable the Retailer to either:

- (a) include that information in the Retailer's next bill to a particular *customer*; or
- (b) reconcile the *statement of charges* with the amounts included in a Retailer's bill to a particular *customer*.

## 8. PAYMENT

### 8.1 Pay statement of charges

Subject to clause 8.5, and unless otherwise agreed between the parties, the Retailer must pay the Distributor the amount set out in the Distributor's *statement of charges* by 5:00pm on the later of:

- (a) the 10<sup>th</sup> *business day* after the receipt by the Retailer of a *statement of charges* issued under clause 7.1; or
- (b) subject to receipt of a *statement of charges* issued under clause 7.1, the 15th *business day* after the end of the *billing period* to which that *statement of charges* relates.

## 8.2 No set-off

Subject to clauses 8.5, 10.3, 10.4 and 10.5, the Retailer must make payments under this clause 8 without set-off or counterclaim. All payments due by the Retailer to the Distributor under this Agreement must be made in cleared funds to a bank account nominated in writing by the Distributor to the Retailer from time to time.

## 8.3 Interest for late payment

Subject to clause 8.5(f), if the Retailer fails to pay an amount owing under this Agreement when due, the Distributor may charge the Retailer interest on that amount. Interest will:

- (a) accrue daily at the *default rate* for each day from the day on which the amount became due and payable until it is paid;
- (b) be calculated on actual days elapsed and a 365 day year; and
- (c) be included on the next *statement of charges* from the Distributor to the Retailer and payable on the due date of that *statement of charges*.

## 8.4 Obligations unaffected

The Retailer's obligation to pay an outstanding amount on the date it becomes due is not affected by clause 8.3.

## 8.5 Billing disputes

Unless protocols for the management of network billing disputes are otherwise provided for through a business to business network billing process specification agreed between the parties, the following shall apply:

- (a) If the Retailer disputes its obligations under this Agreement to pay all or part of a *statement of charges* (the '*disputed amount*') and intends to withhold all or some of the *disputed amount*, the Retailer must notify the Distributor before the due date for payment of a *statement of charges* under clause 8.1 that it disputes its obligation under this Agreement to pay the *disputed amount*.
- (b) If the Retailer notifies the Distributor of a *disputed amount* in accordance with clause 8.5(a):
  - (i) the Retailer is not required to pay the *disputed amount* by the date due for payment of that *statement of charges*; but

- (ii) the Retailer, unless another reasonable amount is agreed by the parties, is required to pay the greater of:
  - (A) the balance of the amount due under that *statement of charges* (after deduction of the *disputed amount*); and
  - (B) the lesser of, 80% of the amount of the previous undisputed *statement of charges* from the Distributor, and the full amount of the *statement of charges*,by the date due for payment of that *statement of charges*; and
- (iii) the parties will submit that dispute for resolution in accordance with clause 17.
- (c) The payment of all or part of an amount set out in a *statement of charges* will not preclude the Retailer from subsequently challenging its liability to pay that amount. If the Retailer disputes an amount paid by it in accordance with a *statement of charges*, the parties will submit that dispute for resolution in accordance with clause 17.
- (d) If as a result of the dispute resolution process under clause 17 it is determined that the amount of that *statement of charges* should have been:
  - (i) less than the amount already paid by the Retailer on account of that *statement of charges*, the Distributor must pay to the Retailer the difference between the amount already paid and the amount determined as being properly due together with, subject to clause 8.5(f), interest on the difference at the *default rate* for each day after the date the amount was paid by the Retailer, up to and including the date the difference is paid; or
  - (ii) more than the amount already paid but less than the amount of the *statement of charges*, the Retailer must pay to the Distributor the difference between the amount already paid and the amount determined as being properly due together with interest, subject to clause 8.5(f), on the difference at the *default rate* for each day after the date that *statement of charges* was due to be paid, up to and including the date the difference is paid; or
  - (iii) equal to or more than the amount of that *statement of charges*, the Retailer must pay to the Distributor:
    - (A) the difference between the amount already paid and the amount determined as being properly due; and
    - (B) subject to clause 8.5(f), interest on the amount of the difference between the amount already paid and the *statement of charges* at the *default rate* for each day after the date that *statement of charges* was due to be paid, up to and including the date the difference is paid.

An amount payable under this clause 8.5(d) will fall due 5 *business days* after the determination of the *dispute*.

- (e) A notice given by the Retailer under clause 8.5(a) must contain sufficient information and supporting detail to enable the Distributor to determine the nature of the Retailer's *dispute* concerning that *statement of charges*.
- (f) For the avoidance of doubt, the parties acknowledge that no interest on amounts in *dispute* under this clause 8.5, either at the *default rate* or the *bank bill rate*, will be owed or payable where that amount is genuinely in *dispute*.
- (g) The parties further acknowledge that an *Independent Expert*, appointed and acting pursuant to clause 17, may determine whether an amount is genuinely in dispute, for the purposes of clause 8.5(f).

## 8.6 Obligation to Pay

Subject to clause 10.5, the obligation of the Retailer to pay the *statement of charges* issued by the Distributor in accordance with this clause 8, will not be affected by any failure of a *customer* to pay the *charges* payable by that *customer* to the Retailer.

## 8.7 Clauses that do not apply

Clauses 7, 8 and 10.1 do not apply in relation to a *customer* to the extent that the parties have agreed with each other and the relevant *customer* to issue separate bills to that *customer*.

The Retailer acknowledges that the Distributor may, in accordance with its *connection contract*, agree with a *customer*, or otherwise elect, to bill a *customer* directly for *customer connection services*. The Distributor will notify the Retailer in circumstances where it agrees or elects to bill a Retailer's *customer* directly for *customer connection services*.

## 8.8 Supply of Money

The parties acknowledge their mutual understanding that because a payment made by the Retailer to the Distributor under this clause is a supply of money, and is not consideration for any *Taxable Supply* by the Distributor to the Retailer, clause 23 does not apply to any such payment.

## 9. GSL PAYMENTS

### 9.1 Retailer Reimbursement

If:

- (a) the Retailer:
  - (i) receives notification of a matter relevant to the Distributor's compliance with a *GSL* and the Retailer delays or fails to pass on that information to the Distributor; or
  - (ii) requests a disconnection; and

- (b) as a result of that delay, failure or request, the Distributor is required to make a payment to the *customer* as a result of failing to satisfy a *GSL*,

then the Retailer must reimburse the Distributor for that portion of the payment made to the *customer* which is attributable to the Retailer's delay, failure or wrongful action in making a request.

However, a Retailer will not be liable to reimburse the Distributor for a wrongful disconnection *GSL* where the Distributor's actions or omissions caused the Retailer to request the disconnection of the wrong *premises* (for example, where the Retailer has relied on *MSATS* data in establishing the *NMI* which is used in the request for disconnection).

## 9.2 Notification

The Retailer must notify the Distributor (or such employee of the Distributor notified by the Distributor to the Retailer from time to time) where it is aware that the Distributor is required to provide a *GSL* payment to a *customer* under the *Electricity Industry Code*.

## 10. ADJUSTMENT

### 10.1 General

As between the parties the Retailer will, in accordance with the requirements of the *applicable law*, recover from *customers* amounts undercharged or pay to *customers* amounts overcharged, as a result of the Retailer's or Distributor's act or omission.

### 10.2 Undercharging

If a *customer* is undercharged as a result of the act or omission of the Retailer or Distributor and the Retailer is prevented by the *applicable law* from recovering from the *customer* the full amount undercharged, then if:

- (a) the undercharging resulted from the Retailer's act or omission, the Retailer will pay to the Distributor the amount of the *distributor charges* specified in a *statement of charges* undercharged to that *customer* which are not permitted to be recovered under the *applicable law* from that *customer*; or
- (b) the undercharging resulted from the Distributor's act or omission, the Distributor will pay to the Retailer the amount of the Retailer's charges undercharged to that *customer* which are not permitted to be recovered under the *applicable law* from that *customer* or which the Retailer using reasonable endeavours is unable to recover from the *customer*.

Each party must notify the other as soon as possible after it becomes aware that a *customer* has been undercharged as a result of its act or omission.

### 10.3 Overcharging

If a *customer* is overcharged as a result of the Distributor's act or omission, the Retailer may, subject to clause 10.4, deduct an amount representing the Distributor's proportion of that overcharged amount from the next payment due to the Distributor under clause 8.

The Distributor must notify the Retailer as soon as possible after it becomes aware that a *customer* has been overcharged as a result of the Distributor's act or omission.

#### 10.4 Steps before deduction

Before deducting any amount from payments due to the Distributor under clause 10.3, the Retailer must give the Distributor an opportunity to determine the cause of the overcharging.

#### 10.5 Non-payment

If, due to a matter for which the Retailer may be indemnified under clause 14.1, a *customer* does not pay an account issued by the Retailer in full, the Retailer may off-set the amount of that shortfall from payments due to the Distributor under clause 8, provided that the Retailer has:

- (a) promptly given the Distributor details of the relevant *customer*, the amount outstanding, the reasons of the non-payment by the *customer*, and such other information as the Distributor may reasonably request; and
- (b) been unable to recover the amount due from the customer within 60 days, after using reasonable endeavours to do so.

Nothing in this clause limits the Distributor's rights under clause 15.2 in relation to a *customer's* complaint or *Claim*.

### 11. DISCONNECTION

#### 11.1 Failure to disconnect

- (a) Subject to clause 11.1(b), if the Distributor does not disconnect the *customer* within the timeframe for completion for the *Service Order Request* or within such timeframes as may otherwise be agreed (or subsequently agreed) between the Distributor and the Retailer on behalf of the *customer*, the Distributor:
  - (i) will from that time not include the related *distributor charges* in any *statement of charges*; and
  - (ii) will be liable to pay to the Retailer, at the Retailer's election, either:
    - (A) an amount representative of the costs incurred by the Retailer for the *customer's* energy consumption, calculated on the basis of the monthly average regional reference price as published by *AEMO* from time to time, for the region and month in which the energy consumption occurs; or
    - (B) an amount representative of the actual costs incurred by the Retailer for the *customer's* energy consumption,

provided that:

- (iii) this will not render the Distributor the retailer of the *customer*; and

- (iv) the Retailer has exercised reasonable endeavours to recover the relevant *distributor charges* and consumption costs and has been unable to recover these costs directly from the *customer*.

If the Retailer subsequently recovers from the *customer* all or any part of any such amount, the Retailer must promptly pay that recovered amount to the Distributor.

- (b) The Distributor may refuse to disconnect a *customer's connection point* where:
  - (i) the Distributor has made reasonable endeavours to carry out the disconnection but is unable to access the *customer's connection point* or the *premises* as a result of the *customer's* action or inaction;
  - (ii) the Distributor reasonably considers that such disconnection would be detrimental to the health or safety of any person (including the *customer*) or the *premises* are registered as having a life support machine;
  - (iii) the Retailer has raised a *Service Order Request* which does not comply with *applicable law*; or
  - (iv) the disconnection would result in the Distributor not complying with its obligations under *applicable law*.

In the case of clause 11.1(b)(ii), the Distributor will use reasonable endeavours to remove or mitigate the risk of detriment. In each case under clause 11.1(b), the Distributor must notify the Retailer, without delay, of the reason for its refusal to disconnect.

- (c) Where the Distributor refuses to disconnect a *customer* on any of the grounds set out in clause 11.1(b), the Retailer will continue to be liable for the *distributor charges* in respect to the use of the *supply network* by the *customer* and the consumption of energy by the *customer*.
- (d) By providing a *Service Order Request*, the Retailer represents and warrants to the Distributor that the Retailer is entitled to make a request for disconnection under its *retail contract* and under any *applicable law*, and it has complied with the procedures for disconnection prescribed in the relevant *retail contract* and any other procedures under any *applicable law*.
- (e) The Retailer shall indemnify the Distributor against all *Claims* arising from, or incurred by, the Distributor as a consequence of the cessation of supply as a result of any disconnection by the Distributor pursuant to a *Service Order Request*, except to the extent that the *Claim* arises from the negligent or reckless act or omission of the Distributor, or from any breach or non-observance by the Distributor of the Agreement or any *applicable law*.

## 11.2 Distributor's right to disconnect

The Distributor may disconnect a *customer's connection point* where it is entitled to do so under the *connection contract* or under an *applicable law*, or required to do so at the direction of State or Federal police, and must, subject to clause 11.3, send a notice to the

Retailer of that disconnection within 24 hours after the disconnection. Where possible the Distributor will notify the Retailer in advance of the disconnection.

### 11.3 Notice before disconnection

Except in cases of *emergency* or where required to do so at the direction of State or Federal police, the Distributor must not disconnect a *customer's connection point* where the *customer*:

- (a) fails to comply with its obligations under the *customer's connection contract* to provide access to the *premises*; or
- (b) has provided false information; or
- (c) uses electricity illegally; or
- (d) uses electricity for a purpose not allowed by the *customer's* tariff or charge; or
- (e) requests to be disconnected,

unless it has first notified the Retailer.

## 12. RETAILER'S PERFORMANCE SECURITY

~~Deleted~~

### 13. TERMINATION

#### 13.1 Termination events

A party may, by giving 24 hours notice in writing to the other party (the '*defaulting party*'), terminate this Agreement if the *defaulting party's*:

- (a) *retail authority* or *distribution authority* (as the case may be); or
- (b) registration as a *Market Customer* or *Network Service Provider* (as the case may be) under the *National Electricity Rules*,

is terminated.

#### 13.2 Distributor may terminate

~~Deleted~~

#### 13.3 Notice to Regulator

The party exercising a right of termination under this clause must inform the *Regulator* of the termination within 1 *business day* of the termination occurring.

#### 13.4 Termination of any previous Coordination Agreement

Any agreement for the coordination of the parties' rights and obligations, entered into or as otherwise may be required to be entered into under *applicable law*, that was in force

~~Deleted: <#>Undertaking¶~~

The Distributor may request the Retailer to procure an undertaking under clause 12.2 only if, immediately prior to the time of that request:¶

<#>the Retailer cannot demonstrate:¶

<#>that it has a Standard & Poor's credit rating of at least BBB- or its equivalent from another recognised credit reporting agency reasonably acceptable to the Distributor (an 'acceptable credit rating'); or¶

<#>that the performance of the Retailer's payment obligations are guaranteed (on terms acceptable to the Distributor acting reasonably) by another entity who has an acceptable credit rating; or¶

<#>within the previous 12 months, including where those 12 months includes a period prior to the commencement date, the Retailer has failed to pay in full:¶

<#>3 statements of charges within the required time limit for payment; or¶

<#>2 consecutive statements of charges within the required time limit for payment; or¶

<#>1 statement of charges within 25 business days of the due date; or¶

<#>a default event occurs in relation to the Retailer under the *National Electricity Rules*; or¶

<#>the Retailer or its *NEM Representative* ceases to be registered with *NEMMCO* as a *market customer*; or¶

<#>where the Retailer purchases energy under an agreement with a person registered with the *NEMMCO* and that person issues a notice of default to the Retailer under that agreement,¶

provided that nothing in clause 12.1(b) shall permit the Distributor to request an undertaking under clause 12.2 where the Retailer has failed to pay the *statement of charges* or a relevant part of the *statement of charges* due to a genuine *dispute* notified to the Distributor pursuant to clause 8.5.¶

<#>Provide undertaking¶

<#>The Retailer must provide to the Distributor, within 10 *business days* after request, an unconditional undertaking ('*undertaking*') in favour of the Distributor in a form agreed between the parties (but failing agreement in the same form as used by *NEMMCO* in relation to the Retailer from time to time), issued by a bank or other body which is capable, to the reasonable satisfaction of the Distributor, of paying on the undertaking in Brisbane when demanded to secure the due and punctual performance of the Retailer's obligations to pay the Distributor amounts owed under clauses 7, 8 and 9 (the '*secured obligations*').¶

<#>The Retailer acknowledges that the Distributor may disclose to its financiers, the Regulator or *NEMMCO* that it has required or called upon an undertaking provided by the Retailer under this clause.¶

<#>The Retailer must notify the Distributor within 1 business day of the Retailer becoming aware that the Distributor is eligible to request an undertaking issued under this clause 12.¶

<#>Amount of undertaking¶

The undertaking procured by the Retailer under clause 12.2 must be for an amount requested by the Distributor, not exceeding an amount equal to 3 months' estimated *distributor charges* to be incurred by the Retailer's customers during the 3 month{... [1]

The undertaking procured by the Retailer under clause 12.2 must be for an amount requested by the Distributor, not exceeding an amount equal to 3 months' estimated distributor charges to be incurred by the Retailer's customers during the 3 month{... [1]

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The undertaking procured by the Retailer under clause 12.2 must be for an amount requested by the Distributor, not exceeding an amount equal to 3 months' estimated distributor charges to be incurred by the Retailer's customers during the 3 month{... [1]

~~Deleted: The Distributor may terminate this Agreement by giving the Retailer 5 business days notice if the Retailer fails to provide an undertaking or undertakings in accordance with clauses 12.2, 12.4 or 12.7.¶~~

~~Deleted: Seventh~~

between the Distributor and the Retailer prior to the commencement of this Agreement is hereby terminated.

### 13.5 Existing rights

The parties' rights to terminate this agreement will be without prejudice to the parties' rights to pursue relief by way of damages, injunction or specific performance in respect of a breach of this agreement. Without limiting the foregoing, each party shall be entitled to render an invoice to the other party for services provided and not invoiced up to and including the date of termination, and any such invoice will be payable in accordance with clause 8.

### 13.6 Distribution Services after Termination

Notwithstanding the termination of this Agreement, the Distributor and the Retailer acknowledge that the Distributor may continue to provide *customer connection services* in respect of any *customer* of the Retailer until the first to occur of the events specified in clause 6.2. In respect of any such *customer connection service* provided after termination of this Agreement, all provisions of this Agreement which relate to the provision of *customer connection services* shall continue to apply.

## 14. INDEMNITY

### 14.1 Distributor's Indemnity

Subject to, and to the extent of, any loss suffered by the Distributor caused by, or contributed to by, the Retailer's non-compliance with clauses 15.2, 15.3 or 15.4 of this Agreement, the Distributor indemnifies the Retailer from and against any:

- (a) *Claim* by a *customer* against the Retailer relating to the quality of, or interruptions to, the *connection* and supply of electricity by the Distributor (other than a *Claim* of the type referred to in clause 14.1(b)), where the Distributor would have been liable to that *customer* under its *connection contract* had that *customer* claimed against the Distributor, but only to the extent that the Distributor would have been liable to that *customer* under its *connection contract*;
- (b) *Claim* against the Retailer for breach by the Retailer of any conditions, warranties or terms implied by Part V of the *Trade Practices Act 1974* or any equivalent state legislation concerning the *connection* or supply of electricity by the Distributor where:
  - (i) that breach has occurred as a result of the acts or omissions of the Distributor; and
  - (ii) the Retailer has in its contract with the *customer* to which the *Claim* relates limited or excluded its liability to that party for breach of any of the conditions, warranties or terms implied by Part V of the *Trade Practices Act 1974* into that contract to the maximum extent permitted by that Act, or any equivalent state legislation;

- (c) *Claims* in connection with the wrongful disconnection of a *customer's connection point* by the Distributor, other than *Claims* in connection with a *Service Order Request* under clause 11 that results in a wrongful disconnection of a *customer's connection point* by the *Distributor*; or
- (d) *Claims* in connection with any failure by the Distributor to comply with clause 15.

#### 14.2 Retailer's Indemnity

Subject to the Distributor complying with clauses 15.2, 15.3 and 15.4, the Retailer indemnifies the Distributor from and against any *Claims* in connection with:

- (a) a failure to provide accurate information under clause 3.2;
- (b) a *Service Order Request* by the Retailer under clause 11 that results in a wrongful disconnection of a *customer's connection point* by the Distributor; and
- (c) any failure by the Retailer to comply with clause 15.

#### 14.3 Limit of liability

To the maximum extent permitted by law, the liability of either party to the other is:

- (a) in the case of *Claims* under clause 14.1(a), limited in the manner set out in that clause;
- (b) in the case of *Claims* under clause 14.1(b) limited to the amount of the Retailer's direct loss incurred in relation to such *Claims*;
- (c) in the case of *Claims* by *customers* for the matters set out in clause 14.1(c) or 14.2(b) limited to \$500,000 per *customer* per financial year for each *Claim* by a *customer*; and
- (d) in the case of *Claims* not covered by clause 14.3(a), (b) or (c), limited to \$500,000 per *Claim*.

Except to the extent provided for in this clause 14, or otherwise provided for expressly in this Agreement, neither party will (to the maximum extent permitted at law) be liable to the other for loss of profits, indirect or consequential loss.

#### 14.4 National Electricity Law

Except to the extent provided for in this clause 14, nothing in this Agreement affects the immunity provided by section 119 and section 120 of the *National Electricity Law*.

### 15. ENQUIRIES, COMPLAINTS AND CLAIMS

#### 15.1 Referral of enquiries and complaints

If a party receives an enquiry or a complaint from a *customer* that relates to the other party's *retail contract* or *connection contract* with that *customer*, the receiving party must, as soon as possible after receiving the enquiry or complaint:

- (a) refer that *customer* to the other party; and
- (b) in the case of complaints, notify the other party in writing of the complaint and the *customer's* details (where such information is available).

## 15.2 Claims and demands

A party (the '*indemnified party*') must notify the other party (the '*responsible party*') of any *Claim* for which it may be indemnified under clause 14 and must:

- (a) permit the *responsible party*, entirely at the *responsible party's* expense, to defend or settle the *Claim* as the *responsible party* sees fit, or, where the *responsible party* does not elect to defend or settle the *Claim*, to have a watching brief and be kept fully informed by the *indemnified party* of the progress of the *Claim*; and
- (b) provide the *responsible party*, at the *responsible party's* expense, with such assistance in respect of the *Claim* as the *responsible party* may reasonably request.

If the *responsible party* elects to take over conduct of a *Claim* as contemplated in paragraph (a) the *responsible party* must:

- (c) use all reasonable endeavours to minimise the time taken to defend or settle the *Claim*;
- (d) consult with and where reasonably possible, take account of the views of the *indemnified party* in relation to the progress of the *Claim*; and
- (e) if it becomes aware that the *indemnified party* may have some liability in respect of that *Claim* for which the *indemnified party* will not be indemnified under clause 14, notify the *indemnified party* of that fact, consult with and keep the *indemnified party* informed in respect of the progress of that *Claim* and comply with the provisions of clause 15.3 as if references in that clause to the '*indemnified party*' were to the '*responsible party*', and vice versa.

## 15.3 No admissions

Except where required by a law to do so, the *indemnified party* must not, in relation to any of the matters referred to in clauses 15.1 or 15.2:

- (a) make any admission or representation prejudicial to the *responsible party*;
- (b) agree to any compromise or settlement;
- (c) do anything else that may be prejudicial to the *responsible party*,

without the *responsible party's* written consent.

## 15.4 No unauthorised representations

The *indemnified party* must not make any representations or warranties to a third party concerning any goods or services being provided by the *responsible party* to that third party (including any representation concerning the nature and quality of any goods or

services being provided by the *responsible party* to the third party) which the *indemnified party* is not authorised by this Agreement or otherwise by the *responsible party* to make.

## 16. COMPLIANCE WITH APPLICABLE LAW

### 16.1 Compliance

Each party will comply with the obligations imposed on that party by any *applicable law*.

### 16.2 Reasonable assistance

Each party will:

- (a) give to the other party all reasonable assistance; and
- (b) co-operate with the other party,

so as to allow that other party to comply with any obligations imposed upon that other party under an *applicable law* or this Agreement.

### 16.3 Limitation

Nothing in this Agreement will limit any right either party may have under an *applicable law* unless that right can be limited in accordance with the provisions of that *applicable law* by agreement between the parties and this Agreement directly or indirectly limits that right.

## 17. RESOLUTION OF DISPUTES

### 17.1 National Electricity Rules disputes – first stage dispute resolution

If any dispute, controversy or *Claim* (*'dispute'*) arises between the parties under or in relation to this Agreement:

- (a) with respect to the application of the *National Electricity Rules*; or
- (b) in relation to which the dispute resolution regime provided for in clause 8.2 of the *National Electricity Rules* otherwise applies,

then the dispute resolution regime provided for in clause 8.2 of the *National Electricity Rules* will apply to that *dispute*.

### 17.2 Non-National Electricity Rules disputes – first stage dispute resolution

- (a) If a dispute under or in relation to this Agreement, other than a *dispute* referred to in clause 17.1, arises between the parties a party may, by written notice, refer the *dispute* to resolution in accordance with this clause. The notice shall state that it is a notice under this clause and shall identify the *dispute* concerned and the clauses of this agreement relevant to the *dispute*.
- (b) The parties will use their reasonable endeavours to resolve the *dispute* within a period of 10 *business days* from the service of the notice under clause 17.2(a).

- (c) If the *dispute* remains unresolved at the end of the period referred to in clause 17.2(b) then either party may require that the *dispute* be determined under clause 17.3.

**17.3 Non National Electricity Rules Disputes – reference to Chief Executives or nominees**

- (a) Where clause 17.2(c) applies, either party may, by written notice, refer the *dispute* to resolution by the respective Chief Executives (or the Chief Executives' nominee) of the parties whose resolution, if so reached, shall be binding in accordance with this clause.
- (b) The Chief Executives (or their nominees) will use their reasonable endeavours to resolve the *dispute* within a period of 10 *business days* from the service of the notice under clause 17.3(a).
- (c) If the *dispute* remains unresolved at the end of the period referred to in clause 17.3(b) then either party may require that the *dispute* be determined under clause 17.4.

**17.4 Non National Electricity Rules Disputes – reference to and appointment of Independent Expert**

- (a) Where clause 17.3(c) applies, either party may require that the *dispute* be determined by an independent expert appointed in accordance with clause 17.4(b) (*'Independent Expert'*).
- (b) The party wishing to have the *dispute* determined by an *Independent Expert* will give written notice to that effect to the other party specifying the nature of the *dispute*. The parties will meet and use all reasonable endeavours to agree upon the identity of the *Independent Expert*, but if they are unable to agree within 5 *business days* of the notice, then either party may refer the matter to the President for the time being of the Law Society of Queensland (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Law Society of Queensland), to nominate a suitably qualified person to act as the *Independent Expert* to determine the *dispute*.

**17.5 Non-National Electricity Rules Disputes – role of Independent Expert**

The *Independent Expert* will:

- (a) act as an expert and not as an arbitrator;
- (b) have no interest or duty which conflicts, or which may conflict, with his or her function as the *Independent Expert*;
- (c) determine the genuineness or otherwise of a *dispute*;
- (d) not be a former or current employee or representative of either party or of a related body corporate of either of them;

- (e) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position; and
- (f) treat all matters related to the *dispute*, including the existence of the *dispute*, as confidential.

#### **17.6 Non-National Electricity Rules Disputes – representation and evidence**

Each party:

- (a) may be legally represented at any hearing before the *Independent Expert*;
- (b) will be entitled to produce to the *Independent Expert* any materials or evidence which that party believes is relevant to the *dispute*; and
- (c) will make available to the *Independent Expert* all materials requested by him or her and all other materials which are relevant to his or her determination.

#### **17.7 Non-National Electricity Rules Disputes – rules of evidence**

The *Independent Expert* will not be bound by the rules of evidence.

#### **17.8 Non-National Electricity Rules Disputes – power**

The *Independent Expert* will have the power to inform himself or herself independently as to the facts to which the *dispute* relates and to take such measures as he or she thinks fit to expedite the determination of the *dispute*.

#### **17.9 Non-National Electricity Rules Disputes – determination**

The *Independent Expert* will make a determination on the *dispute* and:

- (a) will determine what, if any, adjustments may be necessary between the parties; or
- (b) if relevant, determine the amendments required to the terms of this Agreement.

The determination of the *Independent Expert* will be, in the absence of bias or manifest error, final and binding upon the parties.

#### **17.10 Non-National Electricity Rules Disputes – costs**

The costs in relation to a determination by the *Independent Expert* will be dealt with as follows:

- (a) the remuneration of the *Independent Expert* will be borne equally by the parties;
- (b) unless the parties otherwise agree, the *Independent Expert* will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and

- (c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the *Independent Expert*.

#### **17.11 Non-National Electricity Rules Disputes – obligations not suspended**

Except as otherwise provided by this Agreement, no party is relieved from performance of an obligation during the investigation and determination of a *dispute* by an *Independent Expert*.

#### **17.12 Disputes generally**

- (a) No party may have recourse to litigation without first having complied with this clause 17.
- (b) This clause 17 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

#### **17.13 Survival**

This clause 17 survives the termination or expiration of this Agreement.

### **18. ASSIGNMENT AND DISPOSAL**

#### **18.1 General**

Subject to clauses 18.3 and 18.4, a party (*disposing party*) must not *dispose* of all or any part of its right, title and interest under this Agreement without the consent of the other party (*consenting party*).

#### **18.2 Consent**

If a *disposing party* requests the *consenting party* to give its consent to a *disposal* under clause 18.1 then the *consenting party* must not unreasonably withhold or delay that consent or give that consent subject to unreasonable conditions.

#### **18.3 Disposal by force of law**

If, by force of a law in Queensland, the right, title, interest and obligations (whether arising before or after the transmission, transfer, vesting or assumption referred to below) of the *disposing party* under this Agreement are, or are expressed to be, transmitted, transferred or vested in, or assumed by, an assignee, then that transmission, transfer, vesting or assumption (as the case may be) is effective and does not require the *consenting party's* consent under clause 18.1.

#### **18.4 Other permitted disposals**

A *disposing party* may, without the consent of the other party, *dispose* of any or all of its rights, obligations and interest under this Agreement to a person if that person:

- (a) is an entity to which all or a material part of the assets of the *disposing party* are transmitted, transferred or vested as part of a reconstruction or privatisation of the *disposing party*;

- (b) has all the authorities, registrations and approvals necessary for that person to own, operate or control the relevant electricity business in Queensland; and
- (c) executes and delivers to the *consenting party*, a deed prior to the *disposal* by which the assignee agrees to assume obligations (whether arising before or after the disposal) which are substantially equivalent to the *disposing party's* obligations under this Agreement.

### 18.5 Execute documents

Each party must execute all documents reasonably required to effect the *disposals* contemplated by clauses 18.1 to 18.4.

## 19. NOTICES

### 19.1 Method of Giving Notices

A notice, consent, approval or other communication (in this clause 19 called a '*notice*') given under this Agreement, shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail; or
- (c) transmitted by facsimile or electronic mail,

to that person's address.

A *notice* given pursuant to clauses 5.2(a) or 5.3(b) may be given in any reasonable manner as notified from time to time by the Distributor in the Distributor's *Operational Procedures*.

The requirements of this clause 19.1 do not apply to communications between the parties under the *B2B Procedures*.

### 19.2 Time of Receipt

A *notice* given to a person in accordance with this clause 19 is treated as having been given and received:

- (a) if delivered, on the day of delivery if a *business day*, otherwise on the next *business day*;
- (b) if sent by pre-paid mail, on the second *business day* following posting; and
- (c) if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if transmitted before 5.00 p.m. on a *business day*, otherwise on the next *business day*;
- (d) if transmitted by electronic mail, on the day of the transmission if transmitted before 5.00pm on a *business day*, otherwise on the next *business day*.

### 19.3 Address for Notices

For the purposes of this clause 19, a party may take the address and facsimile number of the other party to be the last address or number notified to it by that other party.

## 20. CHANGES TO APPLICABLE LAW

### 20.1 Amendments to Agreement

If after the date this Agreement is signed:

- (a) an *applicable law* is introduced or commences operation;
- (b) an *applicable law* is modified, re-enacted or substituted; or
- (c) the interpretation of an *applicable law* changes,

then, subject to clause 20.2, this Agreement will be interpreted (as far as possible) in such a way as to enable compliance with that *applicable law*.

### 20.2 Negotiation

If any of the events referred to in clause 20.1 has or will have a material effect on the position of either party, the parties will negotiate in good faith any amendments required to be made to this Agreement as a result of that event to return the parties substantially to their respective positions under this Agreement prior to event occurring. If the parties are unable to agree upon such amendments within 28 days of commencing negotiations, that dispute will be resolved in accordance with clause 17 of this Agreement.

## 21. GENERAL

### 21.1 Entire Agreement

This Agreement constitutes the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

### 21.2 Waiver

A failure of a party at any time to require full or part performance of any obligations under this Agreement does not affect in any way the rights of that party to require that performance subsequently.

### 21.3 Variations to Agreement

No variation of this Agreement will be effective unless it is in writing and signed by the parties.

#### 21.4 Severability

Any provision of this Agreement which is invalid or unenforceable may (without affecting any other provision) be read down so as to ensure it is valid and enforceable during that period without affecting the remaining provisions of this Agreement. If that provision cannot be so read down, then it will not operate between the parties until (if at all) it becomes valid and enforceable.

#### 21.5 Remedies Cumulative

The rights and remedies provided in this Agreement do not exclude any rights or remedies provided by any *applicable law*.

#### 21.6 Governing Law

This Agreement is governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of that State.

#### 21.7 No Agency or Partnership

Except as provided for in clause 23.8, nothing in this Agreement constitutes any agency, partnership or joint venture relationship between the parties.

#### 21.8 Costs

- (a) Subject to clause 21.8(b), each party will bear its own legal and other costs in relation to the negotiation and documentation of this Agreement.
- (b) Each party will bear half of any stamp duty payable in respect of this Agreement.

### 22. CONFIDENTIALITY

#### 22.1 General Obligation

- (a) For the purposes of this Agreement, '**Confidential Information**' means:
  - (i) the terms of this Agreement and the operations and dealings under this Agreement; and
  - (ii) all information exchanged between the parties under this Agreement or during the negotiations preceding the signing of this Agreement,but excludes information which is in the public domain or which is lawfully obtained from another source.
- (b) Except as otherwise permitted in this Agreement:
  - (i) each party ('**recipient**') must treat as confidential all *Confidential Information* of the other party ('**disclosing party**') in its possession;
  - (ii) a *recipient* may not disclose *Confidential Information* of the *disclosing party* to third parties without the prior written consent of the *disclosing party*; and

- (iii) a *recipient* must take reasonable precautions to ensure that its representatives maintain the confidentiality of that *Confidential Information*.
- (c) A *recipient* may make such disclosures of *Confidential Information* as are required by law or by the rules of any recognised stock exchange or by an Authority having jurisdiction over the *recipient*.
- (d) Where the *recipient* of *Confidential Information* is a Government Owned Corporation, it may make such disclosures of *Confidential Information* as are required by its Shareholding Ministers or their advisors, provided that the recipient of the *Confidential Information* is advised of its confidential nature and requested also to hold the *Confidential Information* in confidence and that disclosure of that information does not result in a breach of any *applicable law*.
- (e) To the extent practicable, before disclosing *Confidential Information* in reliance on clauses 22.1(c) or 22.1(d), a *recipient* must give reasonable notice to the *disclosing party* that its *Confidential Information* is going to be disclosed, including in that notice reasonable details of the circumstances of the proposed disclosure.
- (f) A *recipient* may disclose *Confidential Information* to any of the undermentioned persons whose legitimate interests reasonably require disclosure and who have first agreed in writing with the *disclosing party* to be bound by the confidentiality obligations imposed upon the *recipient* under this Agreement:
  - (i) any financier, prospective financier or recognized ratings agency;
  - (ii) any employee or any professional adviser;
  - (iii) any assignee or bona fide prospective assignee;
  - (iv) any third party or their advisors in connection with the proposed *disposal* of the recipient, any of its substantial assets or all or a significant part of its business undertaking.
- (g) If this Agreement permits a *recipient* to disclose *Confidential Information* to another person for a purpose, the *recipient* shall use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.
- (h) The rights and obligations contained in this clause 22 shall survive termination of this Agreement, and shall continue in full force and effect after such termination for five years.

For the purposes of this Agreement, information is not generally and publicly available merely because it is known to *AEMO*, an Authority, another Network Service Provider, a generator or another retailer.

## 23. GST

### 23.1 Definitions

In this clause:

‘**Adjustment Event**’ and ‘**Adjustment Note**’ have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*;

‘**GST Charge**’ has the meaning given in clause 23.3;

‘**GST Rate**’ means the rate at which *GST* is payable in respect of a *Taxable Supply* under the *GST law* from time to time;

‘**Input Tax Credit**’ has the meaning given in section 195-1 of the *A New Tax System (Goods And Services Tax) Act 1999 (Cwlth)*;

‘**Recipient**’ means the party who receives a *Taxable Supply* under this Agreement;

‘**Supplier**’ means the party who supplies a *Taxable Supply* under this Agreement.

### 23.2 Effect of GST on Indemnities and Similar Payments

If an amount of money is payable by one party (‘*payer*’) to the other (‘*payee*’) as an indemnity or reimbursement or otherwise calculated by reference to a loss, cost, expense or other amount paid or incurred by the *payee* (an ‘*indemnity amount*’) then:

- (a) the amount that would otherwise be payable must be reduced by the amount of any *Input Tax Credit* to which the *payee* is entitled in respect of the *indemnity amount*; and
- (b) the *payee* must, if required by the *payer*, provide reasonable substantiation of the amount of *Input Tax Credit* to which the *payee* is entitled, or of the fact that the *payee* is not entitled to *Input Tax Credits*, as the case may be.

### 23.3 GST Charge for Taxable Supplies

If and to the extent that any amount payable by one party (‘**Recipient**’) to the other (‘**Supplier**’) under this Agreement is consideration for a *Taxable Supply* by the *Supplier* then in addition to the amount that would be payable otherwise than under this sub-clause (‘*base amount*’) the *Recipient* must, if the *Supplier* issues a valid *Tax Invoice* for the *base amount* and *GST Charge*, pay a *GST Charge* calculated by multiplying the base amount by the *GST Rate*.

### 23.4 Non Monetary Consideration

If a supply made under this Agreement is a *Taxable Supply* made for non-monetary consideration then:

- (a) the *Supplier* must provide the *Recipient* with a valid *Tax Invoice* which states the nature of the *Taxable Supply* and the nature and *GST* inclusive market value (within the meaning of the *GST law*) of the non-monetary consideration; and

- (b) the *Recipient* must pay the *Supplier* a *GST Charge* equivalent to the *GST* payable by the *Supplier* on the *Taxable Supply*.

### 23.5 Time for Payment of GST Charge

Subject to the *Recipient* having received a valid *Tax Invoice*, the *Recipient* must pay a *GST Charge* payable under this clause at the same time as the base payment or any part of the base payment is due and payable by the *Recipient*

### 23.6 Tax Invoices and Adjustment Notes

In respect of any *Taxable Supply* under this Agreement, the *Supplier* must provide to the *Recipient*:

- (a) a *Tax Invoice* when consideration is claimed or payable; and
- (b) an *Adjustment Note* in respect of any *Adjustment Event*.

### 23.7 Registration

Each party must be registered for *GST* purposes.

### 23.8 Agency arrangements for GST purposes

The Distributor appoints the Retailer as its agent for *GST* purposes in order to bill and collect any *distributor charges* due from *customers* to the Distributor under the relevant *connection contracts* for those *customers*.

### 23.9 Scope of agency

To the extent that the Retailer, in issuing bills to *customers*, acts as the Distributor's agent for *GST* purposes:

- (a) the Retailer must take all reasonable steps to ensure that acts done on behalf of the Distributor comply with the Distributor's obligations to *customers* under the *GST law*, and in particular that any bill issued to a *customer* is in the form and manner required by the *GST law* for a *Tax Invoice* or, as applicable, an *Adjustment Note*;
- (b) the Retailer is entitled to assume that any amount stipulated in the Distributor's *statement of charges* in respect of a *customer* is the full amount chargeable by the Distributor (including any amount which the Distributor includes in its charges to cover *GST* obligations); and
- (c) the Distributor must do all acts and execute all documents which are reasonably necessary to be done in order to permit the Retailer to comply with its obligations under clause 23.9(a), and the Retailer must inform the Distributor of its requirement for such acts and documents.

### 23.10 Arrangement under s 153-B or other provision of the GST Law

- (a) The parties acknowledge that it is contemplated there may be a change in the *GST law* (a '**153-B amendment**') to the effect that where a party ('**agent**') who issues bills to and collects money from a *customer* on behalf of another party ('**principal**') in respect of *Taxable Supplies* made by the *principal* to the *customer*, subject to the *agent* and *principal* entering into an agreement that complies with specified criteria ('**complying agreement**') the law will deem that:
- (i) there is a *Taxable Supply* by the *principal* to the *agent*, and the money paid by the *agent* to the *principal* is consideration for the *Taxable Supply*; and
  - (ii) there is a *Taxable Supply* by the *agent* to the *customer*, and the money paid by the *customer* to the *agent* is consideration for the *Taxable Supply*.
- (b) If there is a *153-B amendment*, the parties must negotiate in good faith to enter into a *complying agreement*, and to amend this Agreement accordingly.

## 24. FORCE MAJEURE

### 24.1 Suspension of obligations

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

### 24.2 Mitigation of force majeure event

A party affected by a *force majeure event* shall use its best endeavours to remove the effect of such *force majeure event* affecting its performance of this Agreement, but nothing in this clause requires it to settle any industrial dispute otherwise than as that party in its absolute discretion sees fit.

### 24.3 Notice

Subject to clause 24.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a *force majeure event*, it shall as soon as reasonably practicable thereafter give to the other party notice containing full particulars of the *force majeure event* including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

## 25. INFORMATION EXCHANGE

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

**EXECUTED** as an Agreement

**SIGNED** by )  
for and on behalf of )  
[Distributor] )  
in the presence of: )

..... Date: .....  
Witness  
Name (printed):

**SIGNED** by )  
for and on behalf of )  
[Retailer] )  
in the presence of: )

..... Date: .....  
Witness  
Name (printed):

## Undertaking

The Distributor may request the Retailer to procure an undertaking under clause 12.2 only if, immediately prior to the time of that request:

the Retailer cannot demonstrate:

that it has a Standard & Poor's credit rating of at least BBB- or its equivalent from another recognised credit reporting agency reasonably acceptable to the Distributor (an 'acceptable credit rating'); or

that the performance of the Retailer's payment obligations are guaranteed (on terms acceptable to the Distributor acting reasonably) by another entity who has an acceptable credit rating; or

within the previous 12 months, including where those 12 months includes a period prior to the *commencement date*, the Retailer has failed to pay in full:

3 *statements of charges* within the required time limit for payment; or

2 consecutive *statements of charges* within the required time limit for payment; or

1 *statement of charges* within 25 *business days* of the due date; or

a *default event* occurs in relation to the Retailer under the *National Electricity Rules*; or

the Retailer or its *NEM Representative* ceases to be registered with *NEMMCO* as a *market customer*; or

where the Retailer purchases energy under an agreement with a person registered with the *NEMMCO* and that person issues a notice of default to the Retailer under that agreement,

provided that nothing in clause 12.1(b) shall permit the Distributor to request an undertaking under clause 12.2 where the Retailer has failed to pay the *statement of charges* or a relevant part of the *statement of charges* due to a genuine *dispute* notified to the Distributor pursuant to clause 8.5.

## Provide undertaking

The Retailer must provide to the Distributor, within 10 *business days* after request, an unconditional undertaking ('*undertaking*') in favour of the Distributor in a form agreed between the parties (but failing agreement in the same form as used by *NEMMCO* in relation to the Retailer from time to time), issued by a bank or other body which is capable, to the reasonable satisfaction of the Distributor, of paying on the undertaking in Brisbane when demanded to secure the due and punctual performance of the Retailer's obligations to pay the Distributor amounts owed under clauses 7, 8 and 9 (the '*secured obligations*').

The Retailer acknowledges that the Distributor may disclose to its financiers, the Regulator or *NEMMCO* that it has required or called upon an *undertaking* provided by the Retailer under this clause.

The Retailer must notify the Distributor within 1 business day of the Retailer becoming aware that the Distributor is eligible to request an *undertaking* issued under this clause 12.

### **Amount of undertaking**

The *undertaking* procured by the Retailer under clause 12.2 must be for an amount requested by the Distributor, not exceeding an amount equal to 3 months' estimated *distributor charges* to be incurred by the Retailer's *customers* during the 3 months following the request (the '*required secured obligations amount*').

### **Variations in undertaking amounts**

If at any time during the term of this Agreement the uncalled aggregate amount of the *undertaking* held by the Distributor pursuant to this clause 12 is less than 90 per cent of the *required secured obligations amount*, the Retailer must, on request by the Distributor, within 10 *business days*, increase the uncalled amount of the *undertaking* to the *required secured obligations amount*.

If at any time during the term of this Agreement, the uncalled aggregate amount of the *undertaking* held by the Distributor in accordance with this clause 12 is more than 110 per cent of the *required secured obligations amount*, the Distributor must upon request by the Retailer and in conjunction with the Retailer, do all things necessary to reduce the aggregate uncalled amount of the *undertaking* held by the Distributor to the *required secured obligations amount*.

### **Purpose of the undertaking**

The Distributor may call on any one or more *undertakings* where:

the Retailer has failed to comply with any *secured obligations* at any time after 3 *business days* of giving notice to the Retailer that it intends to do so; and

there is no genuine *dispute* outstanding in accordance with clause 8.5 in relation to the Retailer's liability to pay those charges.

### **No steps to seek injunction**

Subject to the Distributor complying with the restrictions set out in clause 12.5, the Retailer must not take any steps to seek an injunction or otherwise restrain:

any issuer of the *undertaking* from paying the Distributor pursuant to the *undertaking*;

the Distributor from taking any steps for the purposes of making a demand against the *undertaking*;

the Distributor using the money obtained in the calling of the *undertaking*,

where the Distributor has acted in accordance with this clause 12.

### **Voluntary pay out**

If the issuer of an *undertaking* pays an amount to the Distributor pursuant to that undertaking which amount was not called in accordance with clause 12.3, the Distributor will hold that amount and will pay it to the Retailer (together with interest on that amount at the default rate from the date upon which that amount was received to the date upon which that amount is paid to the Retailer) when the Retailer provides an *undertaking* in the form provided for under clause 12.2 to the Distributor for an amount equal to the amount held.

### **Release of undertaking**

At the end of 6 months after the date on which the *undertaking* was originally provided under clause 12.2, and at the end of any 6 month period thereafter (or as otherwise agreed by the parties), the Retailer may request the release of the undertaking, and the Distributor must release the *undertaking*, if the Retailer shows that, at that date, none of the criteria in clause 12.1 apply.