



ENWAVE MASCOT PTY LTD

ACN 100 209 354

(EM)

**LARGE CUSTOMER CONTRACT
FOR SUPPLY AT MASCOT**

Faults and emergencies **(02) 9667 1327**

General enquires **1300 053 212**

Billing enquires **1300 062 721**

VISIT OUR WEBSITE:

www.enwavemascot.com.au

LARGE CUSTOMER CONTRACT

IMPORTANT INFORMATION

This agreement is for the supply and sale of electricity and network services to large business customers (being customers whose annual consumption of electricity exceeds 100 MWh) at premises located in the Service Area.

EM is the business selling electricity under this agreement and is exempt from being an authorised Retailer under the National Energy Retail Law. EM is also exempt from the requirement to be a registered network service provider. EM's exemptions are subject to certain conditions and EM must comply with those conditions in its dealings with its customers. A copy of the exemption conditions under which EM operates is on EM's website www.enwavemascot.com.au.

Customers in the Service Area have the right to purchase electricity from a Retailer of their choice. Customers who are proposing to transfer to a Retailer should contact EM about the steps required for the Customer's supply point to be registered to the Retailer.

PART 1 CONTRACT DETAILS

1 Parties

EM	Name	Enwave Mascot Pty Ltd
	ABN	22 100 209 354
	Address	Level 22, 135 King Street Sydney NSW 2000
	Service Area	
	Phone	
	Authorised representative	
	Email	
Customer	Name	
	ABN	
	Address	
	Phone	
	Authorised representative	
	Email	

2 Supply details

Premises/Service Area	Address	
	EM Meter Number	
Term	Start Date	
	Expiry Date	
Demand	Estimated Annual Volume (MWh pa)	
	Specified Percentage Change in Estimated Annual Volume	
	Maximum Demand (kW)	

3 Invoicing and payment

Invoices	Email address for invoices	
	Attention	
Payments	Payment method	
	EM's account details	
Credit support	Required for Start Date	Yes/No
	Amount	

4 Charges

4.1 Pricing details

Item	Application	Amount
Energy Rates	Peak Rate (Peak Periods)	[amount] c/kWh
	Shoulder Rate (Shoulder Periods)	[amount] c/kWh
	Off Peak Rate (Off Peak Periods)	[amount] c/kWh
LREC Rate	All periods	
SRES Price	From [date] to [date]	
	From [date] to [date]	
ESC Rate	All periods	[amount] c/kWh
Metering Charges	From [date] to [date]	
Market Charges	From [date] to [date]	
Network Charges	From [date] to [date]	

4.2 Notes

- (a) All rates are GST exclusive.
- (b) All Energy Rates, ESC Rates and LREC Rates are in c/kWh.
- (c) Unless the LREC Rate is specified to be fixed, EM may vary the LREC Rate from time to time based on the obligations of liable entities under the REC Act and the market price of large-scale generation certificates created under the REC Act.
- (d) The SRES Rate, in cents/kWh and GST exclusive, is the SRES Price multiplied by the small-scale technology percentage set under the REC Act.
- (e) The Metering Charges are in \$/meter/annum.
- (f) CPI Additional charges may be payable in accordance with clause 5, to compensate for the effect of an Increased Costs Event.
- (g) All rates are subject to annual escalation by 100% of the percentage change in CPI using the CPI published for the quarter ending immediately before the Start Date and the CPI published for the quarter ending immediately before the anniversary of the Start Date.

- (h) **Peak Period** means 7 am – 9 am and 5 pm – 8 pm (AEST), every day except Saturdays, Sundays and public holidays in New South Wales. Show holidays are deemed not to be public holidays.
- (i) **Shoulder Period** means 9 am – 5 pm and 8 pm – 10 pm (AEST) every day except Saturdays, Sundays and public holidays in New South Wales. Show holidays are deemed not to be public holidays.
- (j) **Off Peak Period** means all times outside Peak and Shoulder Periods.

5 Embedded Network

Customers at Mascot are part of an Embedded Network. Therefore, they should not be charged by their Retailer (or EM) the pass-through Ausgrid network charges, as these Ausgrid charges are not applicable to customers on Embedded Networks. However, EM will be charged by Ausgrid for network charges on the total consumption of electricity by all customers at the Service Area.

As a result, EM will charge the Customer the Network Charges for being on the Embedded Network, and these charges will be exactly the same as if they would have been from Ausgrid. This is called shadow pricing as defined in the Australian Energy Regulator Network Exemption Guidelines and ensures the Customer is no worse off by being on an Embedded Network.

If the Customer decides to purchase electricity from a Retailer other than the EM, this agreement will continue to apply in respect the Network Charges.

PART 2 EXECUTION

By signing and returning this document to EM, the Customer enters into a binding network supply contract, and if selected by you the customer a retail electricity contract with EM comprising the Contract Details in Part 1 and the Terms and Conditions in Part 3.

This agreement is signed for and on behalf of the Customer by its duly authorised representative:

.....
Signature of authorised representative of the Customer

.....
Full name (in capitals)

.....
Position (in capitals)

.....
Date

PART 3 TERMS AND CONDITIONS

1 This agreement

- 1.1 This agreement is between the Customer described in the Contract Details and EM as described in the Contract Details. The Contract Details forms part of this agreement.
- 1.2 This agreement sets out the terms on which EM delivers and sells electricity to the Customer at the Premises. The Premises may comprise more than one site. In this agreement, a reference to the Premises includes a reference to any part of the Premises.
- 1.3 Whether the Customer elects to take Electricity Supply at the Premises from a Retailer or EM this agreement will always be in place between the Customer and EM for the provision of Network Services.
- 1.4 In the case the Customer purchases Electricity Supply from EM this agreement will outline the Customer's obligations for both Energy Charges and Network Charges.
- 1.5 In the case the Customer purchases Electricity Supply from a Retailer of its choice this agreement will outline the Customer obligations for Network Services and their associated Network Charges.
- 1.6 EM is responsible under this agreement for physically connecting or delivering electricity to the Customer via the Embedded Network. The Customer is responsible for taking precautions to minimise the risk of loss or damage which may result from poor quality or reliability of electricity supply.
- 1.7 Each of EM and the Customer must comply with all Energy Laws applicable to the sale and use of electricity at the Premises.
- 1.8 EM may appoint an agent to perform obligations of EM under this agreement.

2 Sale and purchase

- 2.1 Should the Customer elect to purchase Electricity Supply from EM then EM agrees to sell to the Customer, and the Customer agrees to buy and pay Energy Charges and Network Charges associated with all electricity delivered and taken at the Premises during the Term on the terms of this agreement. Should the Customer elect to purchase Electricity Supply from a Retailer of its choice then the Energy Charges under this contract will not apply, however the Network Charges will continue under this Contract.
- 2.2 If the Customer elects to purchase Electricity Supply from EM under this Contract the Customer must not buy electricity for the Premises from any other person during the Term.
- 2.3 If EM is not already selling electricity to the Customer at the Premises on the Start Date, EM will arrange for the transfer of the Premises to EM from the current Retailer. The transfer may involve changes to Metering Equipment at the Premises and the disclosure of information relating to the supply of electricity at the Premises. The Customer consents to EM being provided with any consumption history or data required for the transfer.
- 2.4 EM's obligation to sell electricity to the Customer under this agreement will not start until any required transfer is complete, appropriate Metering Equipment has been installed, the Customer has provided the Credit Support (if any) specified for it in the Contract Details and the Customer has satisfied any other preconditions notified to the Customer by EM.

3 Using electricity at the Premises

- 3.1 The Maximum Demand for the Premises is in the Contract Details. Upon request, the Customer must give EM an annual electricity

consumption forecast for the Premises.

- 3.2 The Customer must tell EM promptly if it expects that the aggregate annual electricity consumption at the Premises will vary from the Estimated Annual Volume by more than the Specified Percentage (up or down).
- 3.3 The Customer must not, except as required by law, enter into any arrangements for the curtailment or artificial or automatic management of the rate of consumption of electricity at the Premises without EM's prior consent. EM must not unreasonably withhold or delay consent, but may make its consent subject to reasonable terms. The Customer must not connect or allow to be connected directly or indirectly at the Premises any form of electricity generating equipment (such as battery storage equipment, solar power, or engine driven generator equipment) without the prior express written consent of the EM.
- 3.4 EM may by notice to the Customer terminate its obligation to sell electricity to the Customer under this agreement if the consumption of electricity at the Premises is less than the applicable Small Customer Threshold during any rolling 12 month period throughout the Term. If EM exercises this right it will use reasonable endeavours to offer to continue to sell electricity to the Customer at the Premises but on the terms of its then current Small Customer Contract that applies to the sale of electricity to customers consuming less than 100 MWh/annum. The Customer is under no obligation to accept any such offer from EM.
- 3.5 The Customer must give EM at least 20 Business Days' notice if the Customer intends to vacate the Premises or sell or otherwise part with possession of the Premises.

4 Sale of electricity after the end of the Term

- 4.1 EM will continue to sell to the Customer electricity taken at the

Premises after the end of the Term unless the Customer and EM have agreed to replace this agreement. If the Premises have been transferred to a Retailer this agreement is still in force for the provision of Network Services and their associated Network Charges. Where EM is selling electricity under this clause, the applicable Energy Rates will be those notified by EM to the Customer from time to time.

- 4.2 EM may at any time give the Customer at least 15 Business Days' notice that it will cease selling the Customer electricity under this clause and may then arrange for disconnection of the Premises.

5 Charges

- 5.1 The Customer must pay EM the Energy Charges for all electricity taken at the Premises, the Network Charges and all other charges specified in the Contract Details or elsewhere in this agreement.
- 5.2 EM will determine the amount of electricity taken at the Premises using the metering data recorded by the Metering Equipment.
- 5.3 If for any reason the metering data is not available or is incorrect or inaccurate, including where safe access to the Metering Equipment is denied or the Metering Equipment is faulty, EM will estimate the amount of electricity taken at the Premises using generally accepted methods of estimation and subject to Energy Law.
- 5.4 If an Increased Costs Event occurs after the date of EM's initial offer to the Customer, the Customer must also pay to EM an additional charge to compensate EM for the financial effect on EM or any Related Body Corporate of EM arising from or in connection with the Increased Costs Event.
- 5.5 Any additional charge for an Increased Costs Event is to be determined on a cost pass through basis or a reasonable approximation of a cost pass through basis. EM may use reasonable methods of

estimation, forecasting, allocation or attribution to determine the additional charge. Where the financial effect of an Increased Costs Event is indirect, EM must apportion the financial effect fairly among all of EM's customers.

- 5.6 If requested, EM must provide to the Customer all reasonable information necessary to justify any additional charge.
- 5.7 If the Increased Costs Event is the introduction of an emissions trading scheme or a carbon tax, EM may calculate the additional charges by reference to the average carbon intensity of the electricity generation sector and the market price for emissions units or permits (as reasonably determined by EM) or the rate of the carbon tax, as relevant, (in \$/tonne of CO2-e), at the relevant time.
- 5.8 The Network Charges are based on those published by Ausgrid hence the Network Charges are varied by the EM as and when they are varied by Ausgrid.

6 GST

- 6.1 Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this agreement are exclusive of GST (if any).
- 6.2 If a party (**the supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this agreement, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (**GST gross-up**).
- 6.3 If a GST gross-up is payable, then the supplier must give the recipient a tax invoice for the supply. Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:
 - (a) if any monetary consideration is payable for the supply, at the same time and in the same

manner as such monetary consideration; or

- (b) if no monetary consideration is payable for the supply, within 10 Business Days after the day on which the tax invoice is given.

- 6.4 If any payment to be made to a party under or in connection with this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before the GST gross up is made.
- 6.5 If an adjustment event has occurred in respect of a supply made under or in connection with this agreement, any party that becomes aware of the occurrence of that adjustment event must notify the other party as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST (or part thereof), is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.

- 6.6 In this clause 6, terms which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act and a reference to a payment includes any payment of money and any form of consideration other than payment of money.

7 Billing and payment

- 7.1 EM will invoice the Customer at the end of each Billing Period for the charges payable by the Customer under this agreement. The invoice may include unbilled charges incurred in respect of a previous Billing Period, adjustments to any charges which were billed or should have been billed in a previous Billing Period and

estimated amounts, where information is not yet available to determine the final amount.

- 7.2 EM will send invoices by mail or email. The Customer must at all times during the Term keep EM informed of a current email address to which EM can send invoices.
- 7.3 EM may adjust or replace an invoice (whether paid or not) and send it to the Customer if there is an error in an invoice or if EM receives information relevant to an invoice after sending it to the Customer.
- 7.4 The Customer must pay invoiced charges by the Due Date. All payments must be free of any set off or deduction and must be made using a payment method in the invoice or as set out in the Contract Details.
- 7.5 If invoiced amounts are not paid in full by the Due Date, then except to the extent that the Customer has a right to part-pay the invoiced amounts under this clause, EM may charge interest on the unpaid amount at the Default Interest Rate. Interest will accrue on a daily basis from the Due Date until payment is received in full and will be compounded monthly.
- 7.6 EM may require the Customer to pay any reasonable costs incurred by EM in recovering any amount the Customer owes to EM or otherwise arising from the Customer's default under this agreement, such as disconnection and reconnection costs.
- 7.7 EM may charge the Customer any credit card fees EM incurs in connection with the payment of an invoice paid by credit card.
- 7.8 If the Customer disputes the amount of an invoice, the Customer must give EM notice of the amount in dispute and the reasons for the dispute. The Customer must give the notice as soon as possible and in any event before the Due Date. If a dispute about an invoice is not resolved before the Due Date, the Customer must pay EM by the Due Date the greater of the undisputed amount of

the invoice and the average of the Customer's last three invoices.

- 7.9 If it is agreed or determined that an amount in an invoice withheld from payment is required to be paid by the Customer, the Customer must pay that amount within 10 days of the agreement being reached or the determination being made. EM may charge interest on that amount at the Interest Rate. Interest will accrue on a daily basis from the initial Due Date until payment is received in full and will be compounded monthly.

8 Credit Support

- 8.1 The Customer must, upon signing this agreement, provide to EM the Credit Support identified in the Contract Details (if any).
- 8.2 EM may from time to time ask the Customer to give EM reasonable information to assist EM in its assessment of the Customer's creditworthiness. Upon request, the Customer must provide the information requested.
- 8.3 At any time, EM may require the Customer to provide Credit Support or additional Credit Support to secure the due and punctual performance of the Customer's obligations under this agreement if:
- (a) the Customer is more than 3 days late in paying any three invoices;
 - (b) the Customer is more than 3 days late in paying any two consecutive invoices;
 - (c) EM considers that the Customer, having had a satisfactory credit assessment on the Start Date, ceases to have a satisfactory credit assessment;
 - (d) any provider of Credit Support ceases to have a satisfactory credit rating or Credit Support has been used or is due to expire;

- (e) the Customer assigns, novates or otherwise transfers this agreement to another party; or
 - (f) EM is selling electricity under this agreement beyond the end of the Term or other termination.
 - 8.4 If EM requires the Customer to provide Credit Support in accordance with this agreement, the Customer must provide the Credit Support in the amount requested within seven days after EM's request.
 - 8.5 Credit Support must be in the form of an irrevocable and unconditional bank guarantee given to EM by an Australian bank. EM may agree to another form of Credit Support (such as a guarantee from a creditworthy person or returnable deposit) but has no obligation to do so.
 - 8.6 Each bank guarantee or other form of Credit Support must be on terms and conditions reasonably acceptable to EM and from a bank or other institution reasonably acceptable to EM. The amount of the Credit Support must be at least equal to EM's reasonable estimate of the total charges under this agreement in any three Billing Periods.
 - 8.7 EM may use the Credit support at any time to satisfy any outstanding obligation of the Customer to EM under this agreement. EM may retain any unused portion of any Credit Support held by it until the Customer stops buying electricity from EM. EM must then return any unused portion of the Credit Support to the Customer when all outstanding amounts owed have been paid.
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- 9 Metering**
- 9.1 EM must arrange for the installation, testing and maintenance of the Metering Equipment. Unless the installation costs are included in the Metering Charge, EM will notify the Customer of any amount the Customer must pay to EM to reimburse EM for the installation costs. EM reserves the right to appoint or change the meter reader and the metering provider.
 - 9.2 EM must arrange for the Metering Equipment to be read at appropriate intervals, and at least each month.
 - 9.3 Each party must notify the other party as soon as possible if it suspects that the Metering Equipment is or may be defective or operating inaccurately. EM must replace or repair Metering Equipment that is defective or operating inaccurately.
 - 9.4 The Customer may, at any time by notice, require EM to test the Metering Equipment and EM must arrange to have the Metering Equipment tested. EM may also arrange to have the Metering Equipment tested if it believes the Metering Equipment is defective or operating inaccurately.
 - 9.5 If testing reveals Metering Equipment is defective or operating inaccurately then EM must meet the cost of the test. Otherwise, the person requiring the test must meet the costs of the test.
 - 9.6 The Customer must:
 - (a) provide a suitable location for installing the Metering Equipment;
 - (b) arrange for any electrical work required to facilitate the installation of Metering Equipment (such as switchboard upgrades or re-wiring) to be undertaken by a licensed electrical contractor at the Customer's cost;
 - (c) allow access to the Metering Equipment at all reasonable times to any employee, agent or contractor of EM;
 - (d) ensure the proper care and custody of the Metering Equipment, not damage or interfere in any way with the Metering Equipment or permit any electricity consumption at the Premises that is not recorded by the Metering Equipment; and

- (e) where the Metering Equipment is not owned by the Customer, not mortgage, charge or otherwise deal inconsistently with the rights of the owner of that Metering Equipment.

10 Disconnection and reconnection

10.1 EM may arrange for the disconnection of the Premises:

- (a) if the Customer fails to pay an amount due for payment under this agreement and fails to remedy the breach within 7 days of a request from EM for payment;
- (b) if the Customer breaches any of its material obligations or an obligation that may impact a third party under this agreement and fails to remedy the breach within any reasonably period notified by EM;
- (c) if the Customer fails to provide Credit Support within 7 days of receipt of a request from EM under this agreement to do so;
- (d) if an Insolvency Event has occurred in respect of the Customer;
- (e) upon termination of this agreement for any reason;
- (f) in the event of Force Majeure; or
- (g) pursuant to any right or obligation at law.

10.2 Once the event leading to disconnection is remedied, the Customer may request reconnection, unless this agreement has terminated. Prior to reconnection, EM may require the Customer to pay any costs incurred by EM in arranging disconnection and reconnection.

11 Termination

11.1 Either party may terminate this agreement by notice to the other party if:

- (a) an Insolvency Event occurs in relation to the other party;
- (b) the other party breaches any of its material obligations under this agreement and the breach is not remedied within 14 days of receipt of a notice to remedy that breach; or
- (c) EM is no longer entitled to sell electricity to the Customer under an authorisation granted under Energy Law or an exemption from the obligation to hold an authorisation.

11.2 EM may terminate this agreement immediately by notice to the Customer at any time if:

- (a) the Customer's electricity consumption is likely to be below the Small Customer Threshold; or
- (b) EM has disconnected the Premises in accordance with this agreement and the event leading to disconnection continues for a period of more than 30 days.

11.3 If EM terminates this agreement in accordance with clause 11.1(a), 11.1(b) or 11.2 with respect to an act, omission or event performed by or that relates to the Customer, then the Customer must pay EM any loss, damage, cost, charge or expense suffered or incurred by EM in connection with that termination within 14 days of receipt of a request from EM to do so. Those reasonable costs may include costs and charges under Third Party Contracts. EM will take reasonable steps to endeavour to minimise any such loss damage, cost, charge or expense.

11.4 The termination or expiry of this agreement does not affect any obligation to pay charges incurred under this agreement and that obligation to pay survives termination or expiry.

11.5 Except as provided in this clause 11 or expressly provided elsewhere in this agreement, a party may not

terminate this agreement without the consent of the other party.

12 Liability

12.1 Nothing in this clause limits or excludes an obligation to pay charges or other amounts payable under this agreement.

12.2 So far as the law allows, and except as otherwise provided for in this agreement, EM has no liability to the Customer under or in connection with this agreement, whether arising in contract, tort (including negligence), under statute or on any other basis whatsoever, for any:

- (a) indirect or consequential loss, damage, cost, liability or expense;
- (b) incidental or punitive loss, damage, cost, liability or expense; or
- (c) damages for economic loss, loss of profits, loss of opportunity, loss of market, loss of contract, loss of revenue, goodwill, bargain or anticipated savings or loss or corruption of data.

12.3 So far as the law allows, to the extent that EM has any liability to the Customer (whether arising in contract, tort (including negligence), under statute or on any other basis whatsoever, that liability is limited, for all claims the Customer makes in any one calendar year in aggregate, to 10% of the aggregate Energy Charges invoiced to the Customer during the relevant calendar year.

12.4 The *Competition and Consumer Act 2010* (Cth) and other laws provide that certain conditions, consumer guarantees and rights apply to contracts with consumers (as defined in that legislation) that cannot be excluded or limited.

12.5 So far as the law allows, EM gives no condition, warranty or undertaking, and EM makes no representation to the Customer concerning the condition or suitability of the electricity

EM sells to the Customer or any other good or service provided under this agreement, or its quality, fitness for purpose or safety.

12.6 So far as the law allows, any liability EM has to the Customer for breach of a condition, guarantee, right or representation applying to this agreement that cannot be excluded but can be limited, will (at EM's option) be limited to:

- (a) providing to the Customer equivalent goods or services to those goods or services to which that breach relates; or
- (b) paying the Customer the cost of acquiring goods or services which are equivalent to the goods or services to which that breach relates.

12.7 This clause applies in addition to, and does not vary or exclude, the operation of section 120 of the National Electricity Law or section 316 of the National Energy Retail Law.

12.8 The parties agree that as between EM and the Customer:

- (a) section 120 of the National Electricity Law applies under and in relation to this agreement as if EM were a "Registered participant" within the meaning of that Law; and
- (b) section 316 of the National Energy Retail Law applies under and in relation to this agreement as if EM were a "retailer" within the meaning of that Law.

13 Force Majeure

13.1 A party is not liable to the other party for breach of this agreement if the party fails to perform an obligation under this agreement (other than an obligation to pay money) and that failure was caused by or arose as a consequence of Force Majeure affecting the party.

13.2 A party seeking to rely on a claim of Force Majeure under this clause must

promptly notify the other party when the Force Majeure occurs. EM can notify the Customer of Force Majeure through information provided on its website if the effects are widespread.

- 13.3 A party seeking to rely on a claim of Force Majeure under this clause must use reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure so that it can resume performance of its obligations under this agreement. However, neither party is required to settle an industrial dispute in any way it does not want to, nor is a party obliged to undertake any measures to overcome the effects of Force Majeure which are not commercially or economically feasible.

14 Confidentiality

- 14.1 In this clause, **Confidential Information** of a party means the terms of this agreement and any information disclosed to the other party under or in connection with this agreement about the business or affairs of the disclosing party. However, Confidential Information does not include information in the public domain other than as a result of a breach of this agreement.

- 14.2 A party must not use or disclose Confidential Information of the other party except:

- (a) in performing this agreement or exercising rights contemplated by this agreement;
- (b) to officers, employees and advisers of the party and of its Related Bodies Corporate;
- (c) where required by law or stock exchange rules; or
- (d) with the prior written consent of the other party, which is not to be unreasonably withheld or delayed.

- 14.3 The Customer consents to EM seeking and using information concerning the Customer, its Premises and the Customer's electricity consumption at the

Premises in connection with this agreement.

15 Dispute resolution

- 15.1 If any dispute or difference arises in connection with this agreement, the party requiring it to be resolved must promptly give the other party written notice identifying, and giving details of, the dispute or difference.

- 15.2 Within 10 Business Days of a party receiving a notice about a dispute or difference, or any longer period agreed by the parties, officers of the parties with authority to resolve the dispute must meet and, in good faith, attempt to resolve the dispute by negotiation.

- 15.3 If the parties are unable to reach a resolution of the dispute by negotiation within 20 Business Days of issue of the notice of dispute or difference, either party may by notice to the other bring the negotiation period to an end.

- 15.4 If the dispute or difference relates to an invoice and the negotiation period is brought to an end then either party may refer the dispute or difference for independent expert dispute resolution in accordance with the current version of the expert determination rules of the Institute of Arbitrators & Mediators Australia and:

- (a) upon the independent expert making their determination of a dispute in respect of an invoice, then the relevant amount of the invoice must be paid or refunded in accordance with clause 7.9; and
- (b) a party may appeal any decision of an independent expert in respect of an invoice, which that party considers is incorrect, to a court provided such appeal does not affect the party's obligation to comply with clause 7.9. Any payment made under clause 7.9 does not prejudice any further adjustment between the parties as a result of the court's decision.

15.5 In respect of disputes or differences relating to matters other than invoices, neither party may commence legal proceedings concerning a matter in dispute (other than for the purpose of seeking urgent injunctive or declaratory relief) unless the parties have attempted to resolve the dispute in accordance with this clause 15.

15.6 Despite the existence of a dispute or difference and any steps being taken to resolve it, each party must continue to perform its obligations under this agreement and is entitled to exercise its rights under this agreement, including termination rights.

16 Notices

16.1 A notice from a party to the other under this agreement must be in writing and sent to the relevant address or email of the party in the Contract Details or any updated address or email notified by that party.

16.2 A notice or invoice sent by mail is taken to be received on the third Business Day after mailing.

16.3 A notice or invoice sent by email is taken to be received on the day it is sent, unless sent outside business hours (being 9 am to 5 pm on a Business Day), in which case it is taken to have been received when business hours next open. A notice or invoice is taken to have been successfully transmitted by email unless the sender knew (or in the circumstances, should reasonably have known) that the transmission was not successful.

17 Assignment

17.1 Subject to clause 17.2, a party may only assign, novate or otherwise transfer this agreement with the prior written consent of the other party, which will not be unreasonably withheld or delayed or given on unreasonable conditions.

17.2 EM may assign, novate or otherwise transfer this agreement to a Related Body Corporate that holds an authorisation under Energy Law, or an

exemption from the obligation to hold an authorisation, to sell electricity to customers. The Customer must sign such documentation as EM requires the Customer to sign to facilitate such assignment, novation or transfer.

18 Interruption to Supply

18.1 EM may interrupt the supply of electricity to the Premises including for a planned interruption or where there is an unplanned interruption.

18.2 EM may make planned interruptions to the supply of electricity to the Premises for the following purposes:

(a) where there is a planned interruption by Ausgrid for the maintenance, repair or augmentation of a transmission system or a distribution system, including maintenance of Metering Equipment;

(b) for the maintenance, repair or augmentation of the EM's facilities, including maintenance of metering equipment; or

(c) for the installation of a new connection or a connection alteration to another customer.

18.3 If supply to the Customer will be affected by a planned interruption, EM will where practicable give at least 4 Business Days' notice to the Customer by mail, letterbox drop, press advertisement or other appropriate means.

18.4 EM may interrupt the supply of energy to the Premises in circumstances where it considers there to be an immediate threat of injury or material damage to any person or property including EM's facilities, including:

(a) for unplanned maintenance or repairs;

(b) for health or safety reasons;

(c) in an emergency;

(d) as required by a relevant authority or Ausgrid;

- (e) to shed demand for energy because the total demand at the relevant time exceeds the total supply available; or
 - (f) to restore supply to a customer.
- 18.5 If an unplanned interruption is made, EPC will use its best endeavours to restore energy supply to the Premises as soon as possible.
- 18.6 If requested by the Customer, EM will use its best endeavours to explain, within a reasonable time of the request, any interruption to the supply of electricity to the Premises or a supply of electricity to the Premises of a quality in breach of any relevant standards under the Energy Laws.
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- 19 Interpretation and related matters**
- 19.1 In this agreement unless the contrary intention appears:
- (a) words or expressions importing the singular include the plural and vice versa, words or expressions importing a gender include the other gender and words or expressions denoting individuals include corporations, firms, unincorporated bodies, government authorities and instrumentalities;
 - (b) if a party to this agreement is made up of more than one person, or a term is used in this agreement to refer to more than one party, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately;
 - (c) any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this agreement;
 - (d) a provision of this agreement shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement;
 - (e) a reference to this agreement or another document includes that document as amended, varied, novated, supplemented or replaced from time to time;
 - (f) a reference to legislation or a provision of legislation includes all regulations, orders or instruments issued under the legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision; and
 - (g) references to include and including are to be construed without limitation.
- 19.2 The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement, unless this agreement expressly or by implication provides otherwise.
- 19.3 A party may exercise a right under this agreement at its discretion, more than once and separately or concurrently with another right.
- 19.4 A right may only be waived by notice from the party giving the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of a party (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.
- 19.5 This agreement can only be varied by the parties by written agreement.
- 19.6 Termination or expiry of this agreement for any reason does not affect the accrued rights of the parties under it. The confidentiality obligations of the parties survive termination or expiry of this agreement, as do any other clauses that are intended to survive the

termination or expiry of this agreement.

- 19.7 The law of New South Wales applies to this agreement. The parties submit to the jurisdiction of the courts of New South Wales, including any courts having appellate jurisdiction from those courts.
- 19.8 If a provision of this agreement would, but for this clause, be unenforceable, the provision will be read down to the extent necessary to avoid that result. If the provision cannot be read down, it will be severed. Reading down and severance do not affect the validity and enforceability of the remainder of this agreement. This clause has no effect if its operation alters the basic nature of this document or is contrary to public policy.
- 19.9 This agreement may be executed in any number of counterparts which together will constitute the one instrument but is not effective until each party has executed at least one counterpart. Each party consents to the exchange of counterparts by facsimile or by attachment to email.

20 Glossary

In this agreement unless the contrary intention appears:

AEMO means the entity that operates the National Electricity Market from time to time.

Billing Period means each calendar month, billed in arrears.

Business Day means a day other than a Saturday or Sunday or a public holiday in New South Wales.

Contract Details means Part 1 of this agreement.

CPI means the Consumer Price Index (All Groups), Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics. If that index is no longer published then CPI will be a replacement index nominated by EM, acting reasonably.

Credit Support means the credit support set out in the Contract Details or required by EM in accordance with clause 8.3 of this agreement.

Customer means the person described as such in the Contract Details.

Default Interest Rate means 2% per annum plus the Interest Rate.

Due Date, in relation to an invoice, means 14 days from the date the invoice is issued.

Electricity Supply means the supply of electricity to the customer excluding Network Services.

Energy Charges means the metered consumption of electricity at all connection points for the Premises, adjusted by the Loss Factors, and multiplied by the applicable Energy Rates for the relevant period.

Energy Law means any legislation, guideline, licence condition or other instrument which governs or affects the electricity industry generally, including the purchase or sale of electricity, electricity networks, the reduction or minimisation of emissions of greenhouse gases and energy efficiency.

Energy Rates means the rates in the Contract Details, as reviewed in accordance with this agreement from time to time. The Energy Rates for electricity sold under this agreement after the end of the Term will be notified by EM from time to time.

Embedded Network means the private electricity network that connects the building to Ausgrid's distribution network and over which electricity is supplied to customers within the building.

ESC Charges means the metered consumption of electricity at all connection points for the Premises, adjusted by the Loss Factors and multiplied by the applicable ESC Rate for the relevant period.

ESC Rate means the rate specified in the Contract Details, as reviewed in accordance with this agreement from time to time.

Estimated Annual Volume is set out in the Contract Details.

Expiry Date is set out in the Contract Details.

Force Majeure means in relation to a party, any event or circumstance outside that party's reasonable control, including:

- (a) an act of God, insurrection, industrial disputes of any kind, epidemics or any other risks to health or safety;
- (b) the order of any court or the award of any arbitrator, any order act or omission of government or other regulatory body or any inability or delay in obtaining governmental quasi-governmental or regulatory approvals, consents, permits, licences or authorities; or
- (c) any order, direction, act or omission of a third party (including a Network Operator or AEMO).

GST has the meaning given to the term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Increased Costs Event means the imposition of, change in (or change in application or official interpretation of) or removal of a law (including any legislation, statute, act, rule, code, order, regulation, procedure, direction, tariff or condition or requirement of any licence or authority) which has the effect, directly or indirectly, of increasing or decreasing EM's costs in connection with selling or supplying electricity. An Increased Costs Event includes:

- (a) an increase in the number of regional reference nodes which directly or indirectly leads to an increase in the wholesale cost of electricity (or the amounts

payable by EM under electricity hedging contracts);

- (b) any changes to the REC Act;
- (c) the imposition of a new Tax or a change to the basis for imposing or calculating any Tax; and
- (d) the introduction of, or a change to an Energy Law or a change to the interpretation or effect of an Energy Law, or a person becoming entitled pursuant to an Energy Law to levy or recover any charges, costs or other imposts on EM or a Related Body Corporate of EM.

Insolvency Event means, in relation to a person:

- (a) an administrator, receiver or similar person being appointed to the person or all or a material part of its assets;
- (b) a liquidator or provisional liquidator is appointed in respect of the person;
- (c) the person suspending payment of all or a substantial part of its debts in circumstances where it is insolvent, admitting in writing that it is insolvent or unable to pay its debts as they become due and payable, being declared by any court of competent jurisdiction to be or being deemed under any applicable laws to be insolvent or, becoming otherwise insolvent; or
- (d) a court on the application of another person being entitled or required to presume that the person is insolvent in circumstances where the person is taking no steps to challenge that presumption.

Interest Rate means the corporate overdraft reference rate (from time to time) quoted by the Commonwealth Bank of Australia. If that reference

rate does not exist, it will be another similar rate nominated by EM.

Loss Factors means the transmission loss factors and distribution loss factors applicable to electricity delivered to the LV Connection Point, as if it were directly connected to the local electricity distribution network.

LREC Charges means the metered consumption of electricity at all connection points for the Premises, adjusted by the Loss Factors, multiplied by the LREC Rate applicable in the relevant period.

LREC Rate for a period means the rate specified in the Contract Details for that period, as varied by EM from time to time based on obligations of liable entities under the REC Act and the market price of large-scale generation certificates created under the REC Act.

LV Connection Point means a connection point through which electricity required at the Premises from time to time is or may be delivered to the Premises, as if it were directly connected to the local electricity distribution network and as if it were a connection point that has been assigned to a distribution tariff of the local Network Operator applicable to low voltage (400V or below) supplies.

Market Charges means a charge equivalent to the Customer's proportion on a cost pass through basis of the fees and charges that would be payable by a Retailer to AEMO or any other relevant regulatory authority associated with the sale of electricity for the Premises at the LV Connection Point, including participants fees, ancillary services charges and other charges associated with the operation of the national electricity market. The Market Charges will be determined by EM on a fair and reasonable basis.

Meter means a remotely read interval meter that complies with the relevant provisions of the National Electricity

Rules made under the National Electricity Law.

Metering Charges means the fee per meter per annum set out in the Contract Details.

Metering Equipment means equipment installed (or to be installed) to measure, record and forward the data relating to the amount of electricity taken at the Premises and includes the metering current transformers, the voltage transformers and telemetry equipment.

Network Charges means a charge equivalent to the charges that would be levied from time to time by the local Network Operator in relation to the delivery of electricity for the Premises at the LV Connection Point (whether payable under a connection agreement, use of system agreement, coordination agreement or otherwise). The Network Charges includes the cost of any jurisdictional schemes (as defined in the National Electricity Rules) associated with the Customer's consumption of electricity at the Premises that are passed on to EM.

Network Operator means the operator of any electricity network (including facilities supporting the operation of that network).

Network Services means the physical delivery of electricity to the Premises via the Embedded Network which in turn is connected to Ausgrid.

Premises means each of the sites identified in the Contract Details and where the context requires it, all of those sites.

REC Act means the *Renewable Energy (Electricity) Act 2000* (Cth) and any associated legislation.

Related Body Corporate has the meaning defined in section 9 of the *Corporations Act 2001* (Cth).

Retailer means a person holding an authorisation under Energy Law to sell electricity.

Service Area means the area within which EM sells electricity under this agreement and is specified in the Contract Details.

Small Customer Threshold means 100 MWh in any 12 month rolling period.

Specified Percentage is set out in the Contract Details.

SRES Charges means the metered consumption of electricity at all connection points for the Premises, adjusted by the Loss Factors, multiplied by the SRES Rate for the relevant calendar year.

SRES Price is set out in the Contract Details.

SRES Rate for a calendar year is the SRES Price for the calendar year set out in the Contract Details multiplied by the small-scale technology percentage under the REC Act for that calendar year.

Start Date is set out in the Contract Details.

Taxes means any taxes, levies, imposts, deductions, charges, withholdings or duties, other than income tax, fines or penalties.

Term means the period from the Start Date to the Termination Date.

Termination Date means:

- (a) the earlier of the Expiry Date and the date this agreement terminates under clause 11; or
- (b) where clause 4 applies, the date EM ceases selling electricity to the Customer under this agreement at the Premises.

Third Party Contract means a contract between EM and a third party under which EM procures electricity for on-sale or related products or services including environmental certificates required in connection with the sale of electricity.