

Utilities (Electricity Network Use of System Code) Determination 2010 (No 1)*

Disallowable instrument DI2010– 300

made under the

Utilities Act 2000, s 59 (Determined codes) and s 63 (Public access)

1 Name of instrument

This instrument is the *Utilities (Electricity Network Use of System Code) Determination 2010 (No 1)*.

2 Commencement

This instrument commences on the day after it is notified.

3 Revocation of code

DI2007-212, the Utilities (Electricity Network Use of System Code) Approval 2007 (No 1) is revoked.

4 Determination of code

The Commission determines the Electricity Network Use of System Code set out in the attachment.

5 Public access to documents

Copies of the Electricity Network Use of System Code are available for inspection by members of the public between 9:00 am and 5:00 pm, Monday to Friday, at the Commission's offices at Level 2, 12 Moore Street, Civic ACT, and on the Commission's website (www.icrc.act.gov.au). Copies of these documents can be made at the Commission's offices. Electronic copies are available on request. No charge will apply.

Paul Baxter
Senior Commissioner
Independent Competition and Regulatory Commission

14 December 2010

*Name amended under Legislation Act, s 60

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



ICRC

Independent Competition and Regulatory Commission

ELECTRICITY NETWORK USE OF SYSTEM CODE

DECEMBER 2010

Contents

1	Application and purpose of this Code	1
1.1	Application	1
1.2	Purpose	1
2	Dictionary	1
2.1	Dictionary attached	1
3	Obligation to prepare a Negotiated Use of System Agreement	1
3.1	Electricity distributor and electricity supplier to agree a use of system agreement	1
3.2	Parties to negotiate in good faith	1
3.3	Minimum terms of use of system agreement	1
3.4	Dispute in relation to the terms of use of system agreement	2
4	APPLICATION OF THE DEFAULT USE OF SYSTEM AGREEMENT	2
4.1	Default Use of System Agreement to apply	2
5	TERMINATION OR SUSPENSION OF THE DEFAULT USE OF SYSTEM AGREEMENT	2
5.1	Termination	2
5.2	Suspension	3
5.3	Retailer of last resort	3
5.4	Effect of termination or suspension of the Default Use of System Agreement	3
5.5	Survival of provisions on termination of the Default Use of System Agreement	3
5.6	When the Default Use of System Agreement will not apply	3
6	NEGOTIATED USE OF SYSTEM AGREEMENT	4
6.1	Expiry or termination does not affect any rights accrued	4
6.2	Termination of a Negotiated Use of System Agreement is a “trigger event”	4
6.3	Dispute resolution process	4
7	CHANGES TO REGULATORY FRAMEWORK	4
7.1	Submission to ICRC	4
7.2	ICRC to consider	4
	Dictionary	6
	Schedule 1: Matters that must be dealt with in the Use of System Agreement	8
	Schedule 2: Code Amendment History	9
	Annexure A: Default Use of System Agreement	A-1

1 Application and purpose of this Code

1.1 Application

This Code applies to Electricity Distributors and to Electricity Suppliers.

1.2 Purpose

The purpose of this Code is to:

- (a) impose an obligation on an **Electricity Distributor** and an **Electricity Supplier** (unless they are the same Person) to use best endeavours to enter into a **Negotiated Use of System Agreement**; and
- (b) deem a default **Use of System Agreement** to apply between that **Electricity Distributor** and **Electricity Supplier** in the absence of a **Negotiated Use of System Agreement** between an **Electricity Distributor** and an **Electricity Supplier**.

2 Dictionary

2.1 Dictionary attached

The dictionary at the end of this **Electricity Network Use of System Code** is part of this Code.

3 Obligation to prepare a Negotiated Use of System Agreement

3.1 Electricity distributor and electricity supplier to agree a use of system agreement

An **Electricity Distributor** and an **Electricity Supplier** must use best endeavours to enter into a **Negotiated Use of Systems Agreement**.

3.2 Parties to negotiate in good faith

An **Electricity Distributor** and an **Electricity Supplier** must negotiate the terms of that **Negotiated Use of System Agreement** in good faith and on reasonable terms.

3.3 Minimum terms of use of system agreement

At a minimum, an **Electricity Distributor** must offer terms in the **Negotiated Use of System Agreement** that require it to distribute electricity on terms that comply with:

- (a) the requirements of the **National Electricity Rules**; and
- (b) the standards set out in the **Electricity Distribution (Supply Standards) Code**, unless otherwise agreed with the **Customer** in a **Negotiated Customer Contract**.

The **Negotiated Use of System Agreement** must deal with, but need not be limited to, those matters listed at Schedule 1 to this Code.

3.4 Dispute in relation to the terms of use of system agreement

Any dispute in relation to the terms of a **Negotiated Use of System Agreement** shall be dealt with pursuant to the provisions of Chapter 8 of the **National Electricity Rules**.

4 APPLICATION OF THE DEFAULT USE OF SYSTEM AGREEMENT

4.1 Default Use of System Agreement to apply

Unless and until an **Electricity Distributor** and an **Electricity Supplier** have executed a **Negotiated Use of System Agreement**, the **Default Use of System Agreement** set out in Annexure 1 applies (subject to paragraph 5.6) between those parties from the later of:

- (a) in the case of a newly licensed **Electricity Supplier**, from the date the **Electricity Supplier** first becomes **Financially Responsible** for an electricity **Customer's Connection Point**;
- (b) in the case of an **Electricity Supplier** who already holds a licence to supply electricity in the **Territory** but has not yet executed a **Negotiated Use of System Agreement**, from the date of this Code variation;
- (c) in the case of the **Default Use of System Agreement** being terminated under paragraph 5.1, and the circumstances giving rise to termination are remedied, from the date the **Electricity Supplier** again becomes **Financially Responsible** for an electricity **Customer's Connection Point**; and
- (d) expiry or termination of a **Negotiated Use of System Agreement**.

5 TERMINATION OR SUSPENSION OF THE DEFAULT USE OF SYSTEM AGREEMENT

5.1 Termination

A **Default Use of System Agreement** terminates:

- (a) if the:
 - (i) **Electricity Distributor** ceases to hold its registration with **AEMO** as a network service provider (distribution); or
 - (ii) **Electricity Supplier** ceases to hold its registration with **AEMO** as a market participant,

effective immediately; or

- (b) under applicable **Electricity Law**, the **Electricity Distributor** ceases to be obliged to provide services to electricity **Customers** generally or to electricity **Customers** of the **Electricity Supplier**, and the **Electricity Distributor** serves a notice of termination on the **Electricity Supplier**, effective from the date in the notice given by the **Electricity Distributor** under this paragraph 5.1(b).

5.2 Suspension

A **Default Use of System Agreement** is suspended, effective immediately, (with the exception of clauses 10, 13, 14 and 16, which continue to apply) if a party's registration with **AEMO** is suspended. A **Default Use of System Agreement** will cease to be suspended once that party's registration with **AEMO** is no longer suspended.

5.3 Retailer of last resort

It is intended that the **Retailer of Last Resort Guidelines** and the provisions of the **National Electricity Rules** will operate to ensure that **Customers** of an **Electricity Supplier** whose registration with **AEMO** has been terminated or suspended will be transferred immediately to the **Electricity Supplier** who is the retailer of last resort in the **Territory**.

5.4 Effect of termination or suspension of the Default Use of System Agreement

Suspension or termination of a **Default Use of System Agreement** does not affect any rights of either party that have accrued prior to such suspension or termination.

5.5 Survival of provisions on termination of the Default Use of System Agreement

Clauses 13 (Limitation of Liability), 14 (Confidentiality and Privacy) and 16 (Dispute Resolution) of the **Default Use of System Agreement** survive the termination of the **Default Use of System Agreement** under paragraph 5.1.

5.6 When the Default Use of System Agreement will not apply

Notwithstanding paragraph 4.1, the **Default Use of System Agreement** will not apply where a **Negotiated Use of System Agreement** is terminated because either:

- (a) an **Electricity Distributor** ceases to hold its registration with **AEMO** as a network service provider (distribution) or an **Electricity Supplier** ceases to hold its registration with **AEMO** as a market participant; or
- (b) under applicable **Electricity Law**, the **Electricity Distributor** ceases to be obliged to provide services to electricity **Customers** generally or to electricity **Customers** of the **Electricity Supplier**.

6 NEGOTIATED USE OF SYSTEM AGREEMENT

6.1 Expiry or termination does not affect any rights accrued

For the avoidance of doubt, the rights accrued by a party under a **Negotiated Use of System Agreement** that has expired or terminated will continue in accordance with its terms, despite any **Default Use of System Agreement** subsequently applying between the parties due to the operation of this Code. Nothing in this Code affects the provisions of a **Negotiated Use of System Agreement** that expressly or by their nature survive expiration or termination of that agreement (as applicable).

6.2 Termination of a Negotiated Use of System Agreement is a “trigger event”

If the **Negotiated Use of System Agreement** has been terminated then this is deemed to be a “Trigger Event” for the purpose of clause 10 (Credit Support) of the **Default Use of System Agreement** that then applies to the parties by virtue of clause 4.1 (unless a **Default Use of System Agreement** does not apply by virtue of clause 5.6).

6.3 Dispute resolution process

Without limiting paragraph 6.1, in the event of either party giving the other a notice of dispute under a **Negotiated Use of System Agreement**, the dispute resolution procedure set out in that **Negotiated Use of System Agreement** will survive termination and continue to apply for that dispute, notwithstanding that a **Default Use of System Agreement** is deemed to apply between the parties.

7 CHANGES TO REGULATORY FRAMEWORK

7.1 Submission to ICRC

Where there are changes to the regulatory framework or to **Electricity Law**, and a party believes that any term of the **Default Use of System Agreement** is no longer appropriate, a party may make a submission to the **ICRC** (which must include reasons in support of its submission) requesting the **Default Use of System Agreement** be:

- (a) amended to reflect the changes in the regulatory framework or **Electricity Law**; or
- (b) revoked and/or replaced.

7.2 ICRC to consider

The **ICRC** will consider any submission made under paragraph 7.1, and may in its absolute discretion:

- (a) consult with any parties (including third parties) that may have an interest in or be affected by any amendment, revocation or replacement of the **Default Use of System Agreement**; and

- (b) amend, revoke or replace the **Default Use of System Agreement** as it considers appropriate.

If the **ICRC** amends, revokes or replaces the **Default Use of System Agreement** under this paragraph 7, the **ICRC**:

- (a) must give the **Electricity Distributor** and **Electricity Suppliers** 28 days notice of the amendments, revocation or replacement, prior to the amendments, revocation or replacement taking effect; and
- (b) may publish and implement guidelines for transitional arrangements where appropriate, to assist the **Electricity Distributor** and **Electricity Suppliers** to move to a new arrangement.

Dictionary

- | | | |
|------|--|---|
| (1) | ACAT | means the ACT Civil and Administrative Tribunal established under the <i>ACT Civil and Administrative Tribunal Act 2008</i> (ACT). |
| (2) | Act | means the <i>Utilities Act 2000</i> . |
| (3) | AEMO | has the meaning given in the National Electricity Rules. |
| (4) | Connection Point | has the meaning given in the National Electricity Rules. |
| (5) | Customer | has the meaning given by the Act. |
| (6) | Default Use of System Agreement | means the Use of System Agreement, which applies to an Electricity Distributor and an Electricity Supplier by virtue of paragraph 4.1. |
| (7) | Electricity Distribution (Supply Standards) Code | means the Electricity Distribution (Supply Standards) Code approved by the Minister as a Technical Code under the Act. |
| (8) | Electricity Distributor | means a Person who holds a Utility Services Licence for the distribution of electricity. |
| (9) | Electricity Law | means the Act, National Electricity Law, National Electricity Rules, any Industry Codes, any Technical Codes, a Utility Services Licence and any other statute, regulation, ordinance, code, licence or other law (including the common law), whether state or federal, including any lawfully binding and relevant determination, decree, edict, declaration, ruling, order, procedure or other similar pronouncement applying to the Electricity Distributor or an Electricity Supplier (as applicable) validly issued by any the Commonwealth of Australia, any Australian State or Territory or any local government, and any minister, department, statutory authority, corporation or agency (including the ICRC, the ACAT or AEMO) having jurisdiction and authority over a party. |
| (10) | Electricity Network Use of System Code | means the Electricity Network Use of System Code approved by ICRC as an Industry Code under the Act. |
| (11) | Electricity Supplier | means a Person who holds a Utility Services Licence for the supply of electricity. |
| (12) | Financially Responsible | has the meaning given in the National Electricity Rules. |
| (13) | Industry Code | means a code approved or determined by ICRC under Part 4 of the Act. |
| (14) | ICRC | means the Independent Competition and Regulatory Commission established under section 5 of the <i>Independent Competition and Regulatory Commission Act 1997</i> . |
| (15) | Minister | means the Minister responsible for administering Part 4 of the Act. |

- | | | |
|------|------------------------------------|--|
| (16) | National Electricity Law | means the National Electricity Law agreed to be enacted by New South Wales, Victoria, South Australia, Queensland and the Territory pursuant to an agreement made on 9 May 1996 being the schedule (as amended from time to time) to the National Electricity Act 1996 ((South Australia). |
| (17) | National Electricity Rules | means the code of conduct or rules governing the national electricity market approved in accordance with the National Electricity Law. |
| (18) | Negotiated Customer Contract | means the contract between the Electricity Distributor and a Customer for the provision by the Electricity Distributor of utility services under Division 6.3 of the Act, on terms agreed by the parties, other than the terms of a standard customer contract between the parties which would apply by default under Division 6.2 of the Act as approved or determined from time to time by the ICRC. |
| (19) | Negotiated Use of System Agreement | means a Use of System Agreement entered into between the Electricity Distributor and an Electricity Supplier on terms other than the Default Use of System Agreement. |
| (20) | Person | includes a natural person, a firm, an unincorporated association or a body corporate. |
| (21) | Technical Code | means a code approved or determined by the Minister under Part 5 of the Act. |
| (22) | Territory | means the Australian Capital Territory. |
| (23) | Use of System Agreement | means an agreement describing how the parties will co-ordinate the provision of their respective services to customers in the ACT, and manage their relationship with each other. |
| (24) | Utility | means a Person who holds a Utility Services Licence. |
| (25) | Utility Services Licence | means a licence granted to a Utility by ICRC under the Act. |

Schedule 1: Matters that must be dealt with in the Use of System Agreement

- Network Use of System and connection services to be provided
- record keeping procedures
- the procedures for the disconnection of a customer
- Network Use of System charges
- billing and payment
- credit support
- termination of the agreement
- force majeure events
- limitation of liability
- confidentiality
- representations and warranties

Schedule 2: Code Amendment History

The Electricity Network Use of System Code was first determined on 21 December 2000, under the Utilities (Industry Codes) Determination 2000 (DI2000-368). The Code has been varied by the following instruments, which are available on the ACT Legislation Register (<http://www.legislation.act.gov.au/a/2000-65/di.asp>):

Instrument name and number	Date of effect	Comment
Utilities (Electricity Network Use of System Code) (Industry Code) Approval 2007 (No 1) DI2007-212	Effective from 1 October 2007	Revoked the Code determined in 2000 and approved a new Code to provide for a default Use of System Agreement.
Utilities (Electricity Network Use of System Code) Determination 2010 DI2010-300	Effective from	Revoked the Code approved in 2007 and determined an updated Code that, in addition, corrected errors in the assembly and formatting of DI2007-212.

Annexure A: Default Use of System Agreement

Default Network Use of System Agreement

ACTEW DISTRIBUTION LIMITED and JEMENA NETWORKS (ACT) PTY LIMITED,
trading as ActewAGL Distribution

("ActewAGL")

AND

("Retailer")

Contents: Default Network Use of System Agreement

	Parties	A-5
	Recitals	A-5
1	Introduction	A-5
	Objectives	A-5
	Definitions	A-5
	Rules of interpretation	A-5
	Services do not include electricity supply	A-5
	Network enquiries	A-6
	New South Wales customers	A-6
	National B2B protocols and procedures	A-6
2	Term	A-6
3	Customer relationship	A-6
	Retrospective application in relation to existing customers	A-6
	Record keeping	A-7
4	Services	A-7
	Provision of services	A-7
	Retailer to be charged	A-7
	Negotiation of connection contract	A-8
	Duration of services	A-8
5	Quality and frequency of electricity conveyed	A-8
6	Theft of electricity	A-9
7	Disconnection and reconnection of a customer's premises	A-9
	Disconnection at Retailer's request	A-9
	ActewAGL's right to initiate disconnection	A-11
	Notification of the Retailer	A-11
	Reconnection	A-11
8	Charges	A-12
	Network price list	A-12
	Calculation of charges	A-12
	Retailer to pay government taxes, duties and levies	A-12
	GST	A-12
	Nomination of tariff	A-13
9	Billing and payment	A-14
	Invoices	A-14

	Payment of invoices	A-14
	Disputed invoices	A-15
	No set-off	A-15
	Adjustment of charges	A-15
	Timing of adjustments	A-16
10	Credit support	A-16
	What is credit support?	A-16
	ActewAGL may require credit support to be given	A-17
	Amount of credit support	A-18
	Use of credit support	A-18
	Request for release of credit support	A-18
11	Termination and suspension	A-18
	Termination	A-18
	Suspension	A-19
	General	A-19
12	Force majeure	A-19
13	Limitation of liability	A-19
	Terms implied by statute	A-19
	Exclusion of other implied terms	A-20
	Limitation of liability for loss or damage	A-20
14	Confidentiality and privacy	A-21
	Limitation on disclosure	A-21
	Privacy	A-21
	Relationship with confidentiality provisions	A-22
15	Representations and warranties	A-22
	Retailer's warranties	A-22
	ActewAGL's warranties	A-22
	Date warranties are given	A-22
16	Dispute resolution	A-22
	Obligations not suspended	A-23
	Disputes generally	A-23
17	Notices	A-23
18	Miscellaneous	A-23
	Waiver	A-23
	Amendment	A-24
	Assignment	A-24
	Rights cumulative	A-24
	Entire agreement	A-24

Inconsistency	A-24
No agency or partnership	A-24
Survival of clauses	A-25
Governing law	A-25
Schedule 1: Unconditional Undertaking to provide Credit Support	A-26
Schedule 2: Dispute resolution procedure - expert resolution (non-National Electricity Rules disputes)	A-27
Schedule 3: Dispute resolution procedure - mediation (non-National Electricity Rules disputes)	A-29
Schedule 4: Interpretation	A-30
Definitions	A-30
Interpretation	A-33
Headings	A-34
Business day	A-34

Default Network Use of System Agreement

Parties

ACTEW DISTRIBUTION LIMITED ABN 83 073 025 224 and JEMENA NETWORKS (ACT) PTY LIMITED ABN 24 008 552 663, trading as ActewAGL Distribution (ABN 76 670 568 688) of ActewAGL House, 40 Bunda Street, Canberra in the Australian Capital Territory ("**ActewAGL**")

[insert name] of *[insert street address]* ("**Retailer**")

Recitals

- (A) ActewAGL is the holder of an *electricity distributor's licence* under the *Utilities Act* for its ACT *electricity network*.
- (B) The Retailer is a licensed supplier of electricity to customers.
- (C) This agreement describes how the parties will co-ordinate the provision of their respective services to customers in the ACT, and manage their relationship with each other.

Operative provisions

1 Introduction

Objectives

- 1.1 The objectives of the parties in entering into this agreement are:
 - a) to assist each other in performing their respective functions and obligations under *electricity law*; and
 - b) to avoid duplication, encourage efficiency and streamline their respective relationships with customers and the delivery of services.

Definitions

- 1.2 In this agreement words and phrases printed *like this* have the meaning given in schedule 4.

Rules of interpretation

- 1.3 This agreement is to be interpreted in accordance with the rules of interpretation in schedule 4.

Services do not include electricity supply

- 1.4 The *services* to be provided by ActewAGL do not include the supply of electricity to the Retailer's customers or to customers' premises.

Network enquiries

- 1.5 The Retailer agrees to refer any customer enquiries concerning outages or other network issues promptly to ActewAGL.
- 1.6 The Retailer must include either:
- a) ActewAGL's telephone number; or
 - b) the Retailer's telephone number,
- for network faults, difficulties and emergencies on the Retailer's customer invoices. ActewAGL will provide the Retailer with prior written notice of any change to ActewAGL's number.

New South Wales customers

- 1.7 If the Retailer supplies electricity to a customer in New South Wales who is connected to that part of ActewAGL's electricity network which extends into New South Wales, this agreement applies to the parties in relation to that customer as if that customer was in the ACT.

National B2B protocols and procedures

- 1.8 ActewAGL intends, if National B2B Procedures are introduced, to move towards utilising those protocols and procedures. However, until that time, the business to business protocols and processes set out in this agreement will apply.

2 Term

- 2.1 As specified in the *Electricity Network Use of System Code*, this agreement commences on the date that the Retailer first becomes *financially responsible* for a *connection point* of a customer, and continues until terminated under the *Electricity Network Use of System Code*.

3 Customer relationship

- 3.1 The parties must comply with the *Electricity Customer Transfer Code*, AEMO's customer transfer procedures and any other applicable *electricity law* in force from time to time.
- 3.2 This agreement will apply in relation to a customer for a particular *connection point* on the date the Retailer becomes *financially responsible* for that *connection point*, as notified to ActewAGL by AEMO.

Retrospective application in relation to existing customers

- 3.3 This agreement applies retrospectively (and in substitution of any prior agreement) in relation to customers who were already customers on commencement of this agreement, from the date the Retailer became *financially responsible* for the customer's *connection point*, as

notified to ActewAGL by AEMO. As at the date of this agreement, to the best of the parties' knowledge, neither party is in breach of this agreement in relation to those pre-existing customers.

Record keeping

- 3.4 The parties will keep up-to-date records as required by applicable *electricity law* (including any information required to establish eligibility for particular tariffs) for each customer to which this agreement applies. These details may be kept electronically and may be transferred between the parties using the *ACT business to business protocols*.

4 Services

Provision of services

- 4.1 Without limiting ActewAGL's obligations under the *Utilities Act*, once this agreement applies in relation to a customer for a *connection point*, ActewAGL agrees to provide the customer with the *services* on the terms of the applicable *customer connection contract* described in clause 4.2 and in accordance with *good electricity industry practice*.
- 4.2 The *customer connection contract* that applies to the customer for a *connection point* is:
- while there is a *negotiated customer contract* in force between ActewAGL and the customer for that *connection point* - that contract; or
 - otherwise - ActewAGL's *standard customer contract* for electricity connection applicable to the customer, approved under the *Utilities Act*.

Retailer to be charged

- 4.3 ActewAGL will issue an invoice to the Retailer for *services* provided to customers in relation to a *connection point*, except for some *connection services* (as nominated by ActewAGL from time to time and as listed as miscellaneous charges in the *network price list*), which may be charged directly to customers by ActewAGL.
- 4.4 ActewAGL authorises the Retailer to:
- issue *tax invoices* and adjustment notes to customers; and
 - collect payments from customers,
- in respect of *services* provided by ActewAGL to customers, except for those services ActewAGL charges customers for as contemplated by clause 4.3.
- 4.5 Despite clause 4.3, ActewAGL may charge a customer directly for those *services* which ActewAGL issues an invoice to the Retailer for if:
- the Retailer has failed to pay an amount owing to ActewAGL for those *services*; and

- b) the customer has not paid the Retailer for the *services*.
- 4.6 ActewAGL will notify the Retailer before ActewAGL charges a customer in accordance with clause 4.5.

Negotiation of connection contract

- 4.7 If a customer appoints the Retailer as the customer's agent for the purpose of negotiating and entering into a *negotiated customer contract*, ActewAGL agrees to negotiate with the Retailer for that purpose.
- 4.8 For the avoidance of doubt, a contract negotiated by the Retailer under clause 4.7 forms a contractual relationship between ActewAGL and the customer, not the Retailer.

Duration of services

- 4.9 ActewAGL will cease to provide *services* in relation to a customer for a *connection point* from the date the Retailer ceases to be *financially responsible* for that *connection point*, as notified to ActewAGL by AEMO.
- 4.10 ActewAGL is only obliged to provide *services* in relation to a customer for a *connection point* for so long as:
- a) the Retailer continues to hold an electricity supplier's licence under the *Utilities Act*;
 - b) the relevant customer's premises are connected to ActewAGL's electricity network;
 - c) arrangements are in place for provision of meters and meter reading that are with a metering provider and metering data provider in accordance with applicable *electricity law*, or otherwise reasonably acceptable to ActewAGL and not inconsistent with applicable *electricity law*;
 - d) the Retailer has satisfied all ActewAGL's other reasonable requirements as notified to the Retailer by ActewAGL from time to time (including any requirements imposed to enable ActewAGL to comply with any procedural or other requirement of applicable *electricity law*); and
 - e) a *customer connection contract* between the customer and ActewAGL in relation to the relevant premises remains in force.

5 Quality and frequency of electricity conveyed

- 5.1 The Retailer accepts that ActewAGL is not liable to the Retailer for:
- a) variations in the quality or frequency of the electricity supply; or
 - b) interruptions to the electricity supply.

- 5.2 The Retailer acknowledges that the quality of electricity supplied to customers is covered by the relevant *customer connection contract* and ActewAGL's sole liability in respect of any defects in quality of supply, or interruptions to supply, will be to the customer under that contract and not to the Retailer under this agreement.

6 Theft of electricity

- 6.1 A party must notify the other party if that party becomes aware that a customer has been obtaining or using electricity in a manner contrary to applicable *electricity law*.
- 6.2 On receipt of a notice under clause 6.1, ActewAGL may prepare and issue an invoice to the Retailer (or make an addition to an invoice to be issued under clause 9) to take into consideration any *services* which have been provided by ActewAGL in relation to that customer but have not been invoiced.

7 Disconnection and reconnection of a customer's premises

Disconnection at Retailer's request

- 7.1 ActewAGL will disconnect a customer's premises if:
- a) the Retailer notifies ActewAGL that the customer's electricity supply is to be discontinued in accordance with the contract between the Retailer and the customer;
 - b) if supply is to be discontinued because of a default by the customer, the Retailer certifies to ActewAGL that:
 - i. the Retailer has complied with the disconnection procedures in the *Consumer Protection Code* (including procedures relating to a supply address with a life support machine);
 - ii. there is no current direction from the ACAT in respect of the customer; and
 - iii. the Retailer is complying with the provisions of its *customer supply contract* with the customer, and applicable *electricity law*, in requesting the disconnection; and
 - c) the Retailer gives ActewAGL a disconnection request for the customer in the form reasonably required by ActewAGL from time to time.
- 7.2 If:
- a) the Retailer gives ActewAGL notice at least 3 *business days* prior to the nominated date for disconnection of a customer's premises; and

- b) that notice complies with the requirements in clause 7.1, ActewAGL will use its best endeavours to disconnect that customer's premises on the date nominated, or other date confirmed by ActewAGL in accordance with *ACT business to business protocols* ("**scheduled date**").
- 7.3 ActewAGL may decline to disconnect a customer's premises if it reasonably considers:
 - a) the disconnection would materially affect the health or safety of any person (other than an employee, contractor or agent of ActewAGL) at a supply address (including special needs customers as described in the *Consumer Protection Code*);
 - b) the process to carry out the disconnection would or would be reasonably likely to materially affect the health or safety of any employee, contractor or agent of ActewAGL, and ActewAGL has used reasonable endeavours to remove the risk and is unable to do so; or
 - c) the disconnection request was issued in breach of *electricity law*.
- 7.4 ActewAGL must notify the Retailer if it declines to connect a customer's premises under clause 7.3, and its reasons for declining, in accordance with the *ACT business to business protocols*.
- 7.5 If ActewAGL declines to disconnect a customer's premises under clause 7.3, this agreement will continue to apply in relation to the customer.
- 7.6 The Retailer must pay any applicable charges (as approved by the ICRC) to disconnect a customer's premises in accordance with a disconnection request (whether or not ActewAGL is able to complete the disconnection). These charges are listed in ActewAGL's schedule of electricity network charges at www.actewagl.com.au.
- 7.7 Subject to clause 7.8, for the avoidance of doubt, if ActewAGL does not complete the disconnection because of any act or omission of the Retailer, including where the Retailer subsequently cancels the request, the Retailer must still pay any charges incurred under this agreement (including any disconnection charge).
- 7.8 Where:
 - a) the Retailer:
 - i. has given ActewAGL at least three *business days* notice of a scheduled date under clause 7.2, and
 - ii. has met the other requirements of clause 7.1; and
 - b) clause 7.3 does not apply; and
 - c) due solely to an act or omission of ActewAGL (including ActewAGL failing to gain access to the relevant customer's premises), ActewAGL fails to disconnect the customer's premises on that date,

ActewAGL will waive any of its charges incurred by the Retailer, and reimburse the Retailer for all electricity charges it incurs in relation to the supply of electricity to that customer from the scheduled date to the date of actual disconnection of that customer, provided the Retailer within 20 *business days* of the actual disconnection date:

- a) notifies ActewAGL of any waiver or reimbursement to which the Retailer believes it is entitled under this clause 7.8; and
- b) gives to ActewAGL documentary evidence of the Retailer's entitlement to the waiver or reimbursement satisfactory to ActewAGL acting reasonably.

7.9 Clause 7.8 does not:

- a) prevent ActewAGL from invoicing the Retailer for electricity charges; or
- b) allow the Retailer to recover electricity charges from ActewAGL, to the extent to which the Retailer can recover electricity charges for the period specified in clause 7.8 from the customer.

7.10 For the purposes of clauses 7.8 and 7.9, "electricity charges" means charges for *connection services*, charges for *distribution services* and charges for electricity consumed at the customer's premises.

ActewAGL's right to initiate disconnection

7.11 ActewAGL may disconnect a customer's premises:

- a) under the relevant *customer connection contract* (including at the customer's request); or
- b) as otherwise permitted by applicable *electricity law*.

Notification of the Retailer

7.12 ActewAGL will use its best endeavours to notify the Retailer within 5 *business days* of the disconnection taking place. If ActewAGL has initiated a disconnection under clause 7.11, ActewAGL will use its best endeavours to notify the Retailer, prior to the disconnection taking place, but in any event no later than three *business days* after the disconnection takes place.

Reconnection

7.13 ActewAGL must reconnect a customer's premises disconnected under this clause 7:

- a) if required to do so under the relevant *customer connection contract*;
- b) if requested by the Retailer in the form reasonably required by ActewAGL from time to time; or
- c) if required to do so under *electricity law*.

- 7.14 ActewAGL may decline to reconnect a customer under clause 7.13 if:
- a) permitted to do so under *electricity law*; or
 - b) to do so would materially affect the health or safety of any person; or
 - c) the conditions set out in clause 4.10 are not satisfied in relation to that customer.
- 7.15 The Retailer will provide ActewAGL with any information reasonably requested for the purposes of clause 7.13.

8 Charges

Network price list

- 8.1 ActewAGL's charges for the *services* are set out in its *network price list*.
- 8.2 ActewAGL will give the Retailer notice of any changes in its charges:
- a) in accordance with the requirements of the *ICRC* (if any); or
 - b) otherwise - within 5 *business days* of the *ICRC* approving the relevant charges.

Notice may be given by email.

Calculation of charges

- 8.4 Charges calculated by reference to consumption are calculated in accordance with metered or estimated consumption, or other methods, in accordance with the relevant *customer connection contract* and applicable *electricity law*.

Retailer to pay government taxes, duties and levies

- 8.5 ActewAGL may pass on to the Retailer in full the amount of, or any reduction to, any tax, levy or duty imposed on ActewAGL by any *government* from time to time in respect of:
- a) the provision of *services*; or
 - b) the conveyance of electricity in respect of customers,
- but may not pass on any fines or penalties to the Retailer.

GST

- 8.6 Unless otherwise indicated all consideration provided for a supply by one party to the other under this agreement is exclusive of any *GST* imposed on the supply.
- 8.7 If *GST* is imposed on any supply by the one party (Supplier) to another (Recipient) under this agreement, and the Supplier gives the Recipient a *tax invoice*, then the Recipient must pay to the Supplier

the amount of *GST* imposed in addition without setoff to the *GST*-exclusive consideration the Recipient is required to pay the Supplier for the supply in question.

- 8.8 If the amount of *GST* recovered by the Supplier from the Recipient differs from the amount of *GST* payable at law by the Supplier (or an entity grouped with the Supplier for *GST* purposes) in respect of the supply, the amount of the difference must be paid by, or refunded to the Recipient, as the case may be.
- 8.9 If any party is entitled to be reimbursed or indemnified under this agreement, that party may not claim any portion of any amount for which it is entitled to claim an input tax credit.

Nomination of tariff

- 8.10 ActewAGL must provide to the Retailer a list of its distribution tariffs showing the charges and the relevant conditions relating to the application of each of those tariffs. ActewAGL may satisfy this obligation by posting such information on its website from time to time. ActewAGL must give the Retailer reasonable prior notice of any change to those tariffs or conditions.
- 8.11 The Retailer will use reasonable endeavours to ensure that each customer satisfies the requirements or conditions of the tariff the Retailer nominates to ActewAGL for that customer.
- 8.12 For the purpose of assisting the Retailer to determine appropriate customer tariffs and subject to:
- a) obtaining consent from the relevant customer; and
 - b) the volume of such requests that have been made or are in process,

ActewAGL will use its best endeavours to provide data on energy consumption and maximum demand for the previous 12 months for a specified customer of the Retailer (if reasonably available), within 10 *business days* of receipt of a request from the Retailer.

- 8.13 Each request for the data specified in clause 8.12 must:
- a) only relate to one customer of the Retailer;
 - b) specify the customer with sufficient accuracy and detail to permit the customer to be uniquely identified; and
 - c) only be made after the Retailer has taken reasonable steps to obtain that information if that information is otherwise available.
- 8.14 The Retailer agrees to pay the reasonable costs of ActewAGL in obtaining and providing any of the data specified in clause 8.12.
- 8.15 ActewAGL must notify the Retailer if it is unable to:
- a) provide the data specified in clause 8.12 within the time specified in clause 8.12 (and provide a revised estimated time frame to provide the information); or

- b) provide the data at all (and the reasons why if cannot provide the data),

within five *business days* of the Retailer's request being received

- 8.16 If ActewAGL reasonably believes that the Retailer is not complying with clause 8.11, ActewAGL may give the Retailer a notice of dispute in accordance with clause 16.1(b) (Expert Resolution). Without limiting the dispute resolution procedures referred to in clause 16.1(b), the Retailer must provide the expert with copies of its customer records to assist the independent expert to determine the matter.

9 Billing and payment

Invoices

- 9.1 ActewAGL will give the Retailer an invoice for each customer (an "invoice") within 28 days of the last reading of a customer's meter in a billing period, as contemplated by clause 4.3.
- 9.2 ActewAGL may change its billing period from time to time by reasonable notice to the Retailer. Any changes to the billing period will only be made with the Retailer's consent, which will not be unreasonably withheld.
- 9.3 An invoice may:
- a) include a claim for one or more of the charges for the *services* as are relevant; and
 - b) include adjustments to amounts claimed in previous invoices, as determined from time to time by ActewAGL.
- 9.4 An invoice must comply with applicable *electricity law* and must indicate the method of calculation or basis of each charge.
- 9.5 Invoices may be sent electronically in a format complying with the *ACT business to business protocols*.

Payment of invoices

- 9.6 Subject to clause 9.11 the Retailer must pay an invoice within 10 *business days* from receipt of the invoice.
- 9.7 The Retailer must pay an invoice by:
- a) electronic funds transfer to the account nominated by ActewAGL from time to time; or
 - b) cheque in immediately available funds.

Disputed invoices

- 9.8 If a Retailer disputes payment of an invoice, the Retailer must give a notice of disputed amount within 12 months of the due date for payment for that invoice.
- 9.9 A notice provided under clause 9.8 must state:
- a) the charges specified in the invoice that the Retailer is disputing; and
 - b) the grounds for dispute.
- 9.10 The Retailer must act in good faith when disputing payment of an invoice under clause 9.8.
- 9.11 If the Retailer provides a notice of disputed amount in accordance with this clause 9, not less than 2 *business days* before the due date for payment of that invoice, the Retailer may withhold payment of the invoice containing the disputed amount. For the avoidance of doubt, the Retailer is not obliged to pay any disputed amount validly withheld under this clause 9.11 until the matter is determined under clause 16.
- 9.12 Any undisputed amount which remains unpaid after the due date for payment is a debt to ActewAGL and attracts *interest* on the outstanding balance of the amount.
- 9.13 If all or part of a disputed amount is determined to be payable under clause 16, the Retailer must pay *interest* on that amount calculated from the original due date.

No set-off

- 9.14 Subject to clause 9.11, the Retailer must make payments under this clause 9 without set-off or counterclaim and free and clear of any withholding or deduction for any tax, impost, levy, duty or withholding unless required by law.
- 9.15 Charges invoiced by ActewAGL under this agreement are payable by the Retailer regardless of whether the Retailer has received payment from the relevant customer.

Adjustment of charges

- 9.16 Subject to clauses 9.19 and 9.20, if a party ("first party") becomes aware that the other party has made an error in an amount invoiced or paid under this agreement the first party must notify the other party within five *business days* of becoming aware of that fact; and
- a) where the error relates to an amount invoiced, ActewAGL will reverse the invoice and issue a new invoice showing the correct amount within 10 *business days*;
 - b) where the error relates to an amount paid which is greater than the amount which should have been paid, the party who received the payment must reimburse the other party the amount of the excess; and

- c) where the error relates to an amount paid which is less than the amount which should have been paid, the party who made the payment must pay the other party the amount of the shortfall.
- 9.17 ActewAGL must pay *interest* to the Retailer in relation to amounts overpaid under clause 9.16(b), calculated from the date the overpayment is made.
- 9.18 If, for any reason, *AEMO* or a *metering data provider* makes any adjustment which affects the metered electricity consumption of a customer, and that adjustment affects the amount of the charges under this agreement, ActewAGL will reverse the invoice and issue a new invoice showing the correct amount.
- 9.19 ActewAGL may not recover any undercharged amount (including by reason of clause 9.18) from the Retailer which the Retailer is unable to recover from the relevant customer under applicable *electricity law*, regardless of whether the Retailer actually recovers those charges.
- 9.20 Clause 9.19 does not apply to the extent that the undercharging by ActewAGL was caused or contributed to by the customer or the Retailer (or the customer's or Retailer's agent) by dishonesty or deceit against ActewAGL or the Retailer, or by the unreasonable failure of the customer to provide ActewAGL or the Retailer with information for the purposes of calculating charges.

Timing of adjustments

- 9.21 If it is not practicable for ActewAGL to make an adjustment to the Retailer's next invoice under clause 9.16(b) and (c) or 9.17, ActewAGL will make the adjustment to the following invoice.

10 Credit support

What is credit support?

- 10.1 Credit support is an undertaking in writing from a person that:
 - a) is in the form of a guarantee or bank letter of credit (or other form of equivalent security acceptable to ActewAGL);
 - b) is in favour of ActewAGL; and
 - c) is in the form of Schedule 1 or otherwise acceptable to ActewAGL,

issued by either an Australian bank or other financial institution approved by ActewAGL (or other entity acceptable to ActewAGL), which is capable of paying on the *credit support* in Canberra when demanded to secure the due and punctual performance of the Retailer's obligation to pay ActewAGL amounts owed under this agreement. ActewAGL's:

 - d) acceptance in relation to the form of undertaking required under clause 10.1(a) and (c); or

- e) approval in relation to another entity,
- will not be unreasonably withheld or delayed.

ActewAGL may require credit support to be given

- 10.2 If a Trigger Event occurs, ActewAGL may give notice to the Retailer requiring the Retailer to provide ActewAGL with credit support. The Retailer must provide the required credit support within 10 business days after the date of the notice.
- 10.3 A “**Trigger Event**” occurs if:
- a) the Retailer does not have a credit rating with Standard and Poor’s (Australia) Pty Ltd, Moody’s Investor Service Pty Ltd, Fitch Ratings or another reputable credit reporting agency reasonably acceptable to ActewAGL, of at least “BBB” or its equivalent;
 - b) the Retailer has a “BBB” rating (or its equivalent) and is placed under review by the relevant credit agency listed in paragraph (a). Under review includes being given a negative, downgrade, evolving, developing or uncertain classification by the relevant credit agency;
 - c) the Retailer has failed to pay:
 - i. an invoice within 10 *business days* after the due date for payment;
 - ii. any invoice by the due date for payment in 2 consecutive billing periods (whether the invoices relate to the same customer or not);
 - iii. any 3 invoices by the due date for payment,
 within the previous 12 months (or where the commencement of this agreement occurs within the previous 12 months, since the date of commencement), other than any amount disputed in accordance with clause 9; or
 - d) this agreement is suspended at any time for any reason; or
 - e) AEMO, or any other person from whom the Retailer purchases electricity, calls on any *credit support* provided by the Retailer, or provided by another person in respect of the Retailer.
- 10.4 The Retailer must:
- a) provide to ActewAGL evidence of its current credit rating promptly on request; and
 - b) Notify ActewAGL if the Retailer’s credit rating is downgraded below BBB (or its equivalent), including in that notification details of its new credit rating.

Amount of credit support

- 10.5 The amount of *credit support* required by ActewAGL at any time may not exceed the amount of the charges ActewAGL reasonably anticipates to be payable by the Retailer in the next three month period.
- 10.6 If the amount of any *credit support* then provided by the Retailer is in excess of ActewAGL's estimation under clause 10.5, the Retailer may at its cost reduce the amount of that *credit support* so there is no excess. ActewAGL will facilitate the Retailer's reduction of the amount of that *credit support*, including returning any existing *credit support* in substitution for the new *credit support* procured by the Retailer.

Use of credit support

- 10.7 ActewAGL may set off, apply or draw on the *credit support* (as the case may be) any amount owed by the Retailer to ActewAGL under this agreement at any time from the *business day* following the day on which the amount becomes owing. ActewAGL will promptly inform the Retailer when it has called upon the *credit support*.
- 10.8 The Retailer must ensure that the aggregate undrawn or unclaimed amount of the *credit support*, is at all times not less than the amount determined by ActewAGL under clause 10.5.
- 10.9 The exercise by ActewAGL of any right under this clause 10 does not prejudice any other right of recovery which ActewAGL may have in respect of any amount owing to it by the Retailer.

Request for release of credit support

- 10.10 The Retailer may request ActewAGL release any *credit support* provided by the Retailer, provided that:
- a) the Retailer has a credit rating with Standard and Poor's (Australia) Pty Ltd, Moody's Investor Service Pty Ltd, Fitch Ratings, or another reputable credit reporting agency reasonably acceptable to ActewAGL, of at least "BBB" or its equivalent; and
 - b) none of the criteria in clause 10.3 apply to the Retailer at the time of the request, or have applied to the Retailer in the 12 months prior to the request.
- 10.11 If the Retailer has satisfied clauses 10.10(a) and (b), then ActewAGL must release the *credit support* to the Retailer within 10 *business days* of the Retailer's request under clause 10.10

11 Termination and suspension

Termination

- 11.1 This agreement terminates in the circumstances described in the *Electricity Network Use of System Code*.

Suspension

- 11.2 This agreement is suspended in the circumstances described in the *Electricity Network Use of System Code*.
- 11.3 Notwithstanding any other provision of this agreement, clauses 10, 11.3, 13, 14 and 16 of this agreement will continue to have full force and effect while this agreement is suspended.

General

- 11.4 Termination or suspension does not affect any rights of either party that have accrued prior to termination or suspension.
- 11.5 Without limiting clause 11.4, ActewAGL may invoice the Retailer for services provided up to the date of termination or suspension.

12 Force majeure

- 12.1 A party is not liable as a result of a failure or delay in performance of this agreement if and to the extent the delay or non performance is caused by an event of *force majeure*.
- 12.2 A party claiming to be affected by an event of *force majeure* must:
- give the other party particulars of the event of *force majeure* claimed, including its nature and likely duration and the nature and extent of its effect;
 - take reasonable steps to promptly remove or mitigate the relevant event of *force majeure*; and
 - notify the other party as soon as reasonably practicable following cessation of the event of *force majeure*.
- 12.3 This clause 12 does not apply to a party's failure to pay money under this agreement
- 12.4 Notwithstanding clause 12.3, where:
- one party fails to perform a service as contemplated by this agreement due to an event of *force majeure* claimed under clause 12.2; and
 - there is a fixed charge for that *service* for a period that applies regardless of whether the *service* is received,
- the other party's obligation to pay that fixed charge is reduced so that it reflects the extent (if any) that the *service* is provided during that period.

13 Limitation of liability

Terms implied by statute

- 13.1 Consumer protection legislation may imply terms into contracts, or set out statutory guarantees for the supply of certain services that cannot

be excluded ("Implied Terms") but permits a supplier to limit its liability in respect of those terms in certain circumstances.

13.2: To the extent permitted by law, ActewAGL's liability for breach of an Implied Term applying to the *services* to be provided under this agreement is limited at ActewAGL's option to one of the following remedies

- a) the supplying of the *services* again; or
- b) the payment of the cost of having the *services* supplied again.

13.3 ActewAGL's liability will not be limited in this way if:

- a) the Retailer establishes that such a limitation is not fair or reasonable in the circumstances; or
- b) the liability relates to sections 51, 52, or 53 of the Australian Consumer Law.

Nothing in this agreement shall be taken to exclude, restrict or modify any right or remedy a Retailer may have under the *Australian Competition and Consumer Act 2010* (Cth).

Exclusion of other implied terms

13.4 The only terms, conditions or warranties which apply to the *services* to be provided under this agreement are:

- a) any Implied Terms, but subject to the preceding paragraphs of this clause; and
- b) the express terms of this agreement.

13.5 All other terms, conditions or warranties implied by law (including statute), custom or usage are excluded to the fullest extent permitted by law.

Limitation of liability for loss or damage

13.6 Subject to this clause 13:

- a) a party is not liable to the other party for any loss, liability or expense which that other party may suffer or incur unless the loss, liability or expense is a direct result of the first party's negligence or breach of contract;
- b) without limiting paragraph (a), a party is not liable for any loss of profits, business or anticipated savings, or for any indirect or consequential loss, arising out of or in connection with that party's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise;
- c) any liability a party has to the other for breach of this agreement, or under an indemnity in this agreement, is reduced to the extent the other party caused or contributed to the breach, or to the application of the indemnity.

- 13.7 Clauses 13.6(a) and (b) do not apply to limit the liability of a party under the indemnity in clause 14.5.

14 Confidentiality and privacy

- 14.1 Unless otherwise specifically provided for under this agreement, all *confidential information* exchanged under this agreement must remain strictly confidential between the parties and must not be used otherwise than for the purposes of this agreement, or disclosed to any other person except:
- a) a party's board, its Ministerial shareholders (and their officers and advisers), legal advisers, auditors, financial advisers and bona fide consultants in respect of or pertaining to this agreement; or
 - b) employees and contractors, and the employees and contractors of any of its related bodies corporate, within the meaning of the *Corporations Act 2001*, requiring the information; or
 - c) with the consent of the party who supplied the information; or
 - d) if required by law (including applicable *electricity law*) or by any *government* or stock exchange, in connection with legal proceedings relating to this agreement; or
 - e) if the information is generally and publicly available other than as a result of a breach of confidentiality by the party receiving the information.

Limitation on disclosure

- 14.2 Where this agreement permits a party to disclose *confidential information* to another person for a purpose, the disclosing party must:
- a) inform the proposed recipient of the confidentiality of the information;
 - b) use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose; and
 - c) use all reasonable endeavours to ensure that persons receiving *confidential information* from it do not disclose the information except in the circumstances permitted in clause 14.1.

Privacy

- 14.3 Each party must comply with any applicable requirements of the *Privacy Act 1988*.
- 14.4 Without limiting clause 14.3, each party must:
- a) only use personal information provided by the other party or collected under this agreement, for the purposes of performing its obligations under this agreement; and

- b) when collecting personal information from or about an individual which will be disclosed under this agreement, ensure that the individual is aware that their personal information may be disclosed to the other party and of the purposes for which their information will be used.
- 14.5 Subject to clause 13.6(c), each party indemnifies the other against any loss, liability or expense arising out of or in connection with any breach of the Privacy Act by the other party or its employees, officers, agents or contractors.

Relationship with confidentiality provisions

- 14.6 Each party must comply with its obligations under clauses 14.3 and 14.4 despite anything in clause 14.1.

15 Representations and warranties

Retailer's warranties

- 15.1 The Retailer represents and warrants that:
- a) it holds and will continue to hold an *electricity supplier's licence* under the *Utilities Act* for the duration of this agreement; and
 - b) it has a valid and binding *customer supply contract* with each customer for the relevant *connection point*, subject to a customer's right to terminate or rescind their contract within the cooling off period, or otherwise, under clause 30 of the *Consumer Protection Code*.

ActewAGL's warranties

- 15.2 ActewAGL represents and warrants that it holds and will continue to hold an *electricity distributor's licence* under the *Utilities Act* for the duration of this agreement.

Date warranties are given

- 15.3 Each representation and warranty under clause 15.1 is given in respect of each customer as at the date this agreement applies in relation to that customer.

16 Dispute resolution

- 16.1 If either party gives the other a notice of dispute under this agreement, the following procedure will apply:
- a) if the dispute comes within clause 8.2 of the *National Electricity Rules* - the dispute resolution procedure in that code will apply; or
 - b) if the dispute is over a technical matter or in relation to clause 8.11 - the procedure in Schedule 2 (Expert Resolution) will apply; or

- c) otherwise - the procedure in Schedule 3 (Mediation) will apply.

If there is a dispute over whether a matter is a technical matter or not, then the matter will be referred in accordance with clause 16.1(b) for the relevant independent expert to determine whether the matter should be determined in accordance with Schedule 2 (Independent Expert) or Schedule 3 (Mediation).

Obligations not suspended

- 16.2 No party is relieved from performance of an obligation under this agreement during the investigation and determination of a dispute under this clause 16.

Disputes generally

- 16.3 No party may have recourse to litigation without first having complied with this clause 16.
- 16.4 This clause 16 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

17 Notices

- 17.1 All notices issued under this agreement must be sent to the address of the relevant party notified in writing by the relevant party.
- 17.2 Notices are deemed to be received:
- a) in the case of delivery by post, 2 *business days* after the date of posting;
 - b) in the case of fax, on receipt by the sender of a transmission report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number and indicating that the transmission has been made without error, unless the recipient notifies the sender within 24 hours of the fax being sent that the fax was not received in its entirety in legible form; or
 - c) in the case of email, when it is delivered to a system from which the addressee can retrieve it.
- 17.3 If a notice is received on a day which is not a *business day* or after 5.00 pm on a *business day*, it is taken to be received on the next *business day*.

18 Miscellaneous

Waiver

- 18.1 Any waiver of a breach of a provision of this agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

Amendment

- 18.2 Unless otherwise provided in this agreement, any variation to this agreement must be in writing and signed by both parties.

Assignment

- 18.3 Neither party may assign any of its rights under this agreement without the prior written consent of the other, which consent may not be unreasonably withheld or delayed where the proposed assignee holds the relevant licence and has the financial and technical capacity to perform its obligations under this agreement.

Rights cumulative

- 18.4 Except as expressly stated in this agreement, the rights, remedies and powers of the parties under this agreement are cumulative and do not exclude any other right, remedies or powers.

Entire agreement

- 18.5 This agreement constitutes the entire agreement between the parties about its subject matter.

Inconsistency

- 18.6 The parties must comply with the obligations imposed on them by applicable *electricity law*, except where those obligations are inconsistent with this agreement, in which case the provisions of this agreement will prevail to the extent permitted by law. Where ActewAGL is unable to reasonably comply with an obligation imposed on it by applicable *electricity law* without the co-operation or assistance of the Retailer, then the Retailer will, on request, provide ActewAGL with reasonable co-operation and assistance to enable ActewAGL to comply with the obligation.
- 18.7 Notwithstanding clause 18.6, to the extent of any inconsistency between the *ACT business to business protocols* and this agreement, the *ACT business to business protocols* will prevail. For the avoidance of doubt, this agreement is not a bilateral agreement for the purposes of the *ACT business to business protocols*, unless the parties agree otherwise.
- 18.8 Notwithstanding clause 18.7, to the extent of any inconsistency between ActewAGL's obligations under:
- a) a customer connection contract; and
 - b) this agreement,
- ActewAGL's obligations under the *customer connection contract* will take precedence over its obligations under this agreement.

No agency or partnership

- 18.9 Nothing in this agreement constitutes an agency, partnership or joint venture relationship between the parties.

Survival of clauses

18.10 Clauses 13, 14 and 16 survive the termination of this agreement.

Governing law

18.11 This agreement is governed by the laws of the Australian Capital Territory.

Schedule 1: Unconditional Undertaking to provide Credit Support

At the request of.....ABN.....(**Retailer**) and in consideration of ACTEW Distribution Limited ABN 86 069 381 960 and Jemena Networks (ACT) Pty Limited ABN 24 008 552 663, trading as ActewAGL Distribution (ABN 76 670 568 688) (**ActewAGL**) accepting this undertaking under clause 10 of the Network Use of System Agreement dated.....,

ABN.....(**Financial Institution**) unconditionally undertakes to pay on demand any sum or sums which from time to time are demanded by ActewAGL to a maximum aggregate sum of \$.....

The undertaking continues until notification has been received from ActewAGL that the sum is no longer required, or until this undertaking is returned to the Financial Institution, or until payment to ActewAGL by the Financial Institution of the whole of the sum.

Should the Financial Institution be notified in writing, purporting to be signed by for and on behalf of ActewAGL, that ActewAGL desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to ActewAGL forthwith without reference to the Retailer and notwithstanding any notice given by the Retailer not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to ActewAGL the sum of \$..... less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by ActewAGL and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Dated

Schedule 2: Dispute resolution procedure - expert resolution (non-National Electricity Rules disputes)

A. First stage dispute resolution

- A.1 This Schedule applies to a dispute under clause 16.1(b) of this agreement.
- A.2 The parties will use their reasonable endeavours to resolve the dispute within a period of 20 *business days* after a notice is given under clause 16.1 of this agreement.
- A.3 If the dispute remains unresolved at the end of the period referred to in clause A.2 then either party may require that the dispute be determined under clause B of this schedule.

B. Reference to and appointment of Independent Expert

- B.1 Where clause A.3 applies, either party may require that the dispute be determined by an independent expert appointed in accordance with clause B.2 of this schedule ("**Independent Expert**").
- B.2 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 date of receipt of the notice, then either party may refer the matter to the President for the time being of the Law Society of the Australian Capital Territory (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 the Australian Capital Territory), to nominate a suitably qualified person to act as the Independent Expert to determine the dispute.

C. 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) not be a former or current employee or representative of either party or of a related body corporate of either of them; and
- d) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position.

D. 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.

E. Rules of evidence

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

F. Power of Independent Expert

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.

G. Determination

G.1 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.

G.2 The determination of the Independent Expert will be, in the absence of bias or manifest error, final and binding upon the parties.

H. 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 agreed 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.

Schedule 3: Dispute resolution procedure - mediation (non-National Electricity Rules disputes)

- 1.1 This Schedule applies to a dispute under clause 16.1(c) of this agreement.
- 1.2 If the dispute is not resolved within 10 *business days* after a notice of dispute is given under clause 16.1 ("**Notice Period**"), the dispute is by this clause submitted to mediation. The mediation must be conducted in Canberra. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (in force as at the date of the notice) apply to the mediation, except to the extent they conflict with this Schedule.
- 1.3 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days after the Notice Period, the mediator will be appointed by the President of the Australian Capital Territory Law Society or the President's nominee, at the request of either party, and that person will also determine the amount or rate of the mediator's remuneration.
- 1.4 The parties must share the costs of the mediator. Each party must pay its own costs of the mediation.

Schedule 4: Interpretation

Definitions

In this agreement:

ACAT means the ACT Civil and Administrative Tribunal established by the *ACT Civil and Administrative Tribunal Act 2008* (ACT).

ACT business to business protocols means the business to business processes and procedures adopted and applied in the National Electricity Market as published by AEMO from time to time.

Australian Consumer Law has the meaning given by the *Australian Competition and Consumer Act 2010* (Cth).

business day means a day other than a Saturday, Sunday or an ACT public holiday.

Commonwealth Bank of Australia's Corporate Overdraft Reference Rate means the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate as published from time to time or, if no such rate is published at any time, the substitute or replacement rate published by the Commonwealth Bank of Australia at that time.

confidential information means:

- a) the terms of this agreement; and
- b) all operations and dealings under this agreement; and
- c) all information:
 - i. disclosed by one party to the other under this agreement (including metering and metering data); or
 - ii. if disclosed prior to the date of this agreement, in anticipation of this agreement coming into effect,

and which by its nature is confidential to the party disclosing the information, but excluding information which:

- d) is or becomes part of the public domain; or
- e) is able to be lawfully obtained from another source; or
- f) is already known to the other party at the date of disclosure and was not acquired directly or indirectly from the disclosing party.

connection point has the meaning given in the *National Electricity Rules*.

connection services means the services described in sections 79(1)(a) and (b) of the *Utilities Act*.

Consumer Protection Code means the code of that name under the *Utilities Act*, in force from time to time.

credit support has the meaning given in clause 10.1.

customer connection contract means a standard customer contract or a negotiated customer contract for connection services.

customer supply contract means a *standard customer contract* or a *negotiated customer contract* for electricity supply.

distribution services means *TUoS services* and *DUoS services*.

DUoS services has the meaning given to “distribution use of system service” in the *National Electricity Rules*.

Electricity Customer Transfer Code means the code of that name under the *Utilities Act*, in force from time to time.

Electricity Network Use of System Code means the code of that name under the *Utilities Act*, in force from time to time.

electricity distributor’s licence means ActewAGL’s licence to distribute electricity through its *electricity network*, issued under the *Utilities Act*.

electricity law means the *Utilities Act*, the *National Electricity Rules*, ActewAGL’s electricity distributor’s licence, the Retailer’s electricity supplier’s licence, the *ACT business to business protocols* and any other statute, regulation, ordinance, code, licence or other law (including the common law), whether state or federal, including any lawfully binding and relevant determination, decree, edict, declaration, ruling, order, procedure or other similar pronouncement applying to ActewAGL or the Retailer (as applicable) validly issued by any government.

electricity network means ActewAGL’s ACT electricity network.

electricity supplier’s licence means a licence to supply electricity issued under the *Utilities Act*.

excluded services means services excluded from the revenue or price cap which applies under the *National Electricity Rules*. For the avoidance of doubt, at the date of this agreement, *excluded services* includes *metering services*.

financially responsible has the meaning given in the *National Electricity Rules*.

force majeure means any circumstance or event beyond the reasonable control of the party affected.

good electricity industry practice has the meaning given in the *National Electricity Rules*.

government means the Commonwealth of Australia, any Australian State or Territory or any local government, and any minister, department, statutory authority, corporation or agency (including *ICRC*, the *ACAT* and *AEMO*) having jurisdiction and authority over a party.

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

GST Law means *A New Tax System (Goods & Services Tax) Act 1999*.

ICRC means the Independent Competition and Regulatory Commission, established under the *Independent Competition and Regulatory Commission Act 1997 (ACT)*.

insolvent means being an insolvent under administration or insolvent (each as defined in the Corporations Law) or having a controller (as defined in the Corporations Law) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

interest means interest at 2.5% above the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate.

market participant has the meaning given in the *National Electricity Rules*.

metering data provider means a person accredited by AEMO to collect, process and transfer data from the meter or data logger to AEMO and the relevant *market participants*.

metering installation has the meaning given in the *National Electricity Rules*.

metering provider means a person accredited by AEMO to install and maintain *metering installations*.

metering services means the installation and maintenance of electricity meters and communication equipment.

National B2B Procedures means any business to business protocols or procedures in force (and as amended from time to time) and adopted in each State and Territory participating in the *National Electricity Market*.

National Electricity Law means the National Electricity Law set out in the Schedule of the *National Electricity (South Australia) Act 1996 (SA)*.

National Electricity Market means the market for the supply of electricity set up under the provisions of the *National Electricity Law*.

National Electricity Rules means the code or rules governing the *National Electricity Market* as established pursuant to the Schedule of the *National Electricity (South Australia) Act 1996 (SA)*.

negotiated customer contract means the contract between ActewAGL and a customer for the provision by ActewAGL of utility services under Division 6.3 of the *Utilities Act*, on terms agreed by the parties other than the terms of a *standard customer contract*.

AEMO has the meaning given in the *National Electricity Rules*.

network price list means the schedule of fees and charges for *distribution*, *connection* and *excluded services* published by ActewAGL from time to time.

services means distribution services, excluded services and connection services.

standard customer contract means the contract between ActewAGL and a customer for the provision by ActewAGL of utility services under Division 6.2 of the *Utilities Act*, as approved or determined from time to time by the ICRC, where there is no *negotiated customer contract* in place between ActewAGL and that customer for the relevant services.

tax invoice has the meaning given in the *GST Law*.

TUoS services has the meaning given to “transmission use of system service” in the *National Electricity Rules*.

Utilities Act means the *Utilities Act 2000* (ACT).

Interpretation

In this agreement:

- a) the singular includes the plural and vice versa;
- b) a reference to an agreement, code or another instrument includes any consolidation, amendment, variation or replacement of them;
- c) a reference to a schedule is a reference to a schedule to this agreement and a reference to this includes a recital or schedule;
- d) a reference to a clause is a reference to a clause of this agreement;
- e) a reference to a statute, ordinance, code or other law, including anything which comprises the *electricity law*, includes regulations, licences and other instruments under it and includes all consolidations, amendments, re-enactments or replacements of them or any of them;
- f) a reference to a person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or *government* and vice versa;
- g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- h) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- i) **licence** includes an approval, authorisation or consent;
- j) **including, includes** and **in particular** do not limit the generality of the words which precede them or to which they refer;
- k) a reference to a person includes the person’s permitted successors, substitutes (including persons taking by novation) and assigns;
- l) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- m) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- n) a reference to a month is a calendar month; and
- t) time is a reference to Canberra time.

Headings

In this agreement, headings are for convenience of reference only and do not affect interpretation.

Business day

If the day on which any act, matter or thing is to be done under this agreement is not a *business day*, that act, matter or thing:

- a) if it involves a payment other than a payment which is due on demand, shall be done on the preceding *business day*; and
- b) in all other cases, shall be done no later than the next *business day*.