

Generator Agreement
Registered Market Participant

The Distributor

and

The Customer

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THIS Agreement is made on the day of 20

BETWEEN: Distributor named in **item 1** of **Schedule 1** of this Agreement (**the Distributor**)

AND: Customer named in **item 1** of **Schedule 1** of this Agreement (**the Customer**)

RECITALS:

- (a) The Customer wishes to synchronise and parallel the Embedded Generating Unit with the Distributor's Distribution System and to have the Distributor provide the Services to the Customer.
- (b) The Distributor will permit the Customer to synchronise and parallel the Embedded Generating Unit with the Distributor's Distribution System and will provide the Services to the Customer on the terms and conditions of this Agreement.
- (c) While the Distributor will permit the Customer to export electricity to the Distributor's Distribution System, **item 8** of **Schedule 1** will specify a Maximum Export Capacity.

Operative Provisions

1 Definitions

1.1 Definitions

Act unless the context otherwise requires, means the Electricity Industry Act 2000 (Vic).

AEMO means Australian Energy Market Operator Limited ACN 072 010 327, or any body which assumes its functions in respect of the National Electricity Market.

AER means the Australian Energy Regulator as established under the Competition and Consumer Act 2010 (Cth), or any body which assumes its functions.

Australian Standards means the standards published by Standards Australia.

Authorisation means:

- (a) any authorisation, approval, licence, permit, consent, qualification, accreditation, notarisation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them; and
- (b) for anything which a Government Agency may prohibit or restrict within a specified period, the expiry of that period without intervention or other action by that Government Agency.

Bank Bill Rate means the bank bill standard rate defined to be equal to:

- (a) the "bid rate" (rounded up to four decimal places) quoted on the page entitled "BBSY" of the Reuters Monitor System at or about 10:00am (Melbourne time) on any Business Day for bank accepted bills of exchange which have a tenor of 30 days; or

- (b) if the Bank Bill Rate cannot be determined in accordance with paragraph (a) of this definition, the rate percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the then current bill market, and in default of agreement within 14 days, the rate nominated by the Distributor as an appropriate rate.

Billing Cycle means the period covered by an invoice.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Change in Electricity Law means the occurrence of any one or more of the following after the date of execution of this Agreement:

- (a) the enactment of any new Electricity Law;
- (b) the repeal, modification or re-enactment of any existing Electricity Law;
- (c) a change in the official interpretation or application of any Electricity Law; or
- (d) the commencement of any Electricity Law which has not yet entered into effect.

Charges means charges for the provision of UoS Services, from the Commencement Date being charges based on the Network Tariff assigned to the Customer by the Distributor as specified in **item 10 of Schedule 1** and subject to re-assignment under **clause 4.3** at any time after then.

Charge Liability means the sum of an amount reasonably estimated by the Distributor at the time of a request under **clause 4.9(a)** or at the date on which the Distributor recalculates the Required Credit Support Amount under **clause 4.9(d)** or **clause 4.9(e)** to be 90 days' forecast invoiced Charges and the amount of any Charge on which interest must be paid under **clause 4.7(c)** at the time of the request.

Codes mean the Distribution Code or any other code, order or other instrument applying from time to time to the Victorian region of the National Electricity Market, whether pursuant to statute, an order or certification of the AER, ESC or otherwise.

Commencement Date means that date specified in **item 2 of Schedule 1**.

Connection means contact or a physical link such as will allow the delivery of electricity, but does not include energisation.

Connection Assets means assets used to provide the Connection Services as specified in **item 5 of Schedule 1**.

Connection Services means the service of establishing Connection between the Distributor's Distribution System (on the one hand) and the Customer's Electrical Installation and the Embedded Generating Unit (on the other), so as to allow the delivery of electricity from the Distributor's Distribution System to the Customer's Electrical Installation up to but not exceeding the Maximum Import Capacity and the delivery of electricity from the Embedded Generating Unit to the Distributor's Distribution System up to but not exceeding the Maximum Export Capacity, including maintenance of that Connection but excluding augmentation of the Distributor's Distribution System or energisation.

Credit Allowance, subject to **clause 4.9(b)**, means an amount equal to the Credit Allowance Percentage of the Customer or the Guarantor, as the case may be, multiplied by the Maximum Credit Allowance.

Credit Allowance Percentage means the percentage set out in the second or fourth column of the following table, as the case may be, which corresponds to the Customer Credit Rating:

Customer Credit Rating			
Standard & Poor's credit rating or equivalent	Credit Allowance Percentage	Dun & Bradstreet Dynamic Risk Score	Credit Allowance Percentage
AAA	100.0	N/A	N/A
AA+, AA, AA-	100.0	N/A	N/A
A+, A, A-	100.0	N/A	N/A
BBB+	90.0	N/A	N/A
BBB	72.0	Minimal	72.0
BBB-	48.0	N/A	N/A
BB+	13.0	Very Low	13.0
BB	7.0	Low	7.0
BB-	4.0	Below average/average	4.0
B+	2.0	Moderate	2.0
B	1.1	High	1.1
B-	0.4	Very High	0.4
CCC, CC, C	0.1	Severe	0.1
SD, D, NR	0.0	N/A	0.0

Customer Credit Rating means a Standard & Poor's credit rating of the Customer or the Guarantor or its equivalent from another recognised credit rating agency reasonably acceptable to the Distributor. Where the Customer or the Guarantor, as the case may be, does not have such a rating, the Dun & Bradstreet Dynamic Risk Score instead is to be used.

Customer's Electrical Installation means all electrical infrastructure owned, operated or owned and operated by the Customer on the Customer's side of the Point of Supply.

Default Rate means on any date the rate percent per annum which is the aggregate of 2% per annum and the Bank Bill Rate.

Deemed Distribution Contract means a contract deemed to be entered into by the Distributor and a "retail customer" (as defined in section 40A(11) of the Act) under section 40A of the Act.

DERMS or Distributed Energy Resource Management System means the Distributor's control system used to assist the Distributor maintain the reliability, safety and stability of the Distribution System or TNSP's transmission system and which interfaces with the Customer's Embedded Generating Unit and associated systems.

Distribution Licence means a licence to distribute and supply electricity granted under the Act.

Distribution System has the meaning given to that term by the National Electricity Rules.

Electricity Distribution Code of Practice means the Electricity Distribution Code of Practice issued by the ESC pursuant to the Act.

Electricity Law means the Codes, the Electricity Industry Act 2000 (Vic) and regulations under that Act, the Electricity Safety Act 1998 (Vic) and regulations under that Act, the Essential Services Commission Act 2001 (Vic) and regulations and determinations under that Act, the National Electricity (Victoria) Act (Vic) 2005, the Energy Safe Victoria Act (Vic) 2005 and regulations under that Act, the National Electricity Law, the National Electricity Rules, and any other law, statute, regulation, proclamation, order in council, direction, tariff, guideline or standard which can be enforced by law or by a regulatory authority against a participant in the Victorian region of the National Electricity Market.

Electricity System Code means the code published by the ESC as amended from time to time.

Embedded Generating Unit means the electricity generator described in **item 6 of Schedule 1**.

Embedded Generator has the meaning given to that term by the National Electricity Rules.

Energise has the meaning given to that term by the National Electricity Rules.

ESC means the Essential Services Commission established under the Essential Services Commission Act 2001 (Vic), or any body which assumes its functions.

ESV means Energy Safe Victoria established under the Energy Safe Victoria Act 2005 (Vic), or any body which assumes its functions.

Force Majeure Event means any event beyond the reasonable control of a party which could not have been avoided by that party taking all reasonable steps and includes an act of God, war, riot, natural disaster, act of terrorism, act of public enemy, strikes, blockades, lock out or other industrial dispute but specifically does not include unavailability of items of equipment comprising the Embedded Generating Unit..

Government Agency means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal Government Agency, whether statutory or not.

Guarantor means an entity which, on terms acceptable to the Distributor, guarantees the performance of the Customer's payment obligations under this Agreement.

Harmonic Emission Limit means the harmonic emission limit specified in the performance standards contained in **Schedule 2**.

Harmonic Exceedance means where the operation of the Embedded Generating Unit exceeds the Harmonic Emission Limit.

Maximum Credit Allowance means 33.3% of an amount reasonably estimated by the Distributor at the time of a request under **clause 4.9(a)** or at the date on which the Distributor recalculates the Required Credit Support Amount under **clause 4.9(d)** or **clause 4.9(e)** to be a year's forecast invoiced Charges.

Maximum Import Capacity means the rate specified in **item 7 of Schedule 1**.

Maximum Export Capacity means the rate specified in **item 8 of Schedule 1**.

Metering Data has the meaning given to that term by the National Electricity Rules.

Metering Installation means has the meaning given to that term by the National Electricity Rules and, in **clauses 4.5** and **7.6** means the Metering Installation for the Point of Supply referred to in **clause 7.3(a)(i)**.

Metering Services means metering provision services and metering data provision services in respect of a Metering Installation.

Metrology Procedure means the procedure developed and published by AEMO in accordance with clause 7.14 of the National Electricity Rules.

Minimum Insurance Amount means the amount specified in **item 11** of **Schedule 1**.

Minimum System Load Event means an event where AEMO instructs the Distributor to take action due to Victoria's minimum system load.

Minimum System Load Mechanism (MSLM) means the Distributor's control system used to remotely switch off electricity generation by the Customer's Embedded Generating unit in response to a Minimum System Load Event.

National Electricity Law means the National Electricity (Victoria) Law which applies in Victoria as a result of the operation of section 6 of the National Electricity (Victoria) Act (Vic) 2005.

National Electricity Market has the meaning given to that term by the National Electricity Law.

National Electricity Rules means the rules made in accordance with the National Electricity Law.

Network Tariffs means the tariff or tariffs charged by the Distributor in accordance with the Electricity Law for distributing electricity using the Distributor's Distribution System and the transmission system.

Non-Regulatory Matter means any dispute or difference other than a Regulatory Matter.

Point of Supply means the point of supply specified in **item 4** of **Schedule 1**.

Regulatory Matter means any dispute or difference which is to be, or is capable of being, determined in accordance with the National Electricity Rules.

Required Credit Support Amount means the amount by which the Charge Liability exceeds the Credit Allowance.

Responsible Officer means in relation to each party, that person specified in **item 12** of **Schedule 1**.

Responsible Person has the meaning given to that term by the National Electricity Rules.

Service and Installation Rules means the Victorian Electricity Distributors Service and Installation Rules a copy of which may be found on the following website:
<http://www.victoriansir.org.au/>.

Services means the Connection Services and the UoS Services.

Special Conditions means the Special Conditions (if any) provided in **item 14** of **Schedule 1**.

Supply Address means the address where the Embedded Generating Unit and Customer's Electrical Installation is located, as specified in **item 3 of Schedule 1**.

Term has the meaning given to that term in **clause 2.1**.

TNSP means the transmission network service provider.

UoS Services means the transportation and delivery of electricity through the Distributor's Distribution System and any other services which the Distributor includes in its Network Tariffs.

1.2 Interpretation

(a) General

In this Agreement (including the Recitals) unless a contrary intention appears:

- (i) a reference to any legislation or statutory instrument includes a reference to that legislation or statutory instrument as amended, modified, re-enacted and replaced from time to time, any rulings, regulations, guidelines or codes made or issued under or in relation to that legislation or statutory instrument;
- (ii) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this Agreement;
- (iii) a reference to this Agreement includes a reference to any schedules and annexures to this Agreement;
- (iv) a reference to a document includes a reference to that document as amended or replaced from time to time;
- (v) 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 must be done no later than the next Business Day; and
- (vi) words in *italics* have the meaning given to them in the National Electricity Rules.

(b) Headings

In this Agreement headings are used for reference only and do not affect the construction of any provision in this Agreement.

(c) Parties Bound

- (i) This Agreement binds and benefits each party and their respective successors, assigns and legal personal representatives.
- (ii) If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

2 Term

2.1 Term of Agreement

This Agreement will commence on the Commencement Date and continues for a term of 25 years, unless terminated earlier in accordance with this Agreement.

3 Services

3.1 Provision of Services

Subject to:

- (a) the Customer complying with all of the terms of this Agreement;
- (b) the terms of this Agreement including, without limitation, **clause 5.1**; and
- (c) Electricity Law,

the Distributor must use reasonable endeavours to provide the Customer with the Services during the Term.

4 Charges, Invoicing and Credit Support

4.1 Charges

- (a) The Customer shall pay the Distributor the Charges for the entire period after the Commencement Date during which the Distributor provides the Services to the Customer in accordance with this Agreement.
- (b) The Charges are payable by the Customer despite any outages or other service disruption including, without limitation, any discontinuance, interruption or limitation in the quantity of electricity exported from the Embedded Generating Unit to the Distributor's Distribution System or delivered from the Distributor's Distribution System to the Customer's Electrical Installation.

4.2 Variations to Charges

- (a) The Distributor must give the Customer 30 days prior notice of any variation to a Charge, or such longer period of notice as may be required by Electricity Law. Notice may be given by publication of such amended charges on the Distributor's website, provided that the Distributor must comply with any requirements of Electricity Law as to the giving of notice.
- (b) If a Charge is varied during a Billing Cycle, Power must invoice the varied Charge:
 - (i) on a pro-rata basis in the invoice for that Billing Cycle; or
 - (ii) in the invoice for the next Billing Cycle.

4.3 Assignment of Network Tariffs

The Distributor has assigned the Customer to the Network Tariff specified in **item 10 of Schedule 1** in accordance with the Electricity Law. The Customer agrees that the Distributor may, from time to time and in accordance with the Electricity Law, re-assign the Customer to a different Network Tariff based on the eligibility criteria published by the Distributor from time to time in the Distributor's annual tariff reports. The Distributor must provide to the Customer an extract from the current annual tariff report upon request.

4.4 Invoices

- (a) The Distributor will use its best endeavours to render invoices each month for Services provided, on the same Business Day of each month.

- (b) Invoices shall be in a format determined by the Distributor and must be consistent with electricity industry practice and must contain sufficient information as is reasonable to allow the Customer to assess the accuracy of the Charges specified in each invoice.
- (c) Amounts invoiced must be determined by the Distributor in accordance with Electricity Law.

4.5 Metering Data

- (a) Subject to **clauses 4.5(b) and 4.5(d)**, whichever party is the Responsible Person for the Metering Installation must use best endeavours to ensure that:
 - (i) the meter forming part of the Metering Installation is read (or attempted to be read) in accordance with the frequency specified in **item 9 of Schedule 1**; and
 - (ii) the other party receives a copy of all Metering Data in accordance with the Metrology Procedure and any additional data in a form sufficient to enable the Distributor to invoice those of its Charges that require Metering Data.
- (b) Where the Distributor and the Customer agree that the meter forming part of the Metering Installation may be read at the end of a period other than in accordance with the frequency specified in **item 9 of Schedule 1**, the Charges may be based on estimated meter readings or meters read at the end of the other period.
- (c) Subject to **clause 4.5(d) and clause 4.6**, actual Metering Data is evidence of electricity supplied to or by the Customer and is to be the basis for determining Charges.
- (d) Charges may be based upon estimated meter readings in accordance with the Electricity Law.
- (e) Where the Metering Data becomes available subsequent to the issuing of an invoice based on estimated meter readings in accordance with **clause 4.5(b) or 4.5(d)**, Charges must be adjusted in accordance with **clause 4.6**.
- (f) Estimated meter readings shall be determined by reference to the method set out in the Electricity Law or, if there is no such method, by reference to prior billing history or subsequent meter readings or any other method agreed between the parties.
- (g) A party must promptly notify the other party if it becomes aware of or perceives any errors in Metering Data provided by the other party.

4.6 Adjustment of invoices

An incorrect Charge in an invoice rendered under this Agreement must be altered by the Distributor in a subsequent invoice to rectify the error. An adjusted invoice must include, or be accompanied by, an explanation of the reason why the adjusted invoice is being issued.

4.7 Payment and interest

- (a) Subject to **clause 4.8**, the Customer must pay any such invoice within 10 Business Days after the day on which the invoice is received (or deemed to be received) by the Customer.
- (b) Payment shall be made by deposit into the Distributor's nominated account, or in a manner otherwise agreed between the Distributor and the Customer.

- (c) If the Customer does not pay an invoice in full in accordance with this clause, the Customer must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with **clause 4.8**) from the 10th Business Day after the day the invoice is received (or deemed to be received) until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

4.8 Disputed invoice

- (a) The Customer must notify the Distributor within 7 Business Days of receipt of an invoice (**Dispute Period**) if it disputes its obligation under this Agreement to pay all or part of that invoice (**Disputed Invoice**) and must include in that notice its grounds for disputing the Disputed Invoice and the amount disputed.
- (b) Unless the Customer gives notice to the Distributor within the Dispute Period, the Customer must pay the Disputed Invoice in full, subject to its right to seek a subsequent adjustment under **clause 4.6** or to dispute the amount of the invoice under **clause 4.8(d)** after the invoice has been paid in full.
- (c) If the Customer notifies the Distributor of a Disputed Invoice within the Dispute Period, the parties will seek to resolve that dispute in accordance with **clause 4.8(d)**, and the Customer will be required to pay the greater of the following amounts within the applicable period for payment of the relevant invoice under **clause 4.7(a)**:
 - (i) the amount of the invoice not genuinely disputed by the Customer; or
 - (ii) 80% of the amount of the previous undisputed invoice from the Distributor (or any other reasonable amount agreed by the parties).

For the purposes of this **clause 4.8(c)**, where a dispute as to an invoice is resolved, the resolved amount will be deemed to be an undisputed invoice amount.

- (d) Any dispute notified under **clause 4.8(a)** shall be resolved in accordance with this clause and neither party may refer the dispute to the dispute resolution procedure under **clause 15.11** until the parties have satisfied obligations under **clause 4.8(d)(i)** and, if applicable, **clause 4.8(d)(ii)**:
 - (i) the Distributor will discuss with the Customer any queries that the Customer may have in relation to an invoice and conduct an internal review of the invoice within 10 Business Days after receipt of the notice. The Distributor will report its findings to the Customer as soon as practicable after completion of that review;
 - (ii) if the matter is not resolved within 2 Business Days from the receipt by the Customer of the Distributor's report under **clause 4.8(d)(i)**, either party may refer it to dispute resolution under **clause 15.11**.
- (e) If, following the resolution of a dispute in accordance with **clause 4.8(a)** or **clause 15.11**, it is determined that the amount that is properly due to the Distributor in relation to that invoice is:
 - (i) more than the amount already paid by the Customer, then the Customer must pay within 3 Business Days to the Distributor the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the underpayment;

- (ii) less than the amount already paid by the Customer, then the Distributor must pay within 3 Business Days to the Customer the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the overpayment.
- (f) Interest on the difference payable under **clause 4.8(e)** shall be calculated at the Default Rate applicable on the first day of each month, capitalised on the first day of each month and calculated on actual days elapsed and a 365 day year for each day after that invoice was due to be paid up to and including the date the difference and any accrued interest payable under this **clause 4.8(f)** (if any) is paid.
- (g) Unless the parties otherwise agree, no party may set off or deduct any money which it owes to the other party against any money which the other (second) party owes to the first party.
- (h) The payment by the Customer of all or part of an invoice from the Distributor (whether or not that invoice was disputed by the Customer at the time) will not preclude the Customer from subsequently challenging its liability to pay that invoice or a part of that invoice (unless the challenge relates to a dispute which has already been finally determined in accordance with this **clause 4.8**).

4.9 Credit Support

- (a) Where the Required Credit Support Amount is greater than zero, the Distributor may request the Customer to provide to the Distributor and, within 10 Business Days after the request the Customer must provide to the Distributor, an unconditional undertaking in favour of the Distributor which:
 - (i) is substantially in the form of **Annexure 1** or such other form as approved by the Distributor; and
 - (ii) is issued by either an Australian bank or any other financial institution approved by the Distributor which is capable of paying on the Credit Support in Melbourne when demanded (**Credit Support**).
- (b) For the purpose of the calculation of the Required Credit Support Amount, the Credit Allowance of the Customer is zero if at the time of the Distributor's request for Credit Support under **clause 4.9(a)** any of the following apply:
 - (i) within the previous 12 months or, where the Commencement Date occurs within the previous 12 months, since the Commencement Date, the Customer has failed to pay in full:
 - (A) 3 invoices within the required time limit for payment;
 - (B) 2 consecutive invoices within the required time limit for payment; or
 - (C) 1 invoice within 25 Business Days of the due date,
 otherwise than where the failure to pay an invoice is due to a dispute under **clause 4.8**;
 - (ii) AEMO calls upon any credit support provided by the Customer to AEMO under the National Electricity Rules; and
 - (iii) the Customer ceases to be registered under the National Electricity Rules.
- (c) The Credit Support provided by the Customer under **clause 4.9(a)** must be for an amount requested by the Distributor, not exceeding the Required Credit Support Amount.

- (d) If at any time the aggregate amount of uncalled Credit Support held by the Distributor is less than 90% of the Required Credit Support Amount, the Customer must within 10 Business Days of a request from the Distributor increase the amount of the Credit Support to the Required Credit Support Amount.
- (e) If at any time the aggregate amount of uncalled Credit Support held by the Distributor is more than 110% of the Required Credit Support Amount or if the Required Credit Support Amount is zero, the Distributor must within 10 Business Days of a request from the Customer and in conjunction with the Customer do all things necessary to reduce the aggregate amount of uncalled Credit Support held by the Distributor to the Required Credit Support Amount.
- (f) The Distributor may set off from, apply or draw on the Credit Support if:
 - (i) the Customer has failed to pay any amount due and owing by the Customer to the Distributor under this Agreement at any time 3 Business Days after giving notice to the Customer that it intends to set off, apply or draw on the Credit Support; and
 - (ii) there is no dispute outstanding in accordance with **clause 4.8** or **clause 15.11** in relation to the Customer's liability to pay an amount.
- (g) If the Customer has been required to provide Credit Support, the Customer must ensure that at all times the aggregate undrawn or unclaimed amount of the Credit Support is not less than the amount determined by the Distributor in accordance with **clause 4.9(c)** or adjusted in accordance with **clause 4.9(d)**.
- (h) Following termination or expiry of this Agreement, any balance of the Credit Support outstanding after payment of all amounts owing by the Customer to the Distributor under this Agreement must be paid to the Customer or cancelled or returned to the Customer, as appropriate.
- (i) The exercise of any rights of set off by the Distributor under **clause 4.9(f)** does not prejudice any other right of recovery which the Distributor has in respect of any outstanding amount owed by the Customer.
- (j) The Customer must not take any steps to seek an injunction or otherwise restrain:
 - (i) any issuer of the Credit Support from paying the Distributor pursuant to the Credit Support;
 - (ii) the Distributor from taking any steps for the purposes of making a demand against the Credit Support; or
 - (iii) the Distributor using the money obtained in the calling of the Credit Support, where the Distributor has acted in accordance with **clause 4.9(a)** to **clause 4.9(l)** (each inclusive).
- (k) The Customer must notify the Distributor within 1 Business Day if the Credit Allowance of the Customer becomes equal to zero because of the operation of **clause 4.9(b)(ii)** or **clause 4.9(b)(iii)**.
- (l) If the issuer of the Credit Support pays an amount to the Distributor which amount was not set off from, applied or drawn on in accordance with in accordance with **clause 4.9(a)** to **clause 4.9(l)** (each inclusive), the Distributor holds that amount on trust for the Customer and must pay it to the Customer on demand, together with interest at the Default Rate from the date upon which that amount was paid to the Distributor to the date upon which that amount is paid to the Customer.

4A System Strength Charge

4A.1 System Strength Charge

- (a) This clause only applies where the Customer has made an election to pay the *system strength charge* in accordance with clause 5.3.4B(b1) of the National Electricity Rules.
- (b) Where the Customer has made an election to pay the *system strength charge*:
 - (i) AEMO is the *System Strength Service Provider* in Victoria under clause 5.20C.3 of the National Electricity Rules;
 - (ii) AEMO will charge the Distributor an *annual system strength charge* for the Customer's system strength connection point, in equal monthly instalments from time to time in accordance with the National Electricity Rules;
 - (iii) the Distributor will pass through the *annual system strength charge* by invoicing the Customer for the *annual system strength charge* for the Customer's system strength connection point on a monthly basis;
 - (iv) the Customer must pay the invoice within 10 Business Days after the day the invoice is received by the Customer;
 - (v) payment shall be made by deposit into the Distributor's nominated account, or in a manner otherwise agreed between the Distributor and the Customer.
 - (vi) if the Customer does not pay an invoice in full in accordance with this clause, the Customer must pay interest on the outstanding amount from the 10th Business Day after the day the invoice is received (or deemed to be received) until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

4A.2 Credit Support System Strength Charge

- (a) The Distributor may request the Customer to provide to the Distributor and, within 10 Business Days after the request the Customer must provide to the Distributor, an unconditional undertaking in favour of the Distributor which:
 - (i) is substantially in the form of **Annexure 1** or such other form as approved by the Distributor; and
 - (ii) is issued by either an Australian bank or any other financial institution approved by the Distributor which is capable of paying on the credit support in Melbourne when demanded (**System Strength Credit Support**).
- (b) The System Strength Credit Support provided by the Customer under **clause 4A.2** must be for an amount requested by the Distributor but not exceeding the estimated *annual system strength charge*.

- (c) If at any time the aggregate amount of uncalled System Strength Credit Support held by the Distributor is less than 90% of the estimated *annual system strength charge*, the Customer must within 10 Business Days of a request from the Distributor increase the amount of the System Strength Credit Support to the estimated *annual system strength charge*.
- (d) If at any time the aggregate amount of uncalled System Strength Credit Support held by the Distributor is more than 110% of the estimated annual system strength charge, the Distributor must within 10 Business Days of a request from the Customer and in conjunction with the Customer do all things necessary to reduce the aggregate amount of uncalled System Strength Credit Support held by the Distributor to the estimated annual system strength charge.
- (e) The Distributor may set off from, apply or draw on the System Strength Credit Support if the Customer has failed to pay any amount due and owing by the Customer to the Distributor under this Agreement at any time 3 Business Days after giving notice to the Customer that it intends to set off, apply or draw on the System Strength Credit Support.
- (f) Following termination or expiry of this Agreement, any balance of the System Strength Credit Support outstanding after payment of all amounts owing by the Customer to the Distributor under this Agreement must be paid to the Customer or cancelled or returned to the Customer, as appropriate.
- (g) The exercise of any rights of set off by the Distributor under this clause does not prejudice any other right of recovery which the Distributor has in respect of any outstanding amount owed by the Customer.
- (h) The Customer must not take any steps to seek an injunction or otherwise restrain:
 - (i) any issuer of the System Strength Credit Support from paying the Distributor pursuant to the System Strength Credit Support;
 - (ii) the Distributor from taking any steps for the purposes of making a demand against the System Strength Credit Support; or
 - (iii) the Distributor using the money obtained in the calling of the System Strength Credit Support,
 where the Distributor has acted in accordance with this clause.

5 The Distributor's Rights and Obligations

5.1 The Distributor's Rights and Obligations

- (a) From the Commencement Date and subject to **clauses 5.1(c), 7, 8 and 9**, the Distributor will comply with all applicable requirements of the Electricity Law when performing its obligations under this Agreement.
- (b) The Distributor will use its reasonable endeavours to ensure that the Distributor's Distribution System is capable of accepting the export of electricity from the Embedded Generating Unit to the Distributor's Distribution System through the Point of Supply up to the Maximum Export Capacity.
- (c) The Distributor may without liability (via the DERMS, MSLM or otherwise) discontinue, interrupt or limit the quantity of electricity exported from the Embedded Generating Unit for self consumption or to the Distributor's Distribution System or delivered from the Distributor's Distribution System to the Customer's Electrical Installation at any time for the following reasons:

- (i) planned maintenance, repair or augmentation of the Distributor's Distribution System;
 - (ii) unplanned maintenance or repair of the Distributor's Distribution System after a fault or where, in the reasonable opinion of the Distributor, such works are required to minimise the threat of injury or material damage to a person or property;
 - (iii) where permitted or required under the Electricity Law or in accordance with any valid direction given by an authority in accordance with Electricity Law;
 - (iv) where directed by AEMO (or its agents) in accordance with the Electricity Law as a result of a Minimum System Load Event;
 - (v) in the case of an emergency or in the reasonable opinion of the Distributor, any risk to the health or safety of any person;
 - (vi) where the Customer has not obtained or has failed to maintain all necessary Authorisations or is otherwise in breach of its obligations under **clause 7.1** and has not remedied that failure or breach within 7 days after receiving a notice from the Distributor to remedy that failure or breach;
 - (vii) where the Customer has failed to act as required under Electricity Law and has not remedied that failure within 7 days after receiving a notice from the Distributor to remedy that failure;
 - (viii) where the Distributor is entitled or required to disconnect the Point of Supply under the Electricity Law;
 - (ix) where the Distributor forms a reasonable opinion that it is necessary in order to maintain the reliability, safety, security and stability of the Distribution System;
 - (x) where the Distributor is informed by AEMO or TNSP that it is necessary in order to maintain the reliability, safety, security and stability of the TNSP's transmission system; or
 - (xi) as a result of any Harmonic Exceedance.
- (d) If the Distributor discontinues, interrupts or limits the acceptance of export electricity under **clause 5.1(c)**, the Distributor must, after making allowance for the Distributor's total operational works program and the Distributor's Distribution System priorities, use reasonable endeavours to resume accepting the export of electricity as soon as possible after the reason for the discontinuance, interruption or limitation has been remedied or removed or otherwise ceases.
- (e) Where the Distributor has discontinued, interrupted or limited the quantity of electricity exported from the Embedded Generating Unit to the Distributor's Distribution System as a result of any Harmonic Exceedance, the Distributor's obligation under **clause 5.1(d)** to use reasonable endeavours to resume accepting the export of electricity as soon as possible is subject to the Customer proving, to the satisfaction of the Distributor (acting reasonably), that the operation of the Embedded Generating Unit will be compliant with the Harmonic Emission Limit (which may include a requirement for a remedial plan, additional plant or for controlled mechanisms to be imposed on the operation of the Embedded Generating Unit if such actions are deemed necessary for the Distributor to ensure the Customer's compliance with the Harmonic Emission Limit).

- (f) Where the Distributor discontinues, interrupts or limits the acceptance of export electricity due to a Minimum System Load Event, it will advise the Customer by electronic communications in accordance with the Distributor's process as published from time to time.

5.2 Testing by Distributor

The Distributor may, from time to time, remotely access the Customer's Embedded Generating Unit to carry out testing as the Distributor reasonably requires to verify the Distributor can (via the DERMS, MSLM or otherwise) discontinue, interrupt or limit the quantity of electricity exported from the Embedded Generating Unit to the Distributor's Distribution System or delivered from the Distributor's Distribution System.

5.3 Avoided TUOS

Pursuant to the Distributor's obligation under clause 5.3AA(h) of the National Electricity Rules to pass through the avoided charges for the locational component of *prescribed TUOS services*, within 90 days after the end of each applicable financial year the Distributor will pay the required amount to the Customer for that financial year and provide a statement of each of the charges and amounts determined by the Distributor for the purposes of clause 5.3AA(i) of the National Electricity Rules.

5.4 No Compensation

In the event the Embedded Generating Unit of the Customer is *constrained off* or *constrained on* during a *trading interval* for the purposes of clause 5.3AA(f)(4)(ii)(A) of the National Electricity Rules, the Distributor will not pay any compensation to the Customer.

6 Export of Electricity

6.1 Export of electricity

The Customer is permitted to export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System in accordance with this Agreement.

7 Customer's Obligations

7.1 National Electricity Rules and Electricity Distribution Code of Practice

- (a) The Customer must be a Market Participant (as defined in the National Electricity Rules) and the Embedded Generating Unit must be classified as a market generating unit (as defined in the National Electricity Rules) under clause 2.2.4(a) of the National Electricity Rules, and at all times during the Term the Customer must maintain that registration and that classification.
- (b) The Customer must comply with all obligations imposed on it by the Electricity Law and any direction given in accordance with the Electricity Law in relation to the connection and operation of the Embedded Generating Unit and the Customer's Electrical Installation, the export of electricity from the Embedded Generating Unit to the Distributor's Distribution System and the delivery of electricity from the Distributor's Distribution System to the Customer's Electrical Installation.
- (c) Without limiting **clause 7.1(b)**, the Customer must comply with the Electricity Distribution Code of Practice as an "embedded generator" (as defined in the Electricity Distribution Code of Practice) as well as the Electricity System Code. The Customer must also comply with the obligations imposed on "customers" (as defined in the Electricity Distribution Code of Practice) under the Electricity Distribution Code of Practice. If there is any inconsistency between the Electricity Distribution Code of Practice and this Agreement, the Electricity Distribution Code of Practice prevails.

- (d) The Customer must obtain all necessary Authorisations and statutory approvals from the relevant responsible authorities to enable the Distributor to accept the export of electricity from the Embedded Generating Unit to the Distributor's Distribution System.
- (e) In particular and without limiting the Customer's obligations under this clause, the Customer must:
 - (i) ensure that the Embedded Generating Unit (and associated systems) complies with, and is installed and maintained in accordance with:
 - (A) all applicable Australian Standards;
 - (B) the Electricity Safety Act 1998 (Vic) and any regulations applicable to installations issued under that Act;
 - (C) any other technical requirements reasonably required by the Distributor (including, without limitation, the Distributor's requirements for the DERMS or MSLM where applicable and the Service and Installation Rules to the extent that they apply to the Embedded Generating Unit);
 - (D) the registered performance standards for the Embedded Generating Unit under the National Electricity Rules, a copy of which is contained in **Schedule 2** or such higher standards as may be reasonably required by the Distributor as notified in writing to the Customer.
 - (ii) ensure the Embedded Generating Unit is maintained in a safe condition including without limitation keeping records for all past inspections, testing and maintenance work and must upon request from the Distributor, provide copies of the same to demonstrate that the Embedded Generating Unit is being maintained;
 - (iii) ensure the operation of the Embedded Generating Unit does not compromise the safe operation of the Distributor's Distribution System under normal or abnormal conditions and does not interfere with the continuity of quality of electricity supply to other customers of the Distributor;
 - (iv) inform the Distributor as soon as practicable if there is any:
 - (A) proposed change to wiring, settings or plant or equipment in relation to the Embedded Generating Unit which may affect the ability of the Embedded Generating Unit to comply with this clause;
 - (B) change to the major purpose for which the electricity is used in relation to the Embedded Generating Unit;
 - (C) change affecting access to the Distributor's equipment located in or around the Embedded Generating Unit; and
 - (D) major change to the amount of electricity likely to be used by the Customer in relation to the Embedded Generating Unit;
 - (v) notify the Distributor without delay if it becomes aware of:
 - (A) any fault of irregularity in the Embedded Generating Unit and must take such steps as required to remedy the fault or irregularity and provide such evidence to the Distributor as the Distributor requires to substantiate that such steps have been successfully taken;

- (B) anything that materially affects or is likely to affect its ability to comply with its obligations under this Agreement;
 - (C) anything that occurs or becomes apparent that may affect the safety of its own or the Distributor's employees or agents, the Distributor's customers or their employees, agents or customers or any member of the public or result in the Distributor being in breach of the Codes, the Distribution Licence or the Act; or
 - (D) a material claim, dispute, proceeding, judgment or award affecting the Customer.
- (vi) in respect of inspection and testing:
- (A) be solely responsible for undertaking such inspection and testing of the Embedded Generating Unit as required to ensure that the Embedded Generating Unit is at all times compliant with the requirements of this Agreement (including the requirements of Electricity Law);
 - (B) carry out such inspection and testing of the Embedded Generating Unit (including its protection systems) as the Distributor reasonably requires (whether because of a fault or incident which has arisen in respect of the Embedded Generating Unit or otherwise);
 - (C) must give the Distributor as much notice as is reasonably practicable of any inspection or testing. Any inspection or testing must be carried out in the presence of representatives of the Distributor if required by the Distributor;
 - (D) where inspection or testing is required because of a fault or irregularity in the Embedded Generating Unit, because of a direction given by a government agency or because of the Customer's failure to comply with this Agreement, the Customer must pay the Distributor's reasonable charges for attending such inspection or testing.
- (vii) not export electricity through the Point of Supply at a rate exceeding the Maximum Export Capacity;
- (viii) ensure that its Embedded Generating Unit is capable of being remotely switched off or the electricity generated by the Embedded Generating Unit capable of being remotely curtailed to a range including 0kVA by the Distributor;
- (ix) ensure that its operating personnel are appropriately trained and accredited; and
- (x) have an inspection and maintenance policy which addresses all the matters in this clause 7.1(e).
- (f) In respect of any *dispatch interval* where the Distributor or TNSP has advised the Customer there will be an outage, the Customer must:
- (i) not take any action which will result in the Customer submitting a *dispatch offer* in that *dispatch interval*; and
 - (ii) where a *dispatch offer* was submitted for that *dispatch interval*, withdraw the *dispatch offer* prior to commencement of the outage.

7.2 Maximum Import Capacity

- (a) The Customer must not take electricity at a rate exceeding the Maximum Import Capacity at the Point of Supply, unless the Distributor's prior written approval is obtained, which approval will not be unreasonably withheld.
- (b) Where the capacity of the Distributor's Distribution System is inadequate to make supply available at a higher rate on a continuous basis, the Distributor may advise the Customer that the new Maximum Import Capacity will apply only for the Billing Cycle in which it was established, pending augmentation of the Distributor's Distribution System and renegotiation of a revised Maximum Import Capacity. The Maximum Demand thereafter is limited to the available capacity of the Distributor's Distribution System, as determined by the Distributor, by suitable load limiting equipment installed by the Customer to the Distributor's satisfaction.

7.3 Metering arrangements

- (a) Without limiting **clause 7.1(b)**, the Customer must ensure that:
 - (i) the Point of Supply, as a connection point under the National Electricity Rules, has a Metering Installation and that the Metering Installation is registered with AEMO;
 - (ii) either:
 - (A) the Customer has become the Responsible Person for the Metering Installation under clause 7.2.2 of the National Electricity Rules and has advised the Distributor as the Local Network Service Provider under the National Electricity Rules; or
 - (B) the Customer has sought an offer and, if accepted, entered into an agreement with the Distributor under clause 7.2.3 of the National Electricity Rules under which the Distributor as the Local Network Service Provider is to act as the Responsible Person for the Metering Installation; and
 - (iii) prior to registration, a NMI has been obtained by the Responsible Person for that Metering Installation.
- (b) If the Customer is the Responsible Person for the Metering Installation then, as such, the Customer must discharge all the Customer's roles, responsibilities and obligations as such under Chapter 7 of the National Electricity Rules, the Metrology Procedure and procedures authorised under the National Electricity Rules including, without limitation, roles, responsibilities and obligations in respect of:
 - (i) the provision, installation and maintenance of a Metering Installation for the Point of Supply as a connection point under the National Electricity Rules; and
 - (ii) collection of Metering Data from that Metering Installation, the processing of that data and the delivery of the processed data to the metering database under the National Electricity Rules and to parties entitled to that data under clause 7.7(a) of the National Electricity Rules including the Distributor.

7.4 Network Tariff

As at the date of signing this Agreement, the Customer is not required to pay any Network Tariffs in relation to the export of electricity from the Embedded Generating Unit. If there is a Change in Electricity Law which entitles the Distributor to charge the Customer Network Tariffs in relation to the export of electricity from the Embedded Generating Unit, the Customer agrees that it will pay the Distributor any such relevant Network Tariff.

7.5 Cessation of Operation

If the Customer, for any reason, ceases to be responsible for operating the Embedded Generating Unit, the Customer must:

- (a) advise the proposed operator that it must not take electricity in excess of the Maximum Import Capacity;
- (b) give notice to the Distributor specifying the proposed date of cessation; and
- (c) where another person will become responsible for operating the Embedded Generating Unit, subject to first obtaining the Distributor's consent in accordance with **clause 15.2**, procure the person who will become responsible for operating the Embedded Generating Unit to execute a Agreement of novation under which it becomes bound by this Agreement.

7.6 Access to Supply Address and Metering Installation

- (a) The Customer must give the Distributor reasonable access to the Supply Address at all times for the purpose of complying with, or monitoring compliance with, the obligations of the parties under this Agreement and the Electricity Law as it relates to the obligations of the parties under this Agreement.
- (b) Without limiting **clause 7.6(a)**, the Customer must provide routine business hours access to the Metering Installation for the Distributor or for any person engaged by the Responsible Person to provide any Metering Services in respect of the Metering Installation, to perform local meter data reading, inspection, supply or compliance testing, maintenance or replacement of the metering devices including the instrument transformers, meter or communications equipment. The Customer must also provide emergency after hours access for fault investigation, isolation or disconnection of any metering device or of the Metering Installation.
- (c) The Customer may refuse to give access under this **clause 7.6** to anyone who does not provide identification as an employee, contractor, subcontractor, officer or agent of the Distributor or of a person providing Metering Services in respect of the Metering Installation.

7.7 Technical and operational issues

- (a) The Customer must ensure that the Customer's Electrical Installation complies with, and is installed and maintained in accordance with:
 - (i) the technical requirements outlined in the Service and Installation Rules;
 - (ii) all applicable Australian Standards and *good electricity industry practice*;
 - (iii) the Electricity Safety Act 1998 (Vic) and regulations made under that Act; and
 - (iv) any other technical requirements reasonably required by the Distributor.

- (b) None of the equipment and assets that the Distributor installs at the Supply Address, whether or not they are fixed to the land or any buildings on the land, become part of the land or premises at the Supply Address and the Distributor may remove them after disconnection of the Supply Address. The Customer's obligations in respect of the Distributor's equipment and assets continue after this Agreement terminates.
- (c) If the Customer wishes to increase the Maximum Import Capacity, the Distributor may be entitled to charge the Customer for the cost of any necessary works, as provided for in the Distributor's customer contribution policy.

8 Distributor's Liability

8.1 Limitation of liability

- (a) Subject to clause 8.1(b), but notwithstanding any other provision of this Agreement and except to the extent that liability cannot legally be limited or excluded:
 - (i) the Distributor's total liability for all events giving rise to liability on its part arising out of or in connection with this Agreement will be limited to \$5 million per event and in total aggregate per annum;
 - (ii) in no event will the Distributor be liable for any fines, penalties, liquidated sums that the Customer may be liable for under third party contracts, loss of use, contract, profit or revenue, production stoppage or replacement services, or for any indirect or consequential loss or damage;
 - (iii) the limitation and exclusion of liability contained in this clause 8.1(a) will apply whether the liability claim is based on breach of contract, breach of warranty, breach of statute or regulation, tort, negligence, under an indemnity, strict liability, in equity or other legal theory.
- (b) The Distributor's liability for:
 - (i) personal injury or death;
 - (ii) fraud; or
 - (iii) wilful misconduct,will be unlimited.
- (c) The Distributor's liability under this Agreement is reduced proportionately to the extent that the Customer's negligent acts or omissions have caused or contributed to such loss, damage, expense or injury.

8.2 Exclusion of Warranties

To the maximum extent permitted by law, all statutory or implied conditions and warranties are excluded from this Agreement, and, to the extent they cannot be excluded, all liability in relation to them is disclaimed to the maximum extent permitted by law.

8.3 Limitation of the Distributor's liability under the Competition and Consumer Act

The Competition and Consumer Act 2010 (Cth) and other laws may imply certain terms into this Agreement that cannot be legally excluded. Any liability the Distributor has to the Customer under any such term is limited to the maximum extent permitted under law and, if the law allows, is limited to:

- (a) in the case of goods, the supply of equivalent goods or paying the Customer the cost of acquiring equivalent goods (at the Distributor's option); and
- (b) in the case of services, supplying the services again or paying the Customer the cost of acquiring equivalent services (at the Distributor's option).

8.4 National Electricity Law

Notwithstanding anything else in this Agreement, the Distributor is not liable for any failure to comply with this Agreement if, and to the extent that:

- (a) the Distributor is relieved from the performance of, or liability in respect of, its obligations by the operation of section 119 and 120 of the National Electricity Law (and for the avoidance of doubt nothing in this Agreement varies any of the legislative provisions mentioned above); or
- (b) the failure to comply arises as a result of the Customer's negligence, breach of this Agreement or the Electricity Law or a Force Majeure Event.

Clauses 8.4(a) and **8.4(b)** are not exhaustive and do not limit or diminish other reasons why the Distributor may not be liable to the Customer under the law.

9 Customer's Liability and Indemnity

9.1 Liability and Indemnity

- (a) Without prejudice to any other rights or remedies the Distributor may have under this Agreement or at law, the Customer is liable for and indemnifies and agrees to keep the Distributor indemnified against all claims, actions, demands, proceedings, liabilities, damages, losses, amounts, costs and expenses (including legal costs and disbursements on a solicitor and own client basis) arising, paid, suffered or incurred by the Distributor (directly or indirectly) as a result of or in connection with:
 - (i) a failure by the Customer to pay the Charges or the *annual system strength charge*; or
 - (ii) any breach of the Customer's obligation under clause 7.1(f) which results in TNSP incurring a financial penalty under the Australian Energy Regulator's Electricity Transmission Network Service Providers Service Target Performance Incentive Scheme.
- (b) In this **clause 9**, costs and expenses includes all reasonable legal costs and expenses on a solicitor and own client basis.
- (c) The Customer's liability under this Agreement is reduced proportionately to the extent that the Distributor's negligent acts or omissions have caused or contributed to such loss, damage, expense or injury.

9.2 Limitation of liability

- (a) Subject to clause 9.2(b) and the Customer's obligation to pay the Charges and the *annual system charge*, but notwithstanding any other provision of this Agreement and except to the extent that liability cannot legally be limited or excluded:
 - (i) the Customer's total liability for all events giving rise to liability on its part arising out of or in connection with this Agreement will be limited to the Minimum Insurance Amount per event and in total aggregate per annum;

- (ii) the limitation and exclusion of liability contained in this clause 9.2(a) will apply whether the liability claim is based on breach of contract, breach of warranty, breach of statute or regulation, tort, negligence, under an indemnity, strict liability, in equity or other legal theory.
- (b) The Customer's liability for:
- (i) any third party claims against the Distributor to the extent caused or contributed to by any negligent act or omission of the Customer;
 - (ii) any loss suffered by the Distributor under the Australian Energy Regulator's Service Target Performance Incentive Scheme to the extent caused by negligent act or omission of the Customer;
 - (iii) any losses suffered or incurred by TNSP as a result of or in connection with the Customer's operation of, or the export of electricity from the Embedded Generating Unit (including but not limited to any loss suffered by TNSP under the Australian Energy Regulator's Service Target Performance Incentive Scheme);
 - (iv) any losses suffered or incurred by TNSP arising from any breach of the Customer's obligation under clause 7.1(f) which results in TNSP incurring a financial penalty under the Australian Energy Regulator's Electricity Transmission Network Service Providers Service Target Performance Incentive Scheme;
 - (v) personal injury or death;
 - (vi) fraud; or
 - (vii) wilful misconduct,
- will be unlimited.
- (c) The Customer's liability under this Agreement is reduced proportionately to the extent that the Distributor's negligent acts or omissions have caused or contributed to such loss, damage, expense or injury.

9.3 Indemnities and reimbursements

If a party is to indemnify, reimburse or pay a contribution to the other party under this Agreement, the amount the paying party must pay the other is:

- (a) reduced by any input tax credit the other could have obtained in connection with that indemnity, reimbursement or contribution; and
- (b) increased by the GST the other is liable for on that indemnity, reimbursement or contribution.

10 Force Majeure

- (a) Subject to **clause 10(c)**, neither party will be liable for any delay or failure to perform its obligations pursuant to this Agreement (other than an obligation to pay money) to the extent that the delay or failure to perform its obligations is caused by a Force Majeure Event.
- (b) Subject to **clause 10(c)**, a party's obligations will be suspended to the extent that a delay or failure of the party to perform its obligations (other than an obligation to pay money) is caused by a Force Majeure Event.

- (c) A party suffering a Force Majeure Event (the **Affected Party**) must:
- (i) as soon as practicable after the commencement of a Force Majeure Event, give the other party (the **Non-Affected Party**) notice in writing of the occurrence and details of the Force Majeure Event and the estimated delay in performance of any obligations resulting from the occurrence and regularly update those details and the estimated delay during the period of the Force Majeure Event; and
 - (ii) do all things reasonably required to mitigate the effect of the Force Majeure Event.
- (d) If an Affected Party's obligations are suspended due to a Force Majeure Event for a continuous period of 12 months, the Non-Affected Party may, at the expiry of that 12 month period, terminate this Agreement by written notice to the Affected Party.

11 GST

11.1 GST

- (a) The terms "Adjustment", "Adjustment Note", "Adjustment Event", "Decreasing Adjustment", "GST", "Increasing Adjustment", "Recipient", "Supplier", "Supply", "Taxable Supply", "Tax Invoice" and "Tax Period", have the meanings given in Section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) The parties acknowledge that all amounts payable under this Agreement are expressed on a GST inclusive basis and reflect the rate of GST applicable at the time the amounts payable are calculated.
- (c) If, after the Commencement Date of this Agreement, the GST rate changes (including to an effective rate of zero for any particular Supply) (the **New GST Rate**), the parties agree that the Supplier may vary the GST inclusive price for any Supply made under this Agreement that is attributable to a tax period on or after the commencement of the New GST rate, to reflect the new amount of GST payable (if any).
- (d) Each party agrees that to the extent it makes Taxable Supplies under this Agreement, it shall issue a Tax Invoice to the other party. As a precondition to that party paying any amount in respect of a Taxable Supply, the Supplier must issue a Tax Invoice for that Taxable Supply.
- (e) If, in relation to a Taxable Supply made under this Agreement, an Adjustment Event occurs that gives rise to an Adjustment, then the price of that Taxable Supply (including any GST Amount) will be adjusted accordingly and where necessary a payment will be made to reflect that Adjustment. If a payment is required it will be made within five (5) Business days of the payer becoming aware of the Adjustment. As a precondition paying any amount to a supplier in respect of an Adjustment, the supplier must issue an Adjustment Note.
- (f) If a Supply made under this Agreement is treated as not subject to GST but is, or becomes, a Taxable Supply, the supplier may charge and recover from the Recipient in addition to any other consideration, an amount equivalent to the GST payable on that Taxable Supply.

- (g) If any party is required to pay, reimburse or contribute to an amount paid or payable by another party in respect of an acquisition from a third party, the amount for payment, reimbursement or contribution shall be the acquisition price paid by the acquiring party, less any input tax credit it is entitled to claim, plus GST.

12 Insurance

12.1 Insurance

- (a) Subject to **clause 12.1(e)**, the Customer must at its cost, during the term, maintain public liability insurance in respect of personal injury, death or property damage that arises in respect to the operation of this Agreement, for an amount of not less than the Minimum Insurance Amount.
- (b) The public liability policy maintained in accordance with this clause must be with an insurer, and be on terms, reasonably acceptable to the Distributor.
- (c) The Customer must comply with and observe the terms of the public liability policy and must not do anything which could result in the policy being rendered void or voidable.
- (d) The Customer must deliver to the Distributor evidence satisfactory to the Distributor, that the Customer has the public liability policy required in accordance with this clause and that the policy is current, promptly after a written request by the Distributor to do so.
- (e) With effect from each fifth anniversary of the Commencement Date (**Review Date**), the Minimum Insurance Amount will be adjusted in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

- A = the Minimum Insurance Amount from the Review Date;
- B = the Minimum Insurance Amount applicable immediately before the Review Date;
- C = the Consumer Price Index All Groups Victoria last published by the Australian Bureau of Statistics before the relevant Review Date; and
- D = the Consumer Price Index All Groups Victoria last published by the Australian Bureau of Statistics before the Review Date preceding the relevant Review Date and in the case of the first review, the Commencement Date.

13 Termination

13.1 Termination by the Distributor

- (a) The Distributor may terminate this Agreement immediately by written notice to the Customer if, in the Distributor's opinion, any of the following occurs:

- (i) any act or omission of the Customer places the safety of its own or the Distributor's employees or agents, the Distributor's customers or their employees, agents or customers or any member of the public at risk;
 - (ii) any act or omission of the Customer causes the Distributor to be in breach of its obligation under the Codes, the Distribution Licence or the Act; or
 - (iii) any act or omission of the Customer places the Distributor's Distribution System or the efficient operation of the Distributor's Distribution System seriously at risk.
- (b) The Distributor may terminate this Agreement by 30 days written notice to the Customer if, in the Distributor's opinion, any of the following occurs:
- (i) the Customer fails to remedy a breach of any of its obligations under this Agreement within 14 days of receiving written notice of the breach from the Distributor;
 - (ii) the Point of Supply is disconnected as permitted under the Electricity Law, and is not reconnected within 12 months of the disconnection;
 - (iii) the Embedded Generating Unit is decommissioned; or
 - (iv) the Customer fails to commence export of electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System within 6 months of connection to the Distributor's Distribution System and the Customer fails to commence export of electricity within 30 days of receiving written notice from the Distributor;
 - (v) the Customer fails to export of electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System for a continuous period of 3 months and the Customer fails to commence export of electricity within 30 days of receiving written notice from the Distributor; or
 - (vi) the Negotiated Connection Contract for works to connect the Customer's Embedded Generating Unit to the Distributor's Distribution System is terminated by either party for any reason.

13.2 Termination by the Customer

The Customer may terminate this Agreement by 30 days written notice to the Distributor if the Distributor fails to remedy a breach of any of its obligations under this Agreement within 14 days of receiving written notice of the breach from the Customer.

13.3 Termination for insolvency

Either party may give written notice to terminate this Agreement immediately if the other party:

- (a) commits an act of bankruptcy;
- (b) has a winding up order made against it;
- (c) calls a meeting of its creditors;
- (d) has a receiver appointed over all or substantial part of its assets;
- (e) appoints an administrator;

- (f) passes a resolution for its winding up; or
- (g) compounds with its creditors.

This **clause 13.3** will not apply to the reconstruction or amalgamation of a party while solvent.

13.4 Disconnection upon termination

Upon termination of this Agreement, the Distributor may disconnect the Embedded Generating Unit and the Customer's Electrical Installation from the Distributor's Distribution System.

14 Change in Electricity Law

14.1 Obligations upon Change in Electricity Law

If there is a Change in Electricity Law during the Term which:

- (a) has a material effect on the terms of this Agreement;
- (b) affects the ability of either party to fulfil its obligations under this Agreement;
- (c) results in a material change in the allocation of risk between the parties as reflected in this Agreement, or has the effect of providing a new and material financial benefit to one party whether at the expense of the other or not; or
- (d) imposes a new financial cost, impost or liability upon either party,

then upon the written request of either party, the parties shall promptly meet to discuss and, acting in good faith, agree upon any amendments that may be required to the terms of this Agreement to give effect to the Change in Electricity Law.

14.2 Dispute Resolution

If the parties are unable to come to an agreement under **clause 14.1** (and a dispute or difference shall be deemed to have arisen if the parties have not reached agreement within 30 days of the written request pursuant to **clause 14.1**), either party is entitled to terminate this Agreement upon 30 days written notice to the other party.

15 General

15.1 Special Conditions

Any Special Conditions set out in **item 14 of Schedule 1** form part of this Agreement. To the extent of any inconsistency between any of the Special Conditions and the rest of this Agreement, the Special Conditions will prevail.

15.2 Assignment

- (a) The Customer may assign its rights or transfer its obligations under this Agreement with the prior written consent of the Distributor which must not be unreasonably withheld or delayed.
- (b) Subject to **clause 15.2(c)**, the Distributor may assign its rights or transfer its obligations under this Agreement with the prior written consent of the Customer which must not be unreasonably withheld or delayed.

- (c) the Distributor may assign its rights or transfer its obligations under this Agreement in its absolute discretion if the assignee or transferee (as the case requires) holds a Distribution Licence. The Customer agrees to execute any document the Distributor may reasonably require to effect such assignment or transfer.
- (d) The Customer may grant security over its rights and obligations under this Agreement to financiers, provided that such financiers may only assign or transfer those rights or obligations to an assignee who:
 - (i) holds an electricity generation licence; and
 - (ii) meets all relevant requirements of the AER, ESC and ESV and the Electricity Law,for the operation of the Embedded Generating Unit.

15.3 Governing Law and Jurisdiction

The law of this Agreement is the law of Victoria. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of Victoria or courts having jurisdiction in Victoria and of all courts competent to hear appeals from those courts. The parties waive any right to object to any proceedings being brought in those courts.

15.4 Waiver

A party's failure or delay to exercise a power, right, authority, discretion or remedy does not operate as a waiver of that power, right, authority, discretion or remedy. The waiver of a breach of any of the provisions of this Agreement or a power, right, authority, discretion or remedy under this Agreement must be in writing and executed by the waiving party.

15.5 Notices

- (a) The party giving notice or notifying under this Agreement must do so in legible writing and in English:
 - (i) directed to the recipient's address as set out in **item 13 of Schedule 1** or as varied by any notice;
 - (ii) signed by the party, or, where the sender is a company, by an authorised representative or under the common seal of the sender; and
 - (iii) hand delivered or sent by pre-paid post, (airmail if to or from a place outside Australia).
- (b) A notice given in accordance with **clause 15.5(a)** is taken to be received:
 - (i) if hand delivered, on delivery; and
 - (ii) if sent by prepaid post, five days after the date of posting.

15.6 Responsible Officer

Each party's Responsible Officer, or a substitute nominated in writing by that party, is authorised by that party to undertake any action and bind that party pursuant to, and for the purposes of this Agreement.

15.7 Variation

The parties may only vary this Agreement by agreement in writing.

15.8 Entire Agreement

This Agreement sets out all the terms agreed by the parties and the Customer acknowledges that it has not relied on any representation, inducement, warranty or promise which is not contained in it.

15.9 Costs

Each party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.

15.10 No Agency or Partnership

No party is an agent, representative, partner or fiduciary of any other party by virtue of this Agreement.

15.11 Dispute Resolution

(a) Disputes

Any dispute or difference arising between the parties out of or in connection with this Agreement must be resolved in accordance with this clause.

(b) Notice of Dispute

Should any dispute or differences arise between the parties out of or in connection with this Agreement, either party may give written notice of the dispute or difference to the other party. The notice shall state that it is a notice under this clause and shall identify the dispute concerned and the clauses of this Agreement relevant to the dispute.

(c) Referral to senior representative

If the parties fail to resolve a dispute or difference within 10 business days of a notice of dispute being given under this clause, the dispute or difference must be referred for resolution to each party's authorised senior representative whose decision shall be binding. If the matter is not resolved within 5 business days of such referral either party may then take further action in accordance with **clause 15.11(d)** or **15.11(e)**.

(d) Expert Determination

- (i) The parties must comply with **clauses 15.11(b)** and **15.11(c)** as a pre-condition to submitting a Non-Regulatory Matter for dispute resolution in accordance with this clause.
- (ii) If a Non-Regulatory Matter is not resolved by the senior representatives of the parties as contemplated in **clause 15.11(c)**, either party may submit the Non-Regulatory Matter to expert determination by giving notice in writing to the other party. The provisions of the of the Expert Determination Rules 2001 as published by The Institute of Arbitrators and Mediators Australia (to be found on its website www.iama.org.au) shall apply, except to the extent that they are inconsistent with provisions in this Agreement.

(e) Regulatory Matter

If a dispute or difference is a Regulatory Matter, the parties will resolve that dispute in accordance with the procedures specified in the Electricity Law for the resolution of that type of dispute.

EXECUTED as an agreement

Executed as an agreement for and on behalf of the Distributor named in **item 1** of **Schedule 1** by its authorised representative in the presence of:

Signature

Signature of witness

Name
(Block Letters)

Name of witness
(Block Letters)

Executed as an agreement for and on behalf of the Customer named in **item 1** of **Schedule 1** by its authorised representative in the presence of:

Signature

Signature of witness

Name
(Block Letters)

Name of witness
(Block Letters)

Schedule 1

Item 1	Customer	
	Distributor	
Item 2	Commencement Date	
Item 3	Supply Address	
Item 4	Point of Supply	
Item 5	Connection Assets	
Item 6	Embedded Generating Unit	
Item 7	Maximum Import Capacity	
Item 8	Maximum Export Capacity	
Item 9	Meter Reading Frequency	
Item 10	Network Tariff	
Item 11	Public Liability Insurance	Cover for an amount not less than \$20 million for any one occurrence and in the aggregate per annum
Item 12	Distributor Responsible Officer	
	Customer Responsible Officer	
Item 13	Distributor Address for Notices	
	Customer Address for Notices	
Item 14	Special Conditions	

Schedule 2 - Registered Performance Standards for Embedded Generating Units

Annexure 1 - Form of Credit Support Undertaking

[Name of Bank] Banker's Undertaking

By: (Bank)

To: the Distributor Pty ABN 76 064 651 056 (Favouree)

At the request of [TNSP] (the **Applicant**) and in consideration of the Favouree accepting this undertaking, Bank undertakes to pay on demand any sum or sums which may from time to time be demanded by the Favouree up to a maximum aggregate sum of (Australian Currency) (the **Sum**).

Bank's liability under this undertaking ceases on the first to occur of:

- (a) Bank's receipt of written notification from the Favouree that the Sum is no longer required by the Favouree; or
- (b) return of this undertaking to Bank; or
- (c) payment to the Favouree by Bank of the whole of the Sum or any part the Favouree may require.

Demands must be in writing; purport to be signed by or for and on behalf of the Favouree; and may be made for the whole or any part or parts of the Sum (and if only for a part, then further demands may be made for the balance). Demands and other notices are only received by Bank when delivered into the hands of a Manager of Bank, at the address given below.

Bank agrees that payment or payments due to the Favouree will be made forthwith and notwithstanding any notice given by the Applicant to Bank not to pay. Payment will be made by cheque payable to the Favouree or to a bank account in the name of the Favouree.

Bank may at any time without being required to do so pay to the Favouree the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Favouree. If Bank makes that payment then its liability under this undertaking ceases.

The Favouree must not assign its rights under this undertaking without the prior written consent of Bank. If Bank consents to the assignment of this undertaking then, unless the context requires otherwise, the word "Favouree" includes each assignee.

Date

Signed for **Bank** by its attorney

Title:

Name: