

Generator Agreement

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 (the Distributor)**

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

RECITALS:

- A. The Customer wishes to synchronise and parallel the Embedded Generating Unit with the Distributor's Distribution System.
- B. The Distributor will permit the Customer to synchronise and parallel the Embedded Generating Unit with the Distributor's Distribution System on the terms and conditions of this Agreement.
- C. Where the Distributor has permitted the Customer to export electricity to the Distribution System, **item 5 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).

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.

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.

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**.

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.

Deemed Distribution Contract means the contract deemed to be entered into by the Distributor and the Customer 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 it in 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 (Vic) 1998 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.

Embedded Generating Unit means the electricity generator described in **item 3 of Schedule 1**.

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

Energise has the meaning given to it in 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.

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.

Land means the land specified in **item 8** of **Schedule 1**.

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

Maximum Export Capacity means the rate specified in **item 5** 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 Rules means the rules made in accordance with the National Electricity Law.

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 it in the National Electricity Law.

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.

Responsible Officer means in relation to each party, that person specified in **item 9** of **Schedule 1**.

Retailer has the meaning given to it under the Electricity Law.

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

Special Conditions means the Special Conditions (if any) provided in **item 10** of **Schedule 1**.

Supply has the meaning given to it in the National Electricity Rules.

Supply Address means the supply address specified in **item 6** of **Schedule 1**.

Term has the meaning given to it in **clause 2.1**.

TNSP means the transmission network service provider.

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 The Distributor's Rights and Obligations

3.1 The Distributor's Rights and Obligations

- (a) From the Commencement Date and subject to **clauses 3.1(c), 5, 7** and Error! Reference source not found., the Distributor will comply with all applicable requirements of the Electricity Law when performing its obligations under this Agreement.

- (b) Where the Customer is permitted to export electricity under this Agreement, 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 and 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 5.1** 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 3.1(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 elected to discontinue, interrupt or limit 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 3.1(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.

3.2 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.

3.3 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.

3.4 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.

4 Export of Electricity

4.1 Export of electricity

If **item 5** of **Schedule 1** specifies a Maximum Export Capacity, 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.

4.2 No export of electricity

If **item 5** of **Schedule 1** specifies that there is to be no export of electricity, the Customer must not export electricity from the Customer's Embedded Generating Unit to the Distributor's Distribution System.

5 Customer's Obligations

5.1 National Electricity Rules and Electricity Distribution Code of Practice

- (a) 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 to the Customer's Electrical Installation.
- (b) The Customer must comply with the Electricity Distribution Code of Practice as though the Customer were an "embedded generator" (as defined in the Electricity Distribution Code of Practice).
- (c) Where the Customer is permitted to export electricity under this Agreement, 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.
- (d) 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 Service and Installation Rules to the extent that they apply to the Embedded Generating Unit and the Distributor's requirements for the DERMS or MSLM where applicable);
 - (D) in the case of any Embedded Generating Unit over 5 MW which exports electricity under this Agreement, 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; and
 - (E) in the case of any Embedded Generating Unit less than 5 MW which exports electricity under this Agreement, the performance standards for the Embedded Generating Unit as notified by the Distributor, a current copy of which is contained in **Schedule 3** 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 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) where the Customer is permitted to export electricity under this Agreement, 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 5.1(d).

5.2 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 Import Capacity 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.

5.3 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.

5.4 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 13.2**, 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.

5.5 Access to the Customer Site

- (a) The Customer must give the Distributor reasonable access to the Land 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) The Customer may refuse to give access under this **clause 5.5** to anyone who does not provide identification as an employee, contractor, subcontractor, officer or agent of the Distributor.

5.6 Deemed Distribution Contract

- (a) The Customer must comply with all obligations imposed on it by the Deemed Distribution Contract.
- (b) The Customer warrants that it has and will continue to maintain a valid contract with a Retailer.
- (c) The Customer acknowledges and agrees that if it wishes to cease to have a valid contract with a Retailer:
 - (i) it will give written notification to the Distributor in a timely manner;
 - (ii) upon written request of the Distributor, 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 or the terms of a new agreement; and
 - (iii) until such time as the parties have executed a variation to this Agreement or entered into a new agreement, the Deemed Distribution Contract will continue to apply notwithstanding clause 2.2(b) of the Deemed Distribution Contract.

5.7 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.

6 The Distributor's Liability

6.1 Limitation of liability

- (a) Subject to clause 6.1(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 6.1(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.

6.2 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.

6.3 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).

6.4 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 **6.4(a)** and **(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.

7 Customer's Liability

7.1 Limitation of Liability

- (a) Subject to clause 7.1(b), but notwithstanding any other provision of this Agreement and except to the extent that liability cannot legally be limited or excluded:
 - (i) the 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 7.1(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 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 acts or omissions 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) personal injury or death;

- (v) fraud; or
- (vi) 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.

7.2 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.

8 Force Majeure

- (a) Subject to **clause 8(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 8(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.

9 GST

9.1 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.

10 Insurance

10.1 Insurance

- (a) Subject to **clause 10.1(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 amount specified in **item 11 of Schedule 1 (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.

11 Termination

11.1 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.

11.2 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.

11.3 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 11.3** will not apply to the reconstruction or amalgamation of a party while solvent.

11.4 Disconnection upon termination

Upon termination of this Agreement, the Distributor may disconnect the Embedded Generating Unit from the Distribution System.

12 Change in Electricity Law

12.1 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.

12.2 Dispute Resolution

If the parties are unable to come to an agreement under **clause 12.1** (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 12.1**), either party is entitled to terminate this Agreement upon 30 days written notice to the other party.

13 General

13.1 Special Conditions

Any Special Conditions set out in **item 10** 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.

13.2 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 13.2(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.

13.3 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.

13.4 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.

13.5 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 12 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 13.5(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.

13.6 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.

13.7 Variation

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

13.8 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.

13.9 Costs

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

13.10 No Agency or Partnership

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

13.11 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 13.11(d)** or **13.11(e)**.

(d) Expert Determination

- (i) The parties must comply with **clauses 13.11(b)** and **13.11(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 13.11(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	Embedded Generating Unit	
Item 4	Point of Supply	
Item 5	Maximum Export Capacity	
Item 6	Supply Address	
Item 7	Maximum Import Capacity	
Item 8	Land	
Item 9	Distributor Responsible Officer	
	Customer Responsible Officer	
Item 10	Special Conditions	
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 Address for Notices	
	Customer Address for Notices	

**Schedule 2 - Registered Performance Standards for Embedded Generating Unit
over 5 MW**

Schedule 3 - Performance Standards for Embedded Generating Unit less than 5 MW