

**NEGOTIATED CONNECTION CONTRACT  
(Pit Installation)**

between

**United Energy**

and

**The Customer**

## NEGOTIATED CONNECTION CONTRACT

This Contract is made

Between

United Energy Distribution Pty Ltd ACN 064 651 029 of 43-45 Centreway, Mount Waverley, Vic 3149 ("United Energy");

and

The party named in the Letter of Offer (the "Customer").

### Recitals

United Energy has offered and the Customer has accepted United Energy's offer to construct the Works in accordance with this Contract. The offer is made on the basis of the least cost technically acceptable method of carrying out the Works.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS & INTERPRETATIONS

#### 1.1 Definitions

In this Contract, unless a contrary intention appears:

"Business Day"	means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.
"Charges"	means the charges to be paid by the Customer in accordance with clause 4 and specified by United Energy in the Letter of Offer, including any additional charges as may be notified by United Energy in accordance with clause 3.2 and clause 4.
"Code"	means any 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 ESC or otherwise.
"Commencement Date"	means the later of the Customer's acceptance of this Contract and payment of the Charges.
"Completion Date"	means the date that is 30 Business Days from the Commencement Date.
"Connection Point"	means the Cable termination inside the service pit.
"Customer Works"	means the works to be completed by the Customer specified in clause 3.3.
"Deemed Distribution Contract"	means United Energy's Deemed Electricity Distribution Contract under section 40A of the <i>Electricity Industry Act (Vic) 2000</i> .
"Electricity Distribution Code"	means the code of that name issued by the ESC pursuant to the <i>Electricity Industry Act (Vic) 2000</i> .
"Electricity Law"	means the Codes, the <i>Electricity Industry Act (Vic) 2000</i> and regulations under that Act, the <i>Electricity Safety Act (Vic) 1998</i> and regulations under that Act, the <i>Essential Services Commission Act (Vic) (2001)</i> and regulations and determinations under that Act, the <i>National Electricity (Victoria) Act (Vic)</i>

	2005 and the National Electricity Law, the Deemed Distribution Contract 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.
"ESC"	means the Essential Services Commission under the <i>Essential Services Commission Act (Vic) 2001</i> , or any body which assumes its functions.
"Land"	means the land specified in the Letter of Offer.
"Letter of Offer"	means the letter provided by United Energy which sets out specific details for the Customer and which forms part of the Contract
"National Electricity Law"	means the National Electricity Law which applies in Victoria as a result of the operation of section 6 of the <i>National Electricity (Victoria) Act (Vic) 2005</i>
"National Electricity Rules"	means the rules made under the National Electricity Law.
"Term"	has that meaning given to it in clause 2.
"Works"	means the installation of an underground service pit and cable.

### 2. TERM

This Contract will commence on the Commencement Date and will continue until all of the obligations of the Customer and United Energy under this Contract have been fulfilled or until terminated in accordance with this Contract.

### 3. WORKS

#### 3.1 Works

Subject to Clause 3.2, United Energy will use its reasonable endeavours to construct the Works by the Completion Date.

#### 3.2 Variation to Completion Date and/or Charges

- (a) United Energy may give the Customer a written notice requesting a variation to the Completion Date and / or the Charges if:
- (i) there is a physical condition on the Land or anywhere else where the Works are to be undertaken which differs from the physical conditions which should reasonably have been anticipated by United Energy;
  - (ii) United Energy defers the Works upon written request of the Customer;
  - (iii) United Energy forms a reasonable opinion that the Customer is unlikely to require connection of supply of electricity at the Land at the Completion Date (having consulted with the Customer and taken into account the discussions with, and any other information provided by, the Customer);

- (iv) United Energy forms a reasonable opinion that an event beyond the control of United Energy has interfered with construction of the Works;
  - (v) United Energy forms a reasonable opinion that the Customer's instructions, or part thereof, on which the Works were based have altered;
  - (vi) United Energy forms a reasonable opinion that the Customer has not disclosed all necessary information to United Energy for the proper construction of the Works;
  - (vii) necessary to comply with a plan of subdivision, or the *Road Management Act (Vic) 2004* (or any regulations or determinations under that Act); or
  - (viii) the Customer causes any delay to the Works or has requested that Works be carried out in a way that does not meet the least cost technically acceptable basis of carrying out the Works.
- (b) United Energy is not required to commence or continue with the Works if the Customer fails to comply with any of its obligations under this Contract.
  - (c) If, within 10 Business Days of the Customer receiving the notice under clause 3.2(a), the parties are not able to agree to the variation to the Completion Date and/or the Charges, either party may terminate this Contract immediately. Unless it is not reasonable to do so or the Customer requests otherwise, United Energy will stop carrying out the Works during the 10 Business Days period. The Completion Date will be extended by such period as notified in writing by United Energy to the Customer, acting reasonably and after taking into consideration United Energy's operational priorities.
  - (d) Where United Energy requests a variation to the Completion Date pursuant to clause 3.2, United Energy will use its reasonable endeavours to ensure the adjusted Completion Date allows the Works to be performed as soon as is reasonably possible by United Energy after taking into consideration United Energy's operational priorities and the date that the Customer requires connection of supply of electricity at the Connection Point.

### 3.3 Customer Works

The Customer must at its cost complete the following to the reasonable satisfaction of United Energy:

- (a) obtain and provide to United Energy the written consent of the registered proprietor (or any other person whose consent is required) to enter upon and to perform the Works on the Land, or if the Customer is the registered proprietor, then the Customer providing such consent to United Energy;
- (b) provide safe and unhindered access to the Land, including full vehicular access for construction vehicles and plant to the Land of a standard approved by United Energy's Responsible Officer;
- (c) ensure that the Land boundaries and proposed footpaths in the vicinity of the Works are accurately delineated and identifiable on site; and

- (d) ensure that any surface level alteration works in the vicinity of the Works are completed prior to the Commencement Date.

## 4. PAYMENT

### 4.1 Customer to Pay for Works

In consideration of United Energy constructing the Works, the Customer agrees to pay the Charges plus GST in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).

### 4.2 Payment obligations

The Customer must pay the Charges as a lump sum payment on or before the due date specified in invoice issued by United Energy.

## 5. LIABILITY AND INDEMNITY OF CUSTOMER

The Customer hereby indemnifies and agrees to keep United Energy indemnified against all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses (including legal costs and disbursements on a solicitor and own client basis) arising, paid, suffered or incurred by United Energy (directly or indirectly) as a result of or in connection with a negligent act or omission by the Customer, or any breach or non-performance of any express or implied obligations of the Customer under this Contract, or any breach of or non-performance of an obligation imposed on the Customer by any law.

## 6. EXCLUSIONS AND LIMITATION OF LIABILITY OF UNITED ENERGY

- (a) Subject to clause 6(b), but notwithstanding any other provision of this Contract and except to the extent that liability cannot legally be limited or excluded:
  - (i) United Energy's total liability for all events giving rise to liability on its part arising out of or in connection with this Contract will be limited to the lesser of the Charges or \$1,000,000 (one million dollars) in total aggregate;
  - (ii) in no event will United Energy 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(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) United Energy's liability for:
  - (i) personal injury or death;
  - (ii) fraud; or
  - (iii) wilful misconduct,

will be unlimited to the extent it is caused by United Energy's acts or omissions.

## 7. NOT A RETAIL OFFER OR DEEMED DISTRIBUTION CONTRACT

- (a) This Contract does not in any way constitute an offer to the Customer to sell electricity to the Customer.
- (b) This Contract does not apply to the supply of electricity. Those are matters that are dealt with in a separate contract which is the Deemed Electricity Distribution Contract.

## 8. CUSTOMER'S ONGOING OBLIGATIONS

### 8.1 Customer Compliance

- (a) The Customer must ensure that all electrical work in relation to the Customer's electrical installation is carried out by an appropriately licensed electrical contractor.
- (b) The Customer must comply with the "Victorian Electricity Distributors Service & Installation Rules" as amended from time to time. The Customer acknowledges that this is a reasonable requirement as contemplated by clause 2.6.1(d) of the Electricity Distribution Code.

### 8.2 Ongoing Protection of Works

The Customer must not interfere and must use its best endeavours not to allow interference with the Works on the Land and must provide and maintain appropriate access to, accommodation and/or fencing for the Works and must maintain appropriate clearances from the Works.

### 8.3 Connection Point

The Customer must ensure that they take supply from the Connection Point at all times in accordance with this Contract.

## 9. WORKS ARE PROPERTY OF UNITED ENERGY

- (a) Unless otherwise provided in this Contract, the Works will be, and will remain, the property of United Energy. United Energy may provide electricity supply to any person from the Works upon such terms and conditions as it thinks fit and may at any time after the termination of a connection to supply electricity remove the Works, or any part of the Works. United Energy may alter, replace or otherwise deal with the Works at any time and in its absolute discretion.
- (b) Where United Energy provides electricity supply to another person from the Works as contemplated by clause 9(a) ("Subsequent Electricity Supply") and provided that the Customer qualifies for the reimbursement under the published cost sharing protocol as set out in United Energy's Connection Policy at the time of the Subsequent Electricity Supply, United Energy may reimburse the Customer a proportion of the Charges determined in accordance with that protocol.

## 10. TERMINATION

- (a) Either party may give written notice to terminate this Contract immediately:
  - (i) in accordance with clause 3.2 (variation to Completion Date);
  - (ii) if the defaulting party fails to remedy a material breach within 10 Business Days of receiving written

notice of the breach from the non-defaulting party;  
or

- (iii) if the other party:
  - (A) commits an act of bankruptcy;
  - (B) is the subject of an application for winding up;
  - (C) calls a meeting of its creditors;
  - (D) has a receiver appointed over all or substantial part of its assets;
  - (E) passes a resolution for its winding up;
  - (F) compounds with its creditors; or
  - (G) evinces an intention to no longer perform its obligations under this Contract.

- (b) United Energy may terminate this Contract by 10 Business Days written notice to the Customer where United Energy forms a reasonable opinion that the Customer is unlikely to require connection of supply of electricity at the Land at the Completion Date (having consulted with the Customer and taken into account the discussions with, and any other information provided by, the Customer).
- (c) Clauses 4, 5, 6, 7, 8 and 11 will survive the termination of this Contract.
- (d) Where this Contract is terminated before United Energy has completed the Works, United Energy will reimburse to the Customer the Charges after deducting:
  - (i) charges for Works already carried out by United Energy under this Contract up to the date of termination; and
  - (ii) in the case of termination by United Energy for breach by the Customer, any other costs or losses incurred by United Energy as a result of the termination.
- (d) Where this Contract is terminated before United Energy has completed the Works and the Customer was not required to pay any Charges, United Energy may invoice the Customer for:
  - (iii) charges for Works already carried out by United Energy under this Contract up to the date of termination; and
  - (iv) in the case of termination by United Energy for breach by the Customer, any other costs or losses incurred by United Energy as a result of the termination.

## 11. GENERAL

### 11.1 Governing Law and Jurisdiction

The law of this Contract 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.

### 11.2 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 Contract or a power, right, authority, discretion or remedy under this Contract must be in writing and executed by the waiving party.

**11.3 Exclusion of Warranties**

To the fullest extent permitted by law, all statutory and implied warranties and terms are excluded in respect of the Works by United Energy.

**11.4 Variation**

The Parties may only vary this Contract by agreement in writing.

**11.5 Entire Contract**

This Contract 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.

**11.6 Costs**

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

**11.7 No Agency or Partnership**

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