

# TERMS AND CONDITIONS

## Active Utilities (January 2012)

### 1. Glossary of Terms

### 2. Our Contract with You

- (a) **General Terms and Conditions**
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## Glossary of Terms

**Active Utilities Fee Schedules** means the Voice and Data Fee Schedule

**Active Utilities Terms and Conditions** means the General Terms and Conditions, the Voice and Data Terms and Conditions

**Applicable Laws** means in relation to a Service all applicable state, territory and Commonwealth laws, regulations, directions, policies, determinations, statutes, ordinances, by-laws or other subordinate legislation, judicial, administrative or regulatory decrees or orders, and any determinations or codes of practice made by a governmental or semigovernmental authority responsible for the administration and/or enforcement of laws which relate, in whole or in part, to the Service, including where the context permits the Australian Consumer Law, as amended and varied from time to time.

**Application** means an application made by You to Us for the Services in Our approved form.

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth), as amended and varied from time to time.

**Authority** means a governmental or semi-governmental authority responsible for the administration and enforcement of Applicable Laws, and includes, without limitation, the Australian Communications and Media Authority.

**Billing Period** means the length of the supply period covered by each bill.

**Building Manager** means the manager of the property at the address where the Services are supplied.

**Business Day** means a day other than a Saturday, a Sunday or a public holiday in the State in which the Services are provided to You by Us.

**Code of Banking Practice** means the Code of Banking Practice published by the Australian Bankers' Association Inc as amended and varied from time to time.

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of You, and includes, without limitation, information relevant to identifying You and credit information.

**Consumer Price Index** means the Consumer Price Index (All Groups) Average of Eight Capital Cities published from time to time by the Australian Bureau of Statistics or any replacement body.

**Contract** means the contract between You and Us for the provision of Services the terms of which are included in the Active Utilities Term and Conditions (comprising the sections headed 'Glossary of Terms' and the applicable parts of the section headed 'Our Contract with You'), the Active Utilities Fee Schedules, the Application and any other documents referred to or incorporated by them plus mandatory approvals and guidelines, including industry standards or administrative interpretations of them, as may be in force and as amended and varied from time to time.

**Data Services** means in-bound and out-bound data services, which are to be provided using equipment or facilities owned in whole, or in part, by Us or by Our Related Body Corporate or a contracted third party, together with some or all of the equipment set out in the equipment listed in the Application.

**Distribution System** means a network of wires, Meters and controls used to sell and supply electricity or which a Distributor uses to transport electricity for supply to customers.

**Distributor** means the person who is licensed to own or operate the wires We use to supply You with electricity.

**Electronic Funds Transfer Code of Conduct** means the Electronic Funds Transfer Code of Conduct published by the Australian Securities & Investments Commission as amended and varied from time to time.

**Emergency** means on emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages, or threatens to destroy or damage any property.

**Excess Data** means Data Services provided to You by Us which exceed the Monthly Data Allowance in each calendar month.

**Excluded Information** means Confidential Information which:

(a) Is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to You; or

(b) We can prove by contemporaneous written documentation was already known to it at the time of disclosure by You (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or

(c) We acquire from a source other than You or any Related Body Corporate or Representative of You where such source is entitled to disclose it.

**General Terms and Conditions** means the Active Utilities General Terms and Conditions as amended and varied from time to time.

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

**Insolvent** means where You are unable to pay Your debts as and when they become due and payable.

**Liability** means any costs, expenses, losses, claims, causes of action, proceedings, liabilities, debts, damages, awards and judgments.

**Meter** means an instrument that measures the quantity of electricity passing through it and includes associated equipment attached to the instrument to control or regulate the flow of electricity;

**Metering Standards** means the relevant standards under Applicable Laws which:

(a) regulate the basis for the installation of new Metering equipment and the operation and maintenance of new and existing Metering equipment at Your supply address;

(b) establish rights and obligations with respect to Metered data; and

(c) includes relevant or prescribed industry codes or standards.

**Monthly Data Allowance** means the amount of data upload and download capacity, specified in the Voice and Data Fee Schedule, which We agree to provide to You for the price specified in the Voice and Data Fee Schedule.

**NEMMCO** means the company responsible for management of the National Electricity Market, currently National Electricity Market Management Company Limited (ABN 94 072 010 327).

**Personal Information** means information or opinion about You from which Your identity is apparent or can reasonably be ascertained.

**Policy of Appropriate Use** means the Active Utilities Policy of Appropriate Use as amended and varied from time to time

**Power Services** means the supply of electricity by Us pursuant to Our Contract with You.

**Power Supply Services Fees** means the fees payable in relation to Our supply to You of electricity which are set out in the Power Supply Fee Schedule.

**Power Supply Terms and Conditions** means Active Utility's Power Supply Terms and Conditions as amended and varied from time to time.

**Reading** means:

(a) figures or other information shown on a meter register or instrument either read or collected directly or transmitted or transformed by electronic, radio, microwave, sonic or other means; or

(b) the process of collecting figures or other information from a meter either directly or through being transmitted or transformed by electronic, radio, microwave, sonic or other means.

**Related Body Corporate** has the same meaning as in the Corporations Act 2001 (Cth). Representative of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer or sub-contractor of that party.

**Schedule** means the Schedule to the Power Terms and Conditions including details of early termination fees.

**Service Commencement Date** means the date nominated by You in Your Application and approved by Us for the commencement of the Services.

**Services** means the Voice and Data Services and/or Power Services (as applicable) and Service means either one of them as the context requires.

**State Specific Terms and Conditions** means the State specific terms and conditions incorporated into the Power Terms and Conditions.

**Third Party Provider** means a party or parties engaged from time to time to provide certain telecommunications and other services to Us on such terms and conditions as may be agreed from time to time between Us and the party or parties providing such services.

**Us, We, or Our** means the legal entity defined the Application as the legal entity to whom the Application is made.

**Voice and Data Fee Schedule** means the schedule of fees payable for the Voice and Data Services

**Voice and Data Service Fees** means the fees payable for the Voice and Data Services, as set out in the Voice and Data Fee Schedule

**Voice and Data Services** means the Voice Services and the Data Services.

**Voice and Data Terms and Conditions** means Active Utilities' Voice and Data Terms and Conditions as amended and varied from time to time.

**Voice Services** means in-bound and out-bound voice telecommunications services which are to be provided using equipment and facilities owned, in whole or in part, by Us, a Related Body Corporate or a contracted third party, together with any other equipment specified by Us.

**You or Your** means the legal entity or person making the Application and includes, but is not limited to, the officers, employees, contractors, agents and invitees of the legal entity or person.

### **Interpretation**

In Our Contract with You, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of the Contract;

(b) words importing the singular include the plural and vice versa;

(c) words importing a gender include any gender;

(d) all references to "include" or "including" are non-exhaustive and do not imply any limitation

(e) an expression importing a natural person includes any company, partnership, trust, joint venture, corporation or other body corporation or governmental agency;

(f) a reference to a clause, schedule, appendix or section is to a clause, schedule, appendix or section of the Contract.

(g) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer.

(h) a reference to any statute, regulation, proclamation, orders in council, ordinance, bylaw or rule, includes all regulations, proclamations, orders in council, ordinances, bylaws or rule varying, consolidating, re-enacting extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws or rules issued under that statute;

(i) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that provision of that document;

(j) a reference to a person includes that persons executor, administrators, successors, substitutes (including without limitation, persons taking by novation) and permitted assigns;

(k) a reference to a person includes that persons officers, employees, contractors, agents or other representatives.

(l) when capitalised, other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning:

(m) a period of time which:

(i) dates from a given day or the day of an act or an event is to be calculated exclusive of that day;

(ii) commences on a given day or the day of an act or event is to be calculated inclusive of that day;

(n) an event which is required under this Contract to occur on or by a stipulated day which is not a Business day may occur on or by the next Business Day; and

(o) words defined in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning when used in the Contract.

## **Our Contract with You**

## **General Terms and Conditions**

### **1. Definition and Interpretation**

The meaning of words that begin with a capital letter and the rules for interpretation of Our Contract with You can be found in the Active Utilities' Glossary of Terms.

### **2. Consideration**

The Contract is entered into by You and by Us in consideration of the parties incurring obligations and giving rights under the Contract for valuable consideration.

### **3. Request for Services**

(a) When You submit Your Application to Us You request that We provide You with the Services identified in the Application in accordance with Our Contract with You.

(b) You acknowledge that We may conduct checks in relation to Your Application including credit checks and other checks to verify the information You give to Us in Your Application.

### **4. Our Contract with You**

(a) Our Contract with You commences when We give you notice in writing that we accept Your Application.

(b) The terms of Our Contract with You for the provision of the Services are contained in:

(i) these General Terms and Conditions;

(ii) each Application You make to Us for the Services;

(iii) the Voice and Data Terms and Conditions; and

(iv) the Glossary of Terms, as amended and varied from time to time.

(c) In the event of inconsistency between the above-mentioned documents the provisions in the documents apply in the order of precedence detailed above to the extent of the inconsistency.

### **5. Supply of Services**

(a) Under Our Contract with You, We agree to provide, and You agree to accept, the Services subject to the terms and conditions of Our Contract with You.

(b) We will commence supplying You with the Services on the Services Commencement Date unless, for reasons beyond Our control the Services cannot commence on that date in which case We will notify You of the reason for the delay and an alternative anticipated date for the commencement of the supply of the Services.

### **6. Term of Our Contract with You**

#### **6.1 Term**

Our Contract with You in relation to a particular Service continues for an initial term of 36 months from the Service Commencement Date. At the expiry of this initial term Our Contract with You will automatically renew for successive terms of 12 months unless You provide us with notice under this clause.

#### **6.2 Stopping automatic renewal**

If You do not want Our Contract with You in relation to a particular Service to automatically renew as described above, You must give Us notice in writing, not less than two months before the end of the term, stating that You do not want Our Contract with You in relation to that Service to automatically renew.

### **7. Payment of Service Fees**

You agree to pay the Service Fees in accordance with Our Contract.

### **8. Interest**

We may charge interest on any overdue accounts at the rate calculated by adding 3% to the prevailing unsecured Overdraft rate offered by the Australia and New Zealand Banking Group Limited at the time the account first becomes overdue.

### **9. Goods and Services Tax**

Any amount referred to in Our Contract with You excludes GST. If GST is imposed on any supply made by Us to You, GST will be added to the amounts referred to in the Active Utilities Fee Schedules and billed to You on the invoices issued pursuant to the Active Utilities Terms and Conditions.

### **10. Special conditions for provision of the Services**

#### **10.1 Compliance with Applicable Laws**

In acquiring, purchasing and using the Services, You agree that You will:

(a) comply with all Applicable Laws relating to the provision and use of the

Services, and that You will not use the Services in any way that constitutes, or could be reasonably taken to constitute, a breach of any Applicable Laws relating to the provision or use of the Services; and

(b) indemnify Us and Our officers, employees, contractors, agents, servants and Related Bodies Corporate for any Liability that may be incurred by Us or Our officers, employees, contractors, agents, servants and Related Bodies Corporate as a result of a breach by You of the obligations contained in this clause.

#### **10.2 Cooperation with Us in relation to provision of the Services**

You must comply with such reasonable requests as may be made by Us in relation to the provision of the Services, including, without limitation, granting Us and Our contractors, servants and agents reasonable access to the premises at the supply address to which the Services are provided for the purposes of, without limitation, inspecting, maintaining and repairing the equipment used to provide the Services.

#### **11. Means of Communication**

Except where a particular method of communication is specified by the Active Utilities Terms and Conditions or any Applicable Laws:

- (a) any communication between Us and You under Our Contract with You may be in writing, by telephone or by electronic means such as e-mail to an agreed address; and
- (b) any communication under Our Contract with You required to be in writing may be delivered by facsimile or email.

#### **12. Governing Law**

The Contract is governed by the laws applicable in the State in which the Services are provided to You by Us and each party submits to the non-exclusive jurisdiction of the courts of that State.

#### **13. Waiver and Variation**

- (a) Except as otherwise provided in Our Contract with You, a right created under the Contract may not be waived except in writing by the party granting the waiver.
- (b) Other than as required or permitted by any Applicable Laws or the terms of Our Contract with You, any variation of the Contract must be made in writing and signed by the parties.
- (c) We may vary Our Contract with You to the extent reasonably necessary to comply with any change in any Applicable Laws to the extent permitted by the relevant Applicable Laws and in accordance with Our Contract.

#### **14. Information and communication**

##### **14.1 Information We require from You**

(a) You authorise Us to collect Personal Information about You for the primary purpose of the supply or proposed supply to You of Services in accordance with Our Contract with You. You also authorise Us to collect Personal Information about You for the following related (or secondary) purposes:

- (i) billing and account management;
- (ii) business planning and development; and
- (iii) product development.
- (b) You must ensure that Your name and supply address are correctly set out on Your Application, and must provide Us with identification before any Services are supplied to Your supply address.
- (c) You must also advise Us promptly if there is any change in:
  - (i) responsibility for paying the supply account;
  - (ii) Your contact details;
  - (iii) the major purpose of using Your Service (if applicable) at Your supply address;
  - (iv) access to the Meter (if applicable);
  - (v) any other equipment related to Us supplying You with the Services.
- (d) Our obligations under Our Contract with You are subject to You providing Us with this information and any other Personal Information We reasonably request from You, and We may not be able, or may refuse, to supply You with the Services if You do not provide this information.

##### **14.2 How We Use and disclose Personal Information about You**

(a) You authorise Us to use and disclose Personal Information about You for the purposes set out in clause 14.1(a), and You acknowledge that We may use and disclose Personal Information for the secondary purposes set out in that clause. You authorise Us to disclose Personal Information about You between

Us and:

- (i) any party acting as Our principal, agent or contractor in the performance of Our obligations or the exercise of Our rights under this Contract;
- (ii) the Third Party Provider or any other market operator;
- (iii) any other persons or organisations with which We have established commercial relationships, and which provide products or services related to the supply or proposed supply to You of the Services in accordance with Our Contract with You.
- (b) You acknowledge that in certain circumstances, We may be permitted or required by any Applicable Laws to use or disclose Personal Information about You, including Your name, address and other details. Such uses or disclosures may include, without limitation:
  - (i) disclosures to certain law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
  - (ii) uses or disclosures in accordance with a court order;
  - (iii) uses or disclosures to lessen or prevent serious threats to an

individual's life, health or safety, or to public health or safety; or (iv) uses to assist in internal investigations into suspected fraud or other unlawful activities.

#### **14.3 Access to information**

We will provide You with access, on request, to Personal Information We hold about You, unless We are required by any Applicable Laws to refuse such access. You should contact Us to make an access request.

#### **14.4 Consent to provision of certain information by Us**

In acquiring the Services from Us, You agree that We may pass certain Confidential Information on to a Third Party Provider or other third party (including an Authority) from time to time, including information relevant to telecommunications directories and other related services, and You consent to Us passing such Confidential Information on to a Third Party Provider or other third party.

#### **15. Credit Reporting**

##### **15.1 Notice of disclosure of Your credit information to a credit reporting agency (Privacy Act 1988)**

In addition to the authorities granted to Us under clause 14, You also authorise Us to give information about You to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about You; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about You.

This information is limited to:

- (a) identity particulars – Your name, sex, address (and the previous two addresses), date of birth, name of employer, and drivers license number;
- (b) Your application for credit or commercial credit – the fact that You have applied for credit and the amount;
- (c) the fact that We are a current credit provider to You;
- (d) loan repayments which are overdue by more than 60 days, and for which debt collection action has started;
- (e) advice that Your loan repayments are no longer overdue in respect of any default that has been listed;
- (f) information that, in Our opinion, You have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations); and
- (g) dishonoured cheques – cheques drawn by You for \$100 or more which have been dishonoured more than once.

##### **15.2 Period to which this understanding applies**

This information may be given before, during or after the provision of credit to You.

#### **16. Force Majeure**

- (a) Your and Our obligations under Our Contract with You will be suspended to the extent to which they are affected by an event beyond Your or Our reasonable control (as the case may be).
- (b) If Your or Our obligations are suspended under this clause, We or You must give the other prompt notice of the suspension including full particulars of the affecting event, an estimate of its likely duration, the obligations affected by it and the extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.
- (c) For the purposes of this clause, if the effects of the event are widespread We will be deemed to have given You prompt notice if We make the necessary information available by way of email within 90 minutes of being advised of the event, or otherwise as soon as practicable.
- (d) If We or You claim the benefit of this clause, We or You must use best endeavours to remove, overcome or minimise the effects of the affecting event as quickly as possible. However, this does not require either of Us to settle any industrial dispute in any way We do not want to.

## **Voice and Data Terms and Conditions**

### **1. Interpretation**

In these Voice and Data Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation can be found in the Active Utilities Glossary of Terms.

### **2. Limitations to Voice and Data Services**

You acknowledge and agree that:

- (a) We acquire some or all of the Voice and Data Services from a Third Party Provider;
- (b) these Voice and Data Terms and Conditions are subject to the terms and conditions upon which We obtain the Voice and Data Services from the Third Party Provider;

(c) except as (and then only to the extent required by) the Australian Consumer Law or any other Applicable Laws, in providing the Voice and Data Services to You, We will in no way be obliged to provide You with levels of service or performance which in any way exceed the levels of service and performance which the Third Party Provider is obliged to provide to Us; and

(d) given the nature and mode of delivery of Our Voice and Data Services, we are unable to guarantee and are not otherwise obliged to provide You with telephone number and/or internet protocol address portability in connection with, or the expiry or earlier termination of, Our Contract with You

### **3. Payment for Voice and Data Services**

#### **3.1 Voice and Data Fee Schedule**

You agree that the Active Utilities Voice and Data Fee Schedule forms part of these Voice and Data Terms and Conditions.

#### **3.2 Payment**

You agree to pay Us the Voice and Data Service Fees as set out in the Voice and Data Fee Schedule for the Voice and Data Services in accordance with these Voice and Data Terms and Conditions and for any early termination fee pursuant to clause 4.3(a).

#### **3.3 Invoicing**

We will invoice You as soon as practicable after the last business day of each calendar month or at an agreed time for:

- (a) Voice and Data Services provided by Us to You during the month in which the invoice is prepared;
- (b) Excess Data (if any) provided by Us to You during the month in which the invoice is prepared;
- (c) the Monthly Data Allowance to be provided by Us to You during the month following the month in which the invoice is prepared; and
- (d) where applicable, an early termination fee pursuant to clause 4.3(a).

#### **3.4 Time for payment**

You must pay Us the full amount shown on an invoice issued under these Voice and Data Terms and Conditions within fourteen (14) days of the date of the invoice, or such other date as may be specified on the invoice. If You do not make this payment to Us within this time, then You must pay any applicable late payment fee in addition to the amount shown on the invoice.

#### **3.5 Disputes over invoices and Service Fees**

If You do not agree with the amount payable under an invoice issued pursuant to these Voice and Data Terms and Conditions, You may, by notice in writing to Us, dispute the invoiced amount. If the dispute cannot be resolved by agreement between Us and You, You may lodge a complaint with the Telecommunications Industry Ombudsman.

#### **3.6 Payment of disputed invoices**

You must pay any amount due and payable under an invoice issued pursuant to these Voice and Data Terms and Conditions within the time specified for payment, even though You dispute the amount payable under the invoice and give Us notice of Your dispute in accordance with these Voice and Data Terms and Conditions. Upon resolution of the dispute, if We agree with You that the amount specified on the invoice is:

- (a) greater than the amount that You owe to Us in respect of the Voice and Data Services provided during the period to which the invoice relates, then We will refund You the difference;
- (b) equal to the amount that You owe to Us in respect of the Voice and Data Services provided during the period to which the invoice relates, then no amounts in addition to the amount paid will be payable by You or refundable by Us; or
- (c) less than the amount that You owe to Us in respect of the Voice and Data Services provided during the period to which the invoice relates, then You will pay the difference to Us within seven (7) days of such agreement.

#### **3.7 Security for payment**

We, or a Related Body Corporate of Ours, may require You to provide financial security for the payment of any amounts owing by You to Us under these Voice and Data Terms and Conditions and You agree that We may apply that security wholly or partly against any amount You owe Us under these Voice and Data Terms and Conditions.

### **4. Termination**

#### **4.1 When We may cease providing You with the Voice and Data Services**

We may, at any time, by notice in writing to You, suspend or cease providing You with the Voice and Data Services under Our Contract with You if:

- (a) You fail to pay an amount owing to Us in relating to the Voice and Data Services, in whole or in part, within fourteen (14) days of the date on which such amount is due;

(b) You breach Our Contract with You, including without limitation Your obligation to comply with all Applicable Laws or, in Our reasonable opinion, You otherwise misuse the Voice and Data Services;

(c) We are prevented or otherwise unable to obtain the Voice and Data Services from a Third Party Provider; or

(d) You become Insolvent.

#### **4.2 Costs of reconnection following suspension**

If We suspend the provision of Voice and Data Services under Our Contract with You in accordance these Voice and Data Terms and Conditions, then You must pay the applicable reconnection fee to Us before We agree to cancel the suspension of the provision of the Voice and Data Services and resume providing You with the Voice and Data Services.

#### **4.3 Early Termination Fee**

(a) If the Application specifies that Our Contract with You is for a fixed term, and You terminate Our Contract before expiry of that fixed term, We may charge you an early termination fee calculated according to the following formula:

$$\text{Early Termination Fee} = (\$X \times 50\%) \times Y$$

Where:

*\$X is Your average monthly spend under Our Contract with You; and*

*Y is the aggregate amount of months remaining before the expiry of the fixed term of Our Contract with You.*

(b) We will invoice You for the early termination fee if it becomes payable pursuant to clause 4.3 of these Voice and Data Terms and Conditions.

(c) You must pay the full amount of the early termination fee on presentation of an invoice in accordance with clause 4.3 of these Voice and Data Terms and Conditions.

### **5. Data Services**

In the event that You have selected Data Services in Your Application, We will use reasonable care and skill to provide the Data Services to You. In accepting the Data Services, You must:

- (a) abide by the Policy of Appropriate Use and ensure any persons accessing or otherwise using the Data Services provided by Us to You also abide by the policy;
- (b) maintain proper security relating to Your account details, data and passwords;
- (c) do not connect any unauthorised equipment to the equipment used to provide You with the Data Services;
- (d) on a regular basis monitor Your email for messages regarding the Data Services; and
- (e) acknowledge that:
  - (i) You are liable for any loss or unauthorised interception of Your Data Service, as a result (in whole or in part) of the introduction of Your own wireless connection; and
  - (ii) We may (but are not obliged to) monitor the Data Services provided to You to allow Us to investigate to ensure compliance, or otherwise, with the Policy of Appropriate Use.

### **6. Indemnity**

You indemnify Us against any loss, damage, liability, expense, cost, claim or charge arising from or incurred in connection with any fault in or arising in relation to the facilities, equipment and software used to provide the Services, which arises, in whole or in part, due to Your negligence or wilful misuse, or any unauthorised use of the Voice and Data Services, the software or the equipment used to deliver the Voice and Data Services, or a breach by You of the Policy of Appropriate Use, or as a result of any equipment provided by You.

### **7. Limitation of Liability**

#### **7.1 Australian Consumer Law**

The Australian Consumer Law provides certain statutory guarantees, conditions, warranties and other rights that cannot be excluded or limited. To the extent the Australian Consumer Law applies to Our Contract with You, this clause 7 is subject to, and will not apply to the extent of, any such non-excludable rights under the Australian Consumer Law.

#### **7.2 Limitation of Liability**

- (a) Subject to clause 7.2(b):
  - (i) all conditions, warranties and representations (whether express or implied) not expressly set out in Our Contract with You are excluded; and
  - (ii) Without derogating from clause 6, You agree that We are not, and You shall not hold Us, liable for any loss or

damage (however caused) suffered by You or any third party in connection with the provision of Voice and Data Services under Our Contract with You and/or any subsequent use application modification embodiment or adaptation of the Voice and Data Services and You release Us from liability for, and otherwise shall protect and hold Us harmless from and against, a claim for any such loss or damage.

- (b) If any Applicable Laws (including the ACL) imply a condition or warranty into Our Contract with You in respect of Voice and Data Services supplied by Us, and Our liability for breach of that condition or warranty cannot be excluded or restricted by law but may be limited, clause 7.2(a) does not apply to that liability and instead Our liability for any breach of that condition or warranty is limited to Us doing either or any combination of the following (at Our election):
- (i) supplying the Voice and Data Services again;
  - (ii) paying the cost of having the Voice and Data Services supplied again; and/or
  - (iii) applying any other limitation permitted by Applicable Laws (including the ACL).
- (c) For the avoidance of doubt, where We are liable to You for any Liability or to pay You any refunds, rebates, damages or other compensation ("Compensation") under Our Contract with You the following applies, to the extent permitted by Applicable Laws (including the ACL):
- (i) We exclude any Liability to You for any indirect, special or consequential loss or damage suffered or incurred by You; and
  - (ii) the amount of Compensation that We have to pay You will be reduced to the extent that the event giving rise to the obligation to pay Compensation has been caused or contributed to by You.

## **Power Supply Terms and Conditions**

### **Active Utilities – Power Services Things You Should Know**

We may, by notice to You, vary the charges under these Power Supply Term and Conditions as contained in the Power Supply Fee Schedule to reflect specific variations in Our costs of, and in connection with, purchasing, selling or supplying electricity to You. These include:

- increases in energy costs;
  - variations in distribution costs;
  - increases in market charges;
  - increases in metering charges;
  - loss factors and unaccounted for energy changes;
  - tax changes; and
  - changes in any Applicable Laws,
- as set out in, and to the extent permitted under, the Power Supply Terms and Conditions.

We may, without prior notice, vary the charges under these Power Supply Terms and Conditions to reflect variations in the Consumer Price Index annually on 1 January of each year (or on such other date as We notify You).

By accepting these Power Supply Terms and Conditions and requesting as part of Our Contract with You that We supply electricity to You, You authorise:

- Us to request Your Distributor to provide Your electricity usage data; and
- Your Distributor to release to Us Your electricity usage data, for the 12 months preceding Your last meter read.

**You are under no obligation to purchase electricity from Us, and may choose to purchase Your electricity from a licensed retailer. By entering into Our Contract with You and accepting the Power Supply Terms and Conditions You acknowledge and accept that We supply You with electricity as agent for the Building Owner / Owners Corporation (as the case may be). Specific information may relate to our Supply to You depending on the State in which the Supply is made.**

## **1. Interpretation**

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In these Power Supply Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation can be found in the Active Utilities Glossary of Terms.

### **2. State Specific Terms and Conditions**

In addition to these Power Supply Terms and Conditions and depending on the State in which the Power Services are supplied to You by Us, any applicable State Specific Terms and Conditions become part of these Power Supply Terms and Conditions (and such State Specific Terms and Conditions prevail to the extent of any inconsistency).

### **3. Supply of electricity**

#### **3.1 Our role as Agent**

You acknowledge that We act as the appointed agent for and on behalf of the building owner or Owners Corporation (as the case may be) of the supply address in respect of the on-selling of electricity to the supply address.

#### **3.2 Connection to Distribution System**

(a) The supply of electricity under Our Contract with You depends on the supply address being connected to the electricity Distribution Systems in accordance with all Applicable Laws. Each Distribution System is operated by the relevant Distributor.

(b) We will acquire connection and distribution services from the Distributor in order to supply You with electricity under Our Contract with You. Any charges imposed by the Distributor for these services will either be directly passed through to You or be built into the bundled charges payable under Our Contract with You.

#### **3.3 Supply commencement date**

(a) We will use Our best endeavours to commence supplying You with electricity on the Service Commencement Date. However, where the conditions below have not been met by that time, or no Service Commencement Date has been nominated, We will commence supplying You with electricity as soon as practicable after the following conditions have been met:

- (i) all necessary transfers have been completed to allow Us to supply You with electricity in accordance with all Applicable Laws;
  - (ii) You are connected to the relevant Distribution System in accordance with all Applicable Laws;
  - (iii) the relevant cables and appliances at the supply address are certified as complying with the necessary standards and legislation, and there is a Meter available for Our use;
  - (iv) You have provided on request from Us a refundable advance (if applicable under the terms of the Energy Retail Code), or entered into a payment arrangement; and
  - (v) You have paid or arranged to pay all amounts owing by You to Us other than a debt which is the subject of an unresolved dispute.
- (b) We may charge You a connection fee as set out in the Power Supply Fee Schedule if You do not currently acquire electricity from Us at the supply address.

## **4. Termination**

### **4.1 Termination of the Power Supply**

You may terminate the supply of electricity under Our Contract with You in accordance with the provisions of the Energy Retail Code.

### **4.2 Early Termination Fee**

If the Application specifies that Our Contract with You is for a fixed term, and You terminate Our Contract before the expiry of that fixed term, We may charge You an early termination fee. The early termination will be the aggregate of the amount derived by the following formula (X) **and** \$20:

*X, being the amount derived in accordance with the following formula:*

$$X = \$A / B \times C$$

*Where:*

*\$A is the direct cost of procuring your entry into Our Contract as calculated by Us in the event of such termination as set out in the Schedule.*

*B is the total number of months comprising the fixed term of Our Contract with You; and*

*C is the number of months remaining before the expiry of the fixed term of Our Contract with You.*

The amount of the early termination we may charge you pursuant to this clause 4.3(a) is more particularly described in the Fixed Fee Charts contained in the Schedule.

#### **4.3 Transfer to another retailer**

Subject to clause 4.1, You have the right to elect to purchase electricity from a licensed retailer of Your choice. If You wish to transfer to another retailer:

(a) We will continue to supply You with electricity at the charges applying under Our Contract with You at the earliest transfer date set out in the notice until the next scheduled meter reading occurring after that date; and

(b) We will terminate the supply of electricity to You under these Power Supply Terms and Conditions on the commencement of Your obligation to pay the retailer under Your new arrangements with that retailer.

#### **4.4 Vacating the supply address**

Subject to clause 4.1,

(a) You must give Us notice that You intend to vacate or have vacated the supply address, including the vacation date and a forwarding address to which a final bill may be sent.

(b) Subject to subclause (c) below, if You give Us notice that You intend to vacate or have vacated the supply address, You must pay Us for electricity consumed at the supply address in accordance with these Power Supply Terms and Conditions until the later of:

(i) three Business Days after You give Us notice; and

(ii) the date You vacate the supply address.

(c) Your obligation to pay Us for electricity consumed at the supply address under these Power Supply Terms and Conditions ceases earlier than the date provided for in subclause (b) above in the following circumstances:

(i) if You demonstrate to Us that You were evicted or otherwise forced to vacate the supply address, the date on which the You give Us notice under clause 4.4(a);

(ii) if You enter into a new supply arrangement with Us in relation to the same supply address, Our obligation to supply electricity to You under these Power Supply Terms and Conditions will cease on the commencement of Your obligation to pay under the new arrangement;

(iii) if another retailer becomes responsible for the electricity supplied at the supply address for the purposes of settlement in NEMMCO under any Applicable Laws, the date on which the new retailer becomes so responsible; and

(iv) if the supply address is disconnected, the date on which the supply address is disconnected.

#### **4.4 Breach**

If the supply address is disconnected from the relevant Distribution System for Your breach of these Power Supply Terms and Conditions, and You do not have a right under these Power Supply Terms and Conditions to be reconnected or You have entered into another supply arrangement with Us or another retailer in respect of the supply address, any obligation of Ours to reconnect or continue to supply electricity to You under these Power Supply Terms and Conditions ceases effective immediately.

#### **4.5 Consequences of Termination of supply**

You are responsible for paying for all electricity consumed at the supply address at the charges set out in Our Contract with You until the termination of supply. Termination of supply will not affect Your or Our obligation to pay any amount due at the date the supply is terminated, or any accrued rights or remedies that We or You may have under Our Contract with You.

#### **4.6 Meter Number Portability**

You acknowledge and agree that given the nature and mode of delivery of Our Power Services, We are unable to guarantee and are not otherwise obliged to provide You with meter number portability in connection with, or the expiry or earlier termination of, Our Contract with You.

### **5. When We can disconnect Your Power Supply**

#### **5.1 Non-payment**

We may disconnect the supply address if You fail to pay by the pay-by date any charges at the current or any previous supply address, but only if:

(a) the failure does not relate to an instalment under Your first instalment plan with Us;

(b) We have given You:

(i) a reminder notice at least 14 Business Days after the dispatch of the bill, including a new pay-by date at least 20 Business Days after the dispatch of the bill (unless You are on a shortened Billing Period, in which case We will not give You a reminder notice); and

(ii) a disconnection warning at least 22 Business Days after the dispatch of the bill, including a new pay-by date at least 28 Business Days after the dispatch of the bill (unless You are on a shortened Billing Period, in which case the disconnection warning and new pay-

by date will be at least 16 Business Days and 20 Business Days respectively from the dispatch of the bill);

(c) the disconnection warning includes a statement that We may suspend supply or terminate this Contract on a day at least 7 Business Days after You receive the disconnection warning, and a telephone number for payment assistance enquiries;

(d) if You call that number, We have responded to Your enquiry and provided information about financial assistance; and

(e) before disconnection, You:

(i) do not provide Us with a reasonable assurance that You are willing to pay Our bills; or

(ii) do provide a reasonable assurance, but then do not pay the amount payable by the pay by date on the disconnection warning (unless previously agreed with Us), and do not agree to a new payment arrangement within 5 Business Days of receiving the warning or do not make payments under such a new payment arrangement.

#### **5.2 Denial of access**

We may disconnect the supply address if, due to acts or omissions on Your part, the supply address is inaccessible for the purpose of reading the Meter for 3 consecutive bills provided that:

(a) We have used Our best endeavours to give You an opportunity to offer reasonable access arrangements, given You a notice requesting access each time the Meter is inaccessible, and given You at least 7 Business Days' notice of disconnection; and

(b) due to acts or omissions on Your part, the supply address continues to be inaccessible for the purpose of reading the Meter.

#### **5.3 Unauthorised or illegal access**

If You have obtained supply of electricity otherwise than in accordance with Our Contract with You or any relevant Applicable Laws, We may disconnect the supply address.

#### **5.4 Refusal of security**

If You refuse to pay a refundable advance security deposit, or security levy or to provide a bank guarantee where they are required by Us, and continue this refusal 7 Business Days after receiving a disconnection warning, We may disconnect the supply address or request that the Distributor disconnect the supply address.

#### **5.5 Disconnection and reconnection**

We will not disconnect the supply address except in accordance with all Applicable Laws. We will reconnect the supply address in accordance with all Applicable Laws.

### **6. Power charges**

#### **6.1 Power Supply Schedule of Fees**

You agree that the Power Supply Fee Schedule as amended and varied from time to time forms part of these Power Supply Terms and Conditions.

#### **6.2 Charges and variations**

(a) The initial charges are as set out in the Power Supply Fee Schedule.

(b) The basis for the calculation of charges under these Power Supply Terms and Conditions will be:

(i) if the Power Supply Fee Schedule states a bundled rate, then the charges will be calculated by multiplying Your electricity consumption during the Billing Period by the applicable bundled rate;

(ii) if the Power Supply Fee Schedule states separate rates of charges then the charges payable by You will be the sum of:

(A) for energy consumption rates, the amount resulting from multiplying Your electricity consumption during the Billing Period by the applicable energy consumption rate; and

(B) for daily rates, the amount resulting from multiplying the number of days in the Billing Period by that daily rate.

(iii) if the Power Supply Fee Schedule states different rates of charges for separate periods (such as an off-peak or peak rate) within a Bill Period for an energy consumption rate or a bundled rate then the charges will be the sum of Your electricity consumption during any separate periods within the Billing Period multiplied by the applicable energy consumption rate or bundled rate for that separate period.

#### **6.3 Price Match Guarantee**

We will price match a competitor's published electricity supply tariff for the supply of electricity at an embedded network site operated by Us (for the purposes of this clause the 'supply address'), subject to the following terms and conditions (**Price Match Guarantee**):

(a) You must provide written evidence (**Quote**) to Our reasonable satisfaction of the unconditional offer to You to purchase electricity from a third party licensed retailer (**Retailer**) at a published electricity supply tariff that is cheaper than the tariff offered from time to time by US for the supply of electricity at the supply address.

(b) Without limiting clause 6.3(a), the Quote must:

(i) detail where and from whom the Quote was obtained;

- (ii) be valid within the calendar year in which the electricity is, or is to be, supplied;
  - (iii) relate to the supply of electricity at the supply address;
  - (iv) include all terms and conditions relevant to the supply of electricity by the Retailer pursuant to the Quote.
- (c) If We cannot match a cheaper tariff evidenced by a Quote in the form prescribed by this clause, We agree to pay You the connection fee(s), if any (but excluding any network, distribution, authority and metering costs), imposed by the Retailer for the supply of electricity by the Retailer to You at the supply address pursuant to the Quote.
- (d) Subject to the terms of Our Contract with You, We at all times reserve the right to decline any connection request by You even if We can match the cheaper tariff evidenced by a Quote.

#### **6.4 Increases in energy costs**

(a) We may vary the charges in the Power Supply Fee Schedule to reflect any increase in Our overall costs of purchasing, selling or supplying electricity (including costs arising from increased price risk and Our costs of minimising or meeting that price risk) including increases due to:

- (i) the occurrence of any 'force majeure' event under any third party contract to which We are a party;
- (ii) the amendment, suspension or termination (either in whole or relating to any volume of electricity) of any third party contract to which We are a party; or
- (iii) any new amount, or increase in any amount, passed through to Us by the other party to a third party contract which We are a party to reflect a cost incurred by that party.

(b) The amount of any such variation will be calculated by:

- (i) dividing the total amount of the cost increase in relation to the relevant customer segment (which may be the whole of Our customer base) by the volume of energy purchase, in relation to that customer segment; and
- (ii) applying up to the resulting amount to the charges on basis of cents per kilowatt-hour of electricity consumed at the supply address.

#### **6.5 Variations in distribution costs**

(a) We may vary any distribution charges provided for in the Power Supply Fee Schedule to reflect any change in the amount of, or basis for calculation of, any published charges imposed by the relevant Distributors for the transportation of electricity, whether:

- (i) imposed on Us and reflected in Our charges to You; or
- (ii) imposed directly on You and billed by Us on behalf of the relevant Distributor.

(b) The amount of any such variation will be calculated by the following means:

- (i) if the Power Supply Fee Schedule separately identifies distribution charges, by simply passing through the new charges imposed by the Distributor; and
- (ii) in any other case, by:
  - (A) apportioning the total estimated amount of the cost increase in relation to the relevant customer segment (which may be the whole of Our customer base) across that customer segment; and
  - (B) applying up to the resulting amount to the charges on the basis of cents per kilowatt-hour of electricity consumed at the supply address, days connected to the Distribution System, or a combination of the two.

(c) To the extent permitted by all Applicable Laws, We may also:

- (i) vary any disconnection fee, reconnection fee or call-out fee to reflect any increase in Our cost of disconnection, reconnection or call-out (including any increase in any amount charged to Us by the Distributor or another contractor or agent for providing services in relation to the disconnection, connection or call-out); and
- (ii) pass through to You any other charges imposed by a Distributor for services that are not included in Your charges (such as connection charges) together with Our reasonable administration charges.

#### **6.6 Increases in market charges**

(a) We may vary the Power Supply Fee Schedule to reflect any increases in market charges, any change in the amount of, or basis for calculation of, any charges imposed on Us for participation in energy markets by the relevant market operators.

(b) The amount of any such variation will be calculated by:

- (i) dividing the total amount of the cost increase in relation to the relevant customer segment (which may be the whole of Our customer base) by the volume of energy purchased in relation to that customer segment; and
- (ii) applying up to the resulting amount to the charges on the basis of cents per kilowatt-hour of electricity consumed at the supply address.

#### **6.7 Increases in metering charges**

(a) We may vary the Power Supply Fee Schedule to reflect any change in the amount of, or basis for calculation of, any charges imposed on

Us by the relevant metering providers for the provision, maintenance or reading of electricity metering equipment at the supply address.

(b) The amount of any such variation will be calculated by the following means:

(i) if the Power Supply Fee Schedule separately identifies metering charges, by simply passing through the new charges imposed by the metering provider; and

(ii) in any other case, by apportioning the total estimated amount of the cost increase in relation to the relevant customer segment (which may be the whole of Our customer base) across that customer segment;

(iii) applying up to the resulting amount to the charge the basis of cents per kilowatt-hour of electricity consumed at the supply address, days connected to the Distribution System, or a combination of the two.

(c) To the extent permitted by all Applicable Laws, We may also pass through to You any charges imposed by a metering provider for services that are not included in Your charge such as additional meter readings or meter testing.

#### **6.8 Loss factor**

If the Power Supply Fee Schedule provides for variation in the case of changes in loss factors:

(a) We may vary any electricity charges to reflect any change in the applicable loss factors provided by NEMMCO or, estimated by Us that affect any additional amounts payable in relation to electricity that is lost through the transmission and distribution systems on the way to the supply address, and

(b) the amount of any such variation will be calculated by:

- (i) estimating the proportion of Our costs of purchasing selling and supplying electricity that are directly affected by the volume of electricity purchased by You; and
- (ii) adjusting the charges by that proportion multiplied by the new loss factor and divided by the old loss factor.

#### **6.9 CPI increases**

We may vary the Power Supply Fee Schedule in the case of changes in the Consumer Price Index, on 1 January (or such other date We advise) in each year We may without prior notice adjust the charges in the Power Supply Fee Schedule to reflect any variation in the Consumer Price Index during the previous year.

(b) Any such variation will be calculated by multiplying the existing charge by the Consumer Price Index for the latest available quarter and dividing it by the Consumer Price Index for the corresponding quarter in the previous year.

#### **6.10 Tax changes**

We may adjust the Power Supply Fee Schedule to reflect any introduction of change in any taxes (including GST), imposts or charges payable by Us in relation to the purchase, sale or supply of electricity or other goods or services under these Power Supply Terms and Conditions including:

(a) any new or increased obligation imposed on Us relating to the promotion of renewable energy, the reduction of greenhouse gases or carbon emissions, or any other environmental obligations or incentives; and;

(b) the introduction of, or any amendment to or change in any law or regulation (including without limitation the GST law) or any action or decision relating to such a law or regulation that changes Our entitlement to claim input tax credits in respect of creditable acquisitions made by Us in making supplies under these Power Supply Terms and Conditions.

#### **6.11 Changes in Applicable Laws**

We may adjust Power Supply Fee Schedule to the extent necessary to pass through any costs of complying with any change in any Applicable Laws (including any new or increased obligations or charges imposed by a regulator or other authorised body under any Applicable Laws), to the extent permitted by that relevant Applicable Laws.

#### **6.12 Timing of variations**

(a) Except in the case of CPI increases, the Power Supply Fee Schedule varied in accordance with this clause will not take effect until We have given You written notice (which may consist of a statement on Your bill) notifying You of the varied Power Supply Fee Schedule, including:

(i) the date on which the varied Power Supply Fee Schedule is to take effect (being a date that is later than the date on which We give You the notice); and

(ii) a copy of the varied Power Supply Fee Schedule or details of how to access a copy of the varied Power Supply Fee Schedule.

(b) Any varied Power Supply Fee Schedule will form part Our Contract with You from the date on which the varied Power Supply Fee Schedule is to take effect as notified.

(c) If the date on which the varied Power Supply Fee Schedule is to take effect occurs during a Billing Period, then for that Billing Period the charges will be the sum of:

(i) for the period of time from the start of the Billing Period up to the day on which the varied Power Supply Fee Schedule took effect, the relevant charges calculated using:

(A) the former bundled rate or energy consumption rate and the amount of energy consumed by You during the period of time from the start of the Billing Period up to the day on which the varied Power Supply Fee Schedule took effect; and

(B) the former daily rate and the number of days from the start of the Billing Period up to the day on which the varied Power Supply Fee Schedule took effect; and

(ii) for the period of time from the day on which the variation took effect to the end of the Billing Period, the charges calculated using:

(A) the new bundled rate or energy consumption rate and the amount of energy consumed by You during the period of time from the day on which the varied Power Supply Fee Schedule took effect to the end of the Billing Period; and

(B) the new daily rate and the number of days from the day on which the varied Power Supply Fee Schedule took effect to the end of the Billing Period.

## **7. Paying for Your Power**

### **7.1 Format and timing of bills**

(a) We will issue a bill to the address or e-mail address nominated by You or a person authorised to act on Your behalf according to the Billing Period. We will bill You every month for Your electricity.

(b) Each bill will identify the charges for electricity and will set out any other information as required by any Applicable Laws.

(c) If We provide goods or services in addition to the sale or supply of electricity, those items may be billed separately or as separate items on the bill.

(d) In the event of early termination as described in clause 4.2, we may bill You for the amount of the early termination fee.

### **7.2 Calculation of bills**

(a) Your bill will be based on the amount of electricity and identified by Us or the Distributor as having been delivered to Your supply address.

(b) Subject to all Applicable Laws, the amount of electricity will be derived from consecutive Meter Readings or, where Meter Readings are unavailable, from estimates or by calculation from a Meter Reading You have provided. We will use Our best endeavours to ensure that Your Meter is read at least once in any 12 month period.

(c) In the event that We use an estimate or a calculation from a Meter Reading You have provided to identify the amount of electricity as having been delivered to Your supply address and We subsequently obtain a Meter Reading, We will make any appropriate adjustment to Your next bill in accordance with the Meter Reading.

### **7.3 Review of bills**

(a) We will review Your bill at Your request, provided You agree to pay the lower of:

(i) the portion of the bill that You and We agree is not in dispute; or

(ii) an amount equal to Your average bill amount in the previous 12 months.

(b) Our review of Your bill will be in accordance with Our complaints and dispute resolution process outlined these Power Supply Terms and Conditions.

(c) If Our review shows the bill to be correct, You must pay the amount of the bill in full or request a Meter test these Power Supply Terms and Conditions. If Our review shows the bill to be incorrect the process outlined for circumstances where there is an error in a bill (detailed below) will apply.

(d) Clause 7.3(a)-(c) does not apply to any bill sent to You pursuant to clause 7.1(d).

### **7.4 Meter testing**

(a) If after the completion of the bill review process You require Your Meter to be tested, We will refer You to the Distributor or energy authority that will test the Meter at a charge for services, which You must pay in advance. We will give You a copy of the results of the test if the testing authority does not do so.

(b) If the Meter is not defective according to the Metering Standards, You will be responsible for paying all testing charges and the full amount of Your bill.

(c) If the Meter is defective and favours You by more than the amount allowable in the Metering Standards, You must pay the difference between the Metered consumption and the calculated actual consumption.

(d) If the Meter is defective and favours Us by more than the amount allowable in the Metering Standards, We will reimburse the difference (if the account has been paid) between the Metered consumption and

the calculated actual consumption, and We will reimburse the testing charges.

### **7.5 Bill adjustment**

If Your bill covers a period other than Your usual Billing Period We will adjust any service to property charge and any energy usage calculation on a pro-rata basis.

### **7.6 If there is an error in a bill**

(a) If there are errors in Your bill or if We are informed of errors in the amount of electricity delivered to Your supply address, We will refund any amount overcharged or charge You the amount that You were undercharged on the next bill.

(b) If You were undercharged (including the omission of any charges), except by reason of any fraud or use of electricity other than as permitted under Our Contract with You, We will:

(i) only seek to recover any amount undercharged in the 12 months prior to Your last bill (or, if We have not sent You a bill, prior to the date on which We notify You of the undercharging); and

(ii) list the amount as a separate item in a special bill or in the next bill in Your Billing Period, together with an explanation of the amount.

(c) You will not be charged interest on any undercharged amount.

(d) If You were overcharged, We will:

(i) inform You of the overcharging within 10 business days after We become aware of the overcharging; and

(ii) seek Your instructions as to how You wish Us to refund the amount by which You have been overcharged, or credit the amount on Your next bill if You do not give Us other instructions.

(e) We are not obliged to pay You interest for any overcharging.

### **7.7. Payments**

(a) You are required to pay Your bill by the date specified in the bill as the pay-by date.

(b) The available methods of payment for each bill will be as specified in that bill.

(c) If Your payment is dishonoured or reversed by Your bank, You must reimburse Us all fees any bank charges Us plus Our reasonable administration charges.

### **7.8 If You have trouble paying**

You must notify Us if You are experiencing difficulty in paying Your bill. We will consider any reasonable request from You for an instalment plan, and may impose an additional charge on You if We agree to offer You an instalment plan.

### **7.9 Direct debit**

If We offer You the option of payment directly from Your bank account, We will do so on terms consistent with the "Code of Banking Practice", the "Electronic Funds Transfer Code of Conduct" in force and as amended from time to time and all Applicable Laws. We will not alter the amount (which may include the full bill or an agreed instalment) and the frequency of the direct debits without Your agreement.

### **7.10 Shortened Billing Periods**

(a) We may place You on a shortened Billing Period or You may otherwise negotiate a shorter Billing Period with Us in the circumstances set out in any Applicable Laws.

(b) If You negotiate a shorter Billing Period with Us, then We may impose an additional retail charge and may charge You for any costs imposed on Us if You fail to make the periodical payment You agreed to make.

### **7.11 Refundable advances and security deposits**

(a) Subject to Applicable Laws, We may require You to provide a refundable advance before connection or reconnection of supply of electricity.

(b) We may use the refundable advance and accrued interest to offset any amount owed by You to Us if You are disconnected for failure to pay and no longer have a right to be reconnected, or if You vacate Your supply address, request disconnection or transfer to another retailer.

(c) If We use a refundable advance, We will provide You with an account of its use and will repay any balance to You within 10 Business Days. We will also repay the refundable advance and interest within 10 Business Days of You completing 2 year's payment of bills by the pay-by date or on termination of the supply of electricity by Us to You under these Power Supply Terms and Conditions.

## **8. Your obligations using electricity**

### **8.1 General**

Our obligations under these Power Supply Terms and Conditions are subject to You complying with the following requirements:

(a) You must comply with all Applicable Laws and must give effect to any of the Distributor's rights under those Applicable Laws;

(b) You must pay all relevant fees and charges in relation to supply at the supply address, and continue to pay the supply account, by the due date specified on the bill;

(c) You must not allow electricity directed to the supply address to be used at another address, or take at Your supply address any electricity provided by Us directed to another address;

(d) You must not resupply electricity supplied under this contract to any other person unless specifically agreed to by Us in writing or unless permitted by all Applicable Laws;

(e) You must not tamper with or bypass, or permit anyone else to tamper with or bypass, the Meter or associated equipment; and

(f) if We sell or supply electricity to You for a specific purpose, You must not use the electricity for another purpose.

### **8.2 Unauthorised access**

If You obtain electricity from Us otherwise than as permitted by Our Contract with You We may take action to disconnect supply, estimate the usage for which You have not paid and take debt recovery action for the unpaid amount (and any disconnection and reasonable legal costs to the extent permitted under Applicable Laws). If Your actions result in damage to Our equipment, We may recover from You the costs of repair or replacement of that equipment together with reasonable investigation and legal costs and costs of disconnection (to the extent permitted under Applicable Laws).

### **8.3 Protection and maintenance of Your Power Supply**

To enable Us to provide You with a reliable safe supply of electricity, You must:

(a) keep the electrical installations at Your supply address in safe condition;

(b) protect Our and the Distributor's equipment from damage and interference;

(c) provide safe, convenient and unhindered access to enable work on the Distribution Systems to be carried out;

(d) not allow a person other than someone You reasonably believe to be an accredited electrical installer to perform work on an electrical installation;

(e) not use the electricity supply in a manner that may interfere with the Distribution Systems or supply to any other electrical installation or cause damage or interference to a third party; and

(f) not interfere or allow someone to interfere with the Distribution System which delivers electricity to the supply address, or with any Metering equipment at the supply address.

### **8.4 Access to supply address**

You must give Us and the Distributor safe, convenient and unhindered access to the supply address for the following purposes:

(a) to read the Meter;

(b) to connect or disconnect supply;

(c) to inspect or test electrical installations as appropriate; or

(d) to inspect, repair, test or maintain the Distribution System.

## **9. If You have a complaint about Your Power Services**

### **9.1 Your Right to Review**

You may make a complaint to Us about any decision We have made in relation to Our supply of electricity to the supply address.

### **9.2 Complaints handling and dispute resolution procedure**

When We receive a complaint from You, We will deal with Your complaint in accordance with Our complaints handling and dispute resolution procedure, which is outlined below.

### **9.3 Outline of Review Process Telephone Complaint**

(a) Verbal Complaint

You may telephone Us on the number set out on Your bill or otherwise communicated to You in order to notify Us of any complaint in relation to Our supply of electricity to the supply address and We will try to resolve Your complaint through informal negotiations over the telephone.

(b) Written Complaint

(i) Where You are not satisfied with the way We have dealt with Your complaint over the telephone, or where You prefer to write to Us, You may write to Us and formally notify Us of Your original complaint and Your request for a review of Your complaint.

(ii) On receipt of Your written complaint and request for review, We will review Your complaint and respond to You in writing within 28 days with Our decision.

### **9.4 Referral to Higher Level**

Where You are not satisfied with the response received from Your first point of contact (whether over the telephone or by written complaint), You may have the complaint reviewed at the higher level. This process elevates Your complaint through to the appropriate manager, by telephone or in writing as You prefer.

### **9.5 Referral to Court or Tribunal**

If You are not satisfied with the outcome of the dispute resolution procedure set out in this clause 9 You may have the matter heard by the appropriate Court or Tribunal in the State in which the Services are

provided to You by Us. In this regard, please contact Us if you require details of the appropriate Court or Tribunal.

## **10 Our Liability**

### **10.1 Australian Consumer Law**

The Australian Consumer Law provides certain statutory guarantees, conditions, warranties and other rights that cannot be excluded or limited. To the extent the Australian Consumer Law applies to Our Contract with You, this clause 10 is subject to, and will not apply to the extent of, any such non-excludable rights under the Australian Consumer Law.

### **10.2 Title and Risk**

Title and risk in all electricity supplied to You will pass to You at the respective delivery point.

### **10.3 Limitation of Liability**

(a) Subject to clause 10.3(b):

(i) all conditions, warranties and representations (whether express or implied) not expressly set out in Our Contract with You are excluded; and

(iii) Without derogating from clause 6, You agree that We are not, and You shall not hold Us, liable for any loss or damage (however caused) suffered by You or any third party in connection with the provision of Voice and Data Services under Our Contract with You and/or any subsequent use application modification embodiment or adaptation of the Voice and Data Services and You release Us from liability for, and otherwise shall protect and hold Us harmless from and against, a claim for any such loss or damage.

(b) If any Applicable Laws (including the ACL) imply a condition or warranty into Our Contract with You in respect of Power Services supplied by Us, and Our liability for breach of that condition or warranty cannot be excluded or restricted by law but may be limited, clause 10.2(a) does not apply to that liability and instead Our liability for any breach of that condition or warranty is limited to Us doing either or any combination of the following (at Our election):

(i) supplying the Power Services again;

(ii) paying the cost of having the Power Services supplied again; and/or

(iii) applying any other limitation permitted by Applicable Laws (including the ACL).

(c) For the avoidance of doubt, where We are liable to You for any Liability or pay You any refunds, rebates, damages or other compensation ("Compensation") under Our Contract with You the following applies, to the extent permitted by Applicable Laws (including the ACL):

(i) We exclude any Liability to You for any indirect, special or consequential loss or damage suffered or incurred by You; and

(ii) the amount of Compensation that We have to pay You will be reduced to the extent that the event giving rise to the obligation to pay Compensation has been caused or contributed to by You.

## **Victoria Power Supply Terms and Conditions**

### **1. Interpretation and Definitions**

#### **1.1 Interpretation**

Subject to clause 1.2 below, in these Victoria Specific Power Supply Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation, can be found in the Active Utilities Glossary of Terms.

#### **1.2 Definitions**

**Electricity Distribution Code** means the Electricity Distribution Code dated January 2006 published by the Essential Services Commission and includes any amended or updated version or any replacement document or code.

**Energy and Water Ombudsman Victoria** means the Energy and Water Ombudsman (Victoria) Limited whose web site address is <http://www.ewov.com.au>.

**Energy Retail Code** means the Energy Retail Code Version 2 dated February 2006 published by the Essential Services Commission and includes any amended or updated version or any replacement document or code.

**Essential Services Commission** means the Essential Services Commission Victoria located at 35 Spring Street Melbourne, Victoria 3000 and whose web site address is <http://www.esc.vic.gov.au>.

### **2. General**

(a) We are exempted from the requirement to hold a licence to supply or sell electricity to You by virtue of the Exemption Order under Section 17, Order in Council dated 1 May 2002 and made under the Electricity Industry Act 2000 (Vic).

(b) Depending on how We supply You with electricity any provisions of the Electricity Distribution Code and Energy Retail Code that apply to Our Contract with You becomes part of these Victoria Specific Power Supply Terms and Conditions.

(c) Where there is any inconsistency between the relevant code and these Victoria Specific Power Supply Terms and Conditions then these Victoria Specific Power Supply Terms and Conditions prevail to the extent allowed by the relevant code, however where this is not allowed by the relevant code, the terms of the relevant code will prevail. If You require a copy of either the Electricity Distribution Code or the Energy Retail Code You can inspect it at the Essential Services Commission website at [www.esc.vic.gov.au](http://www.esc.vic.gov.au).

(d) If you are a Business Customer for the purposes of the Energy Retail Code, You agree to take reasonable precautions to minimise the risk of loss or damage to any of your equipment, premises or business which may result from poor quality or reliability of electricity supply.

### **3. Method of supply**

(a) Where We supply You with electricity on an intermediary distribution basis the Electricity Distribution Code applies and We must observe all the applicable provisions of that code as if We are a licensed electricity distributor.

(b) Where We supply You with electricity on a metered intermediary distribution basis the Energy Retail Code applies and We must observe all the applicable provisions of that code as if We are a licensed retailer of electricity.

### **4. Disconnection and reconnection**

#### **4.1 Restrictions on Our ability to disconnect Your Power Supply**

We will not disconnect the supply address except in accordance with the Energy Retail Code and any Applicable Laws. In particular, We will not disconnect the supply address:

(a) for non-payment of a bill:

(i) where the amount payable is less than any amount approved by the Essential Services Commission in a relevant guideline;

(ii) if you have made a relevant complaint to the Energy and Water Ombudsman Victoria or other dispute resolution body which remains unresolved;

(iii) where You have a formal decision relating to a Utility Relief Grant pending; or

(iv) where the only unpaid amount is a charge not for the supply or sale of electricity;

(b) if the supply address is registered by the Distributor as a life support machine supply address; or

(c) unless otherwise requested by You:

(i) after 3 pm on a weekday; or

(ii) on a Friday, on a weekend, on a public holiday or on the day before a public holiday.

#### **4.2 Reconnection**

(a) If the supply address has been disconnected for any of the following reasons:

(i) non-payment of a bill;

(ii) access to the Meter was refused;

(iii) for obtaining supply otherwise than in accordance with Our Contract with You; or

(iv) refusing to pay a refundable advance or security levy, We will reconnect the supply address at Your request provided that You make Your request within 10 Business Days of the relevant disconnection and that You agree to payment of a reconnection fee reflecting Our direct costs arising from the disconnection and reconnection (including any amount charged to Us by the Distributor or another contractor or agent for providing services in relation to the disconnection, connection and Our reasonable administrative charges).

(b) We will reconnect the supply address:

(i) on the day of Your request, if You contacted Us before 3 pm on a Business Day;

(ii) on the next Business Day after Your request, if You contacted Us after 3pm on a Business Day; or

(iii) on the day of Your request, if You contacted Us after 3 pm on a Business Day but before 9 pm and You agree to pay Our after hours reconnection fee.

(c) If We (or the Distributor or another contractor or agent) have been called out to disconnect the supply premises for any of the reasons set out in subclause (a) above, and the reason is rectified before We disconnect the supply premises, then We may charge the call-out fee specified in the Power Supply Fee Schedule.

### **5. If You have a complaint about Your Power Services**

If You are not satisfied with the outcome of the dispute resolution procedure set out in clause 9 of the Active Utilities Power Supply Terms and Conditions, You may have the right to have the matter heard by the Victorian Civil and Administrative Tribunal. If you require contact details for Victorian Civil and Administrative Tribunal, please contact us.

## **ACT Power Supply Terms and Conditions**

### **1. Interpretation and Definitions**

#### **1.1 Interpretation**

Subject to clause 1.2 below, in these ACT Specific Power Supply Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation, can be found in the Active Utilities Glossary of Terms.

#### **1.2 Definitions**

**ACT** means the Australian Capital Territory.

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

### **2. General**

(a) We are exempted from the requirement to hold a licence to supply or sell electricity to You by virtue of the Utilities Exemption 2007 (No 3) made under Section 22 of the Utilities Act and dated 13 November 2007.

(b) Depending on how We supply You with electricity, any provisions of any Applicable Laws which apply to Our Contract with You become part of these ACT Specific Power Supply Terms and Conditions.

(c) Where there is any inconsistency between the Applicable Laws and these ACT Specific Power Supply Terms and Conditions then these ACT Specific Power Supply Terms and Conditions prevail to the extent allowed by the Applicable Laws, however where this is not allowed by the Applicable Laws, the terms of the Applicable Laws will prevail.

### **3. Disconnection and reconnection**

#### **3.1 Restrictions on Our ability to disconnect Your Power Supply**

Unless You have requested Us to do so, We will not arrange for Your residential premises to be disconnected unless:

(a) two written notices have been served on You at least seven days apart;

(b) the account has not been paid within five days of a second notice being served on You, and we have made a reasonable attempt to contact You; and

(c) after the procedures of paragraphs (b) and (c) above have been followed, You have not made and complied with any payment arrangement, satisfactory to Us and reasonable in your financial circumstances.

#### **3.2 Restoration of connection once Your payment is received**

If We have taken action to disconnect electricity from your premises, and You pay your account, or We accept an arrangement by You to pay the account, We must arrange to restore the service as soon as practicable and, in any event, within 24 hours.

## **NSW Power Supply Terms and Conditions**

### **1. Interpretation and Definitions**

#### **1.1 Interpretation**

Subject to clause 1.2 below, in these New South Wales Specific Power Supply Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation, can be found in the Active Utilities Glossary of Terms.

#### **1.2 Definitions**

**Act** means the Electricity Supply Act 1995 (NSW).

**AS 1284** means the series of documents published by Standards Australia, and numbered AS 1284, as in force on 7 May 1996.

**Regulation** means the Electricity Supply (General) Regulation 2001 (NSW).

**Relevant Standard Retail Supplier** means in relation to the Power Supply a retail supplier whose retail authority states an area which includes the area where Your premises are located.

**Standard Form Supply Contract** means a standard form supply contract made under the Regulation.

### **2. General**

(a) We are not required to be a licensed retail supplier in respect of the supply and sale of electricity under the Act.

(b) Our Contract with You sets out how We will supply electricity to You and how We will charge You for Your electricity consumption.

(c) Where there is any inconsistency between the applicable provisions of the Act and/or Regulation and these New South Wales Power Supply Terms and Conditions the terms of the relevant provisions of the Act and/or Regulation will prevail to the extent of the inconsistency.

### **3. Electricity meter standards**

We will only charge You for electricity supplied if the quantity of the electricity we supplied to You is measured by a separate electricity meter that complies with AS 1284 relevant to electricity meters of the same kind, or any relevant market operations rules in respect of electricity meters.

### **4. Maximum charge**

Despite anything else contained in the terms of Our Contract with You, We must not charge You more than the amount that the Relevant Standard Retail Supplier would have charged You under a Standard Form Supply Contract for a similar quantity of electricity supplied during the same period.

## **QLD Power Supply Terms and Conditions**

### **1. Interpretation and Definitions**

#### **1.1 Interpretation**

Subject to clause 1.2 below, in these Queensland Specific Power Supply Terms and Conditions the meaning of words that begin with a capital letter and the rules for interpretation, can be found in the Active Utilities Glossary of Terms.

#### **1.2 Definitions**

**Act** means the Electricity Act 1994 (Qld).

**National Electricity Rules** means the National Electricity Rules Version 13 dated 15 March 2007 and includes any amended or updated version or any replacement document or code.

**Relevant Retail Entity** means in relation to the Power Supply a retail entity whose retail authority states an area which includes the area where Your premises are located.

### **2. General**

(a) We are exempted from the requirement to be a retail authority in respect of the supply and sale of electricity by virtue of the exemption under Section 20A of the Act.

(b) Our Contract with You constitutes an on-supply agreement made under section 20B of the Act and sets out how We will supply electricity to You and how We will charge You for Your electricity consumption.

(c) Where there is any inconsistency between the applicable provisions of the Act and these Queensland Specific Power Supply Terms and Conditions the terms of the relevant provisions of the Act will prevail to the extent of the inconsistency.

### **3. Individual metering**

(a) You may at any time elect, by written notice to Us, to be charged for Your consumption of electricity supplied to You by Us, as measured by a meter. You will be responsible for the cost of installing the meter.

(b) The election stated in subclause (a) above will only be effective if the installation of the meter is reasonable and done in a way that complies with any reasonable written directions given by Us, if any, within 5 Business Days of Us giving the written directions.

(c) If You install a meter in a way that is not reasonable or that does not comply with a written direction given by Us then You may be liable to pay compensation to Us or another person who occupies the complex and suffers damage as a result.

### **4. Maximum charge for metered supply**

If electricity supplied to You by Us is charged on the basis of Your electricity consumption as measured by a meter then:

(a) if there is a Relevant Retail Entity for the supply, We must not charge more than the lowest rate that You would have been charged by the Relevant Retail Entity; or

(b) if there is no Relevant Retail Entity for the supply, We must not charge You more than the lowest rate that You would have been charged by the Relevant Retail Entity of Our supplier.

In particular:

(c) We must ensure that Our Power Supply Fee Schedule does not include rates exceeding the limits stated in subclauses (a) and (b) above; and

(d) We must not recover from You an amount charged for electricity consumption that has been calculated at a rate exceeding the limits stated in subclauses (a) and (b) above.

### **5. Private network**

Where We operate a supply network located solely within Our premises and We supply, or supply and sell to You electricity using the network, the National Electricity Rules apply and We must observe all the applicable provisions of the National Electricity Rules. In particular:

(a) We must provide You with access to the supply network at no cost or at a nominal fee; and

(b) as stated in the Active Utilities Power Supply Terms and Conditions, You are under no obligation to purchase electricity from Us, and may choose to purchase Your electricity from a licensed retailer.