

Government of Western Australia, Department of Finance, Public Utilities Office  
**Electricity Market Review**

***Position Paper on Changing the Contractual Relationship between  
the Electricity Distributor, Customers and Retailers***

**Review of the position paper from the perspective of  
a small [use] customer in the market**

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## **Contents**

Overview .....	03
<b>Comments in response to:</b>	
1. Introduction .....	04
4. Distributor-Customer Relationship .....	05
5. Retailer-Customer Relationship .....	09
6. Distributor-Retailer Relationship .....	10
7. Role of Local Regulator .....	12
Appendix A – National Energy Retail Rules	
Model terms and conditions for deemed standard connection contracts .....	13

## **Acknowledgement and disclaimer**

Tony Westmore prepared this response to the position paper in his capacity as an independent advisor. He was engaged by the Department of Finance, Government of Western Australia, to provide ‘consumer advocacy consultancy services’ for particular aspects of the Electricity Market Review. This response is intended to provide an independent perspective and may not reflect the views of the Department or the Government. All responsibility for this text rests with the author.

## Overview

This response is set out in the form of answers to the questions posed in the position paper [the paper], with the exception of 1. *Introduction*, 2. *The proposed contracting model* and 7. *Role of local regulator*, for which ad hoc responses are offered. Appendix A is included for those readers unfamiliar with the National Energy Customer Framework (NECF), the National Energy Retail Law, Rules or/and Regulations and the model deemed standard contract between a distributor and a small [use] customer or its terms and conditions.

Before proceeding to the detail of the paper these general remarks are made. While the effects of the proposed changes on any individual customer are likely to be minimal in reality, any change brings the prospect of concern. It is suggested that a program of information for customers accompany any transition and that it summarise reasons for change, the changes to contractual arrangements (ie the change from a linear to a triangular model), and the actual changes in relationships that are likely to result.

There seems to be an ambiguity that permeates the paper about the relationship between the introduction of the National Electricity Law and its framework for economic regulation of market participants and future arrangements for non-economic regulation, ie of distributor and retailer relationships with small [use] customers. It is not clear whether the Government of Western Australia has yet made a decision about the NECF and whether it or an alternative will be implemented in the South West Interconnected System (SWIS). The proposed triangular contracting model is but one aspect of non-economic regulation. However, it seems likely to set the tenor of approaches to other reform. The well researched and well argued position paper includes these observations:

### ***Low level of implementation risk***

*Implementing the triangular contracting model will require extensive regulatory changes, but will involve a relatively low level of implementation risk because a clearly defined template already exists. The National Energy Customer Framework establishes a contracting framework that interoperates effectively with the National Electricity Law and the National Electricity Rules. By using the National Energy Customer Framework as a guide, some of the risks of unintended consequences associated with a complex regulatory architecture should be reduced.*

### ***Greater consistency with most Australian jurisdictions***

*The National Energy Customer Framework is used in most Australian jurisdictions. Therefore, by applying the triangular contracting model as implemented under the National Energy Customer Framework, the changes are expected to reduce the costs of market entry for interstate retailers.*

These observations would seem to support the adoption of the NECF in Western Australia, perhaps with derogations to suit local conditions. The NECF was developed with the expectation that participating jurisdictions may need to make amendments to the instruments that comprise the national framework, either for a period of transition or permanently. All of the jurisdictions that have implemented the NECF thus far (ie all NEM-participant jurisdictions excepting Victoria) have indeed made such amendments.

Related to this observation is another in parallel. The paper suggests an alternative to existing prescriptive regulation (the NECF) in the form of express principles and minimum terms and conditions to be prescribed by local [ie Western Australia-specific] regulation. That suggestion is reasonable but difficult to assess vis a vis the NECF in the absence of particulars. If the review process is seriously contemplating this alternative then these minimum terms and conditions ought to be set out for consideration alongside the NECF.

## 1. Introduction

The paper refers to these high level principles for market reform:

### ***Principles***

*Legislation and regulation to implement the modified model will be designed in such a way as to:*

- *support electricity network regulation reforms;*
- *avoid changing the level of customer protection currently provided, unless necessary;*
- *have minimal effect on customers; and*
- *not limit future adoption of full retail contestability*

If some level of consistency and harmonisation with other jurisdictions is a principle underpinning the reform there might be value in adding this to the list.

Ought the principles include some reference to an overarching goal or principle such as the National Electricity Objective? For reference the Objective, included in the National Electricity Law and the National Energy Retail Law is

The objective of [this Law] is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The paper refers to these high level assumptions for market reform:

### ***Assumptions***

- *Chapter 5A of the National Electricity Rules will be adopted substantially as it applies in other National Electricity Market jurisdictions.*
- *Local regulations consistent with the reforms will be retained.*
- *Western Power is the only distributor operating within this framework. As Horizon Power and other integrated licensees will not be subject to the National Electricity Law, the amendments for the triangular model will not apply to them.*
- *The distinction between contestable and non-contestable customers will be retained until separate retail contestability reforms are implemented.*
- *The Australian Consumer Law will apply to customer contracts covered by these regulatory reforms*

These assumptions would seem to be reasonable. However, as noted above, another assumption that seems to underpin some of the thinking in the position paper is that the Government of Western Australia will not adopt the NECF. It is understood that a more general review of consumer protections for small [use] electricity customers is in train and that the outcome of that review will inform a decision about frameworks for customer protections including whether and to what extent to implement the NECF.

There might be value in providing an explanation and, perhaps, an example of the application of the Australian Consumer Law to customer contracts covered by these regulatory reforms. It may not be clear how electricity market-specific regulation interacts with the coverage of the generic regulatory framework.

## 4. Distributor-customer relationship

*Question: Should standard contracts be prescribed pursuant to regulation, or developed by the distributor for approval by the local regulator?*

Further to general observations made earlier, my view is that, as far as possible and reasonable, consistency with the NECF ought to be a principle of market reform in Western Australia. Deemed standard ongoing supply contracts should be prescribed pursuant to regulation.

The paper observes that ‘both the efficiency and consistency arguments for the prescription approach do not hold locally’ but does not put a case for that observation. The model contract set out in the National Energy Retail Rules at Schedule 2 [and appended to this document as Appendix A] has proved adequate to the task in jurisdictions that have implemented the NECF. A ‘model’ provides for consistency not only within but also between businesses and jurisdictions.

The promise of regulatory consistency between jurisdictions is that it encourages competition, at least partly by reducing regulatory burden and barriers to entry. The existence of a well-tested and successful model ought to expedite the process of transition. It is not necessarily desirable that Western Power be provided with ‘more control’ or flexibility’. As the paper observes at 2.3.2 under the heading *Low level of implementation risk*,

*[t]he National Energy Customer Framework establishes a contracting framework that interoperates effectively with the National Electricity Law and the National Electricity Rules. By using the National Energy Customer Framework as a guide, some of the risks of unintended consequences associated with a complex regulatory architecture should be reduced.*

In the event that it is decided to prefer the alternative ie ‘that the distributor develop and publish the contract, subject to the [local] regulator’s approval’, the ‘minimum conditions set out in the regulation’ ought to be the subject of public consultation.

*Question: Should the distributor be limited to large customers in the development of deemed class-specific contracts?*

Yes. However, as noted above, the ‘principles... minimum terms and conditions prescribed by the regulations’ ought to be the subject of public consultation.

*Question: Is the negotiation framework under Chapter 5A suitable for negotiating ongoing supply contracts in the South West Interconnected System? If not, what amendments should be made?*

The paper observes under *Negotiated contracts* on page 17 that “the National Energy Customer Framework will not be adopted in the South West Interconnected System”. However, in the earlier discussion, under *1.2 Background* on page 2, the paper observes that “[in] Western Australia the government has not made a decision to implement the National Energy Customer Framework”. If a decision has been made *to not implement* the NECF, that ought to be made clear. Such a decision would impact the consideration of this paper, the implementation of a triangular relationship and the regulatory regime supporting that relationship.

The paper observes that the NECF ‘imposes some contractual conditions as outlined in r. 82 of the National Energy Retail Rules’. While r. 82 [extracted below] provides for important

customer protections, it relates particularly to customer complaints and resolution. Contracts negotiated between the distributor and small [use] customers should have regard to the 'principles and minimum terms and conditions prescribed by the regulations' and any derogation from those principles, terms and conditions should be the subject of explicit agreement between the parties.

## 82 Small customer complaints and dispute resolution information

- (1) A distributor must include, in a negotiated connection contract with a small customer, provisions to the effect of the following:
  - (a) the small customer may, if they have a query, complaint or dispute, contact the distributor;
  - (b) the distributor is obliged to handle a complaint made by a small customer in accordance with the distributor's standard complaints and dispute resolution procedures, which can be found on the distributor's website or provided to the customer on request;
  - (c) the distributor must inform the small customer of the outcome of the customer's complaint;
  - (d) if the small customer is not satisfied with the distributor's response to the customer's complaint, the customer has a right to refer the complaint or dispute to the energy ombudsman.
- (2) The provisions required to be included in the negotiated connection contract must provide the distributor's contact details for the small customer to contact the distributor in connection with a query, complaint or dispute.

Note:

This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

National Energy Retail Rules (Version 6) 23 June 2016

Sourced online: <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Current-rules>  
10 July 2016

*Question: Is there any reason why the high-level contractual provisions under r. 82 of the National Energy Retail Rules should not be adopted in the South West Interconnected System?*

No. However, as noted above r. 82 provides protection in a limited area only. The 'principles... minimum terms and conditions prescribed by the regulations' for deemed standard and deemed class-specific contracts should apply to negotiated contracts also, except in circumstances in which the parties agree to derogate.

*Question: Should the additional information provisions above be included within local customer protection arrangements?*

Yes. Regardless of whether the NECF is implemented in the SWIS, these information requirements are reasonable and ought to be obligatory.

*Question: Should Western Power's liability to customers under the ongoing supply contract*

*be limited? If so, why and in what ways? and*

*Question: Should negotiated ongoing supply contracts grant full scope for the parties to agree to contract away from the default liability settings established under Section 120(1) of the National Electricity Law? Should the answer be different in the case of small use customers?*

No. The relevant section of the National Electricity Law is extracted below. It is reasonable that the distributor's liability in respect of small [use] customers differs from its liability in respect of large customers. Western Power ought not be afforded the ability to further limit its liability in respect of small customers and certainly not those customers on a standard deemed contract. It might be reasonable, as the paper observes, for customers who negotiate a contract to 'reallocate' liabilities provided any such reallocation is the subject of explicit informed consent having regard to the 'minimum terms and conditions prescribed by the regulations'.

### **120—Immunity in relation to failure to supply electricity**

- (1) A Registered participant or AEMO, or an officer or employee of a Registered participant or AEMO, does not incur any civil monetary liability for any partial or total failure to supply electricity unless the failure is due to an act or omission done or made by the Registered participant or AEMO, or the officer or employee of a Registered participant or AEMO, in bad faith or through negligence.
- (2) A Registered participant or AEMO may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.
- (2A) Subsection (2) does not apply in relation to an agreement between a retailer, or a regulated distribution system operator, and a person who is a small customer within the meaning of the National Energy Retail Law.
- (3) This section does not apply—
  - (a) to AEMO or an officer or employee of AEMO in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of AEMO under this Law or the Rules; or
  - (b) to a network service provider or an officer or employee of a network service provider in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power; or
  - (c) to any liability of an officer or employee of a body corporate to the body corporate.
- (4) In this section—  
**system operations function or power** has the same meaning as in section 119.

National Electricity (South Australia) Act 1996 [21 October 2011]

Sourced online

[https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20\(SOUTH%20AUSTRALIA\)%20ACT%201996.aspx](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20(SOUTH%20AUSTRALIA)%20ACT%201996.aspx)

10 July 2016

*Question: Should customer contractual liabilities to Western Power be limited? If so, why and in what ways?*

Possibly. Although if consistency with the national framework is a guiding principle the paper correctly observes that customers who have complied with technical obligations ought to be

protected from claims by the distributor. It might be argued that the scope for such claim would be limited and that contract law more generally would apply and offer comfort.

*Questions: Should limits on customer contractual liabilities be defined differently for small-use and large customers?*

Possibly. The NECF applies to small [use] customers. The definition of ‘small’ currently differs as between those jurisdictions that participate in the national framework [100/40 MWh] and Western Australia [160 MWh]. So-called ‘large’ customers are able to negotiate and defend contractual provisions that suit them best. If customer contractual liabilities are the subject of minimum [or standard] terms and conditions prescribed by regulation, then derogation from the minimum [or standard] should be the subject of explicit agreement.

*Question: Are there other liabilities created by statute that should be considered for amendment as part of these reforms?*

The paper correctly observes that good regulatory practice extends to a consideration of overlap and redundancy during review and reform. The writer is not aware of implications for other statute or regulation in Western Australia but concurs that a thorough investigation should be undertaken as a matter of course.



## **5. Retailer-customer relationship**

*Question: Are there any circumstances under which specific intervention is needed to ensure contracts are updated to reflect the change in contracting arrangements?*

No. However it might be regarded as good regulatory practice for either of the Public Utilities Office or the [local] regulator to review current standard form retail contracts and the proposed deemed standard [distributor] contract with a view to ensuring consistency and completeness.

*Question: Are there any other reasons why intervention in contracts is necessary?*

No. However, in the course of any campaign to inform customers of changes in the regulatory framework it would be advisable to include reference to changes in contractual arrangements and offer customers further information about the nature of the changes and the detail of new contracts.

## 6. Distributor retailer relationship

*Question: Is there any reason why local regulations regarding assistance and cooperation between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in r. 94 of the National Energy Retail Rules?*

No, none.

*Question: Is there any reason why local regulations regarding provision of information between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in rr.95-100 of the National Energy Retail Rules?*

No, none.

*Question: Is there any reason why local regulations regarding classification and reclassification of customers should be substantively different to the National Energy Customer Framework model set out in rr.7-10 of the National Energy Retail Rules? Is the administrative burden associated with the classification and reclassification of customers reasonable?*

No, there is no reason why local regulations regarding classification and reclassification of customers should be substantively different to the NECF model set out in rr.7-10 of the National Energy Retail Rules. The administrative burden associated with the classification and reclassification of customers is reasonable. However, care should be taken with regard to classification as affected by consumption thresholds and differences as between 'local' regulations and the National Energy Retail Regulations, at rr 7-8.

*Question: Is there any reason why local regulations regarding referral of enquiries and complaints should be substantively different to the National Energy Customer Framework model set out in rr. 101-102 of the National Energy Retail Rules? Is the overlap between the Customer Code and the proposed provisions adequately resolved?*

No, there is no reason why local regulations regarding referral of enquiries and complaints should be substantively different to the National Energy Customer Framework model set out in rr. 101-102 of the National Energy Retail Rules. The overlap between the Customer Code and the proposed provisions is adequately resolved. However, as the paper observes, the relevant Customer Code provision could be amended if needs be, particularly if the experience of customers, retailers or /and distributors is that the overlap does indeed result in unnecessary complexity or confusion.

*Question: Is there any reason why local regulations regarding coordination of service standard payments should be substantively different to the National Energy Customer Framework model set out in r.84 of the National Energy Retail Rules?*

No, none.

*Question: Is there any reason why local regulations regarding coordination of de-energisations and re-energisations should be substantively different to the National Energy Customer Framework model set out in rr.103-106 of the National Energy Retail Rules?*

No, none. However, although perhaps a matter for consideration in a more thoroughgoing review of the Code, there may be unreasonable inconsistencies between the Code and other elements of the NECF. Of particular concern are the protections afforded by the National Energy Retail Law at s47, *General principle regarding de-energisation (or disconnection) of*

*premises of hardship customers and Part 6 of the National Energy Retail Rules, De-energisation (or disconnection) of premises—small customers.*

*Question: Is there any reason why local regulations regarding mutual indemnification should be substantively different to the National Energy Customer Framework model set out in s.317 of the National Energy Retail Law?*

No, none.

*Question: Is there any reason why local regulations regarding billing arrangements should be substantively different to the National Energy Customer Framework model set out in Part A of Chapter 6B of the National Electricity Rules?*

No, none

*Question: Is there any reason why local regulations regarding the administrative framework for credit support should be substantively different to the National Energy Customer Framework model set out in Rule 6B.B2.1, Divisions 1, 4 and 5 of Part B of Chapter 6B and Schedule 6B.2 of the National Electricity Rules?*

No, none

*Question: Do you consider that the Commercial Arbitration Act is a suitable framework for managing disputes regarding billing and credit support?*

Yes.

## 7. Role of local regulator

It is understood that the Government of Western Australia is conducting a wide-ranging Electricity Market Review and that the review is ongoing. And, as noted above there seems to be some ambiguity with regard to NECF and its implementation in all or part of Western Australia. However, the paper notes that “the Economic Regulation Authority would perform the new and existing functions of the local regulator and would regulate the relationships within the triangular model through the licencing regime”.

The paper proposes that the Authority

*be conferred the power to [review, assess and] approve distributor deemed ongoing supply contracts*

This would seem to suggest either that there is an assumption that standard contracts will be developed by the distributor rather than ‘prescribed pursuant to legislation’ or that the reference is to deemed class-specific contracts or/and to negotiated contracts. In any case the meaning should be made clearer.

With regard to remedies, the paper observes that

*[i]t is intended that the Authority will have the same remedies available to it for enforcing compliance as it does for other aspects of the licencing regime. These include:*

*...*

*order the licensee to pay a monetary penalty not exceeding \$100,000*

If, as noted above, consistency with the regulatory regimes operating in other jurisdictions is a goal of reform there ought to be consistency with the approach to remedies and penalties established by the National Electricity Law and Rules and with the NECF.

And finally, in that regard, consideration should be given to an alternative approach to regulation and that is to take this opportunity to transfer regulatory oversight from the Authority to the Australian Energy Regulator. If such a consideration has been undertaken there may be value in communicating the process and outcome to stakeholders.

## **Appendix A – Model terms and conditions for deemed standard connection contracts**

**National Energy Retail Rules (Version 6) 23 June 2016**

**Sourced online:** <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Current-rules>

**10 July 2016**

### **Schedule 2            Model terms and conditions for deemed standard connection contracts**

(Rule 81)

#### **PREAMBLE**

This contract is about the services which cover connection of your premises to our distribution system, and the energy supplied to the premises. These services are called “customer connection services”.

In addition to this contract, we are required to comply with energy laws and other consumer laws in our dealings with you.

You also have a separate contract with your retailer dealing with the sale of energy to the premises.

More information about this contract and other matters is on our website [permitted alteration: insert distributor’s website address].

#### **1            THE PARTIES**

This contract is between:

[Permitted alteration: name of distributor] who provides you with customer connection services at the premises (in this contract referred to as “we”, “our” or “us”); and

You, the customer to whom this contract applies (in this contract referred to as “you” or “your”).

#### **2            DEFINITIONS AND INTERPRETATION**

- (a) Terms used in this contract have the same meanings as they have in the National Energy Retail Law and the National Energy Retail Rules (“the Rules”). However, for ease of reference, a simplified explanation of some terms is given at the end of this contract.
- (b) Where the simplified explanations in Schedule 1 differ from the definitions in the National Energy Retail Law and the Rules, the definitions in the National Energy Retail Law and the Rules prevail.

#### **3            DO THESE TERMS AND CONDITIONS APPLY TO YOU?**

##### **3.1    These are our terms and conditions**

This contract sets out the terms and conditions for the standard connection contract for customers under the National Energy Retail Law and the Rules.

##### **3.2    Does this contract apply to you?**

This contract applies to you if your premises are connected to our distribution system, and you do not have another customer connection contract with us for those premises.

### **3.3 What if I need a new connection?**

If you require a new connection or an alteration to your existing connection we will provide you with a connection offer in accordance with either the National Electricity Rules (for an electricity connection) or the National Gas Rules (for a gas connection). That offer will contain terms and conditions relevant to the connection, which will form additional terms and conditions to this contract if you agree to the connection offer.

### **3.4 Electricity or gas**

Standard connection contracts apply to electricity and gas, but some terms are expressed to apply only to one or the other. Our distribution system is [insert “a gas” or “an electricity” as relevant] distribution system.

## **4 WHAT IS THE TERM OF THIS CONTRACT?**

### **4.1 When does this contract start?**

If your premises are connected to our distribution system, this contract starts on the date when you start to take supply of energy at those premises.

### **4.2 When does this contract end?**

- (a) This contract ends:
  - (i) if your retailer notifies us that the supply of energy to the premises is to be disconnected (a ‘termination notice’)—subject to paragraph (b), on the date we disconnect the premises, (even if you have vacated the premises earlier); or
  - (ii) if you start receiving supply of energy for the premises under a different customer connection contract—on the date that contract starts; or
  - (iii) if a different customer starts receiving supply of energy for the premises—on the date the connection contract of that customer starts;
  - (iv) if we both agree to a date to end the contract – on the date that is agreed; or
  - (v) 10 business days after we disconnect the premises under the Rules, if you have not within that period asked your retailer to reconnect the premises and met the requirements in the Rules for reconnection.
- (b) If your retailer gives us a termination notice but you do not give safe and unhindered access to your premises to conduct a final *meter* reading (where relevant), this contract will not end under paragraph (a)(i) until a final *meter* reading is carried out.
- (c) Rights and obligations accrued before the end of this contract continue despite the end of this contract.

## **5 SCOPE OF THIS CONTRACT**

### **5.1 What is covered by this contract?**

- (a) Under this contract we agree to provide customer connection services at the premises. We also agree to meet other obligations set out in this contract and to comply with the energy laws.
- (b) Charges for customer connection services will be billed under your contract with your retailer.

### **5.2 Sale of energy not covered by this contract**

This contract does not cover the sale of energy to your premises. This is the role of your retailer.

### 5.3 Services and your connection point

- (a) We must provide, install and maintain equipment for the provision of customer connection services at your premises safely and in accordance with the energy laws.
- (b) Our obligations extend up to the connection point where energy is to be supplied to the premises (as defined by us) and not beyond.

### 5.4 Guaranteed service levels

- (a) If you are a small customer, we are required under *the laws* of [required alteration: insert name of the State or Territory] to meet certain guaranteed service levels. These requirements are [required alteration: set out the applicable GSL scheme requirements of that State or Territory]. If we do not meet a relevant guaranteed service level and you are entitled to a payment under those laws, we will make a payment to you in accordance with the relevant laws.
- (b) Nothing in this contract limits our obligations to make payments in accordance with the applicable GSL scheme.

**[Note:**

Where there is no GSL Scheme in a State or Territory for small customers, the deletion of this clause is a required alteration.]

## 6 YOUR GENERAL OBLIGATIONS

### 6.1 Full information

You must give us any information we reasonably require for the purposes of this contract. The information must be correct, and you must not mislead or deceive us in relation to any information provided to us.

### 6.2 Updating information

You must promptly:

- (a) inform your retailer of any change to your contact details; and
- (b) inform your retailer of any change that you are aware of that materially affects access to your *meter* or to other equipment involved in providing customer connection services at the premises; and
- (c) inform us of any proposed change that you are aware of in plant or equipment, including *metering* equipment, or any change to the capacity or operation of connected plant or equipment that may affect the quality, reliability, safety or *metering* of the supply of energy to the premises or the premises of any other person; and
- (d) inform either your retailer or us of any permanent material change to the energy load or pattern of usage at the premises.

### 6.3 Your obligation to comply with energy laws and our requirements

You must comply with:

- (a) the energy laws relating to the provision of customer connection services we provide to your premises under this contract; and
- (b) our reasonable requirements under the energy laws, including our service and installation rules. This includes a requirement that you provide and maintain at your premises any reasonable or agreed facility required by us to provide

customer connection services to the premises.

#### **6.4 Life support equipment**

- (a) If a person living at your premises requires *life support equipment*, you must register the premises with your retailer or with us. To register, you will need to give written confirmation from a registered medical practitioner of the requirement for *life support equipment* at the premises.
- (b) You must tell us or your retailer if the *life support equipment* is no longer required at the premises.
- (c) If the premises are registered as having *life support equipment*, we must give you:
  - (i) general advice that there may be a planned or *unplanned interruption* to the supply of energy to the premises; and
  - (ii) at least 4 business days notice in writing of any *planned interruptions* to the supply of energy to the premises; and
  - (iii) information to assist you to prepare a plan of action in case of an *unplanned interruption*; and
  - (iv) an emergency telephone contact number.

#### **6.5 Obligations if you are not an owner**

If you cannot meet an obligation relating to your premises under this contract because you are not the owner, you will not be in breach of the obligation if you take all reasonable steps to ensure that the owner or other person responsible for the premises fulfils the obligation.

#### **6.6 Small generators including solar panels**

- (a) If you have a small generator connected to our distribution system at the premises, you must comply with the applicable standards in operating and maintaining the generator when you start to take supply of energy under this contract.
- (b) If you no longer want to keep a small generator at the premises connected to our distribution system, you must apply to us for a connection alteration so that any necessary alterations to the connection can be made.
- (c) If you want to connect a small generator at the premises to our distribution system for the purpose of exporting energy (for example, a solar panel), you must apply for a connection alteration under the National Electricity Rules. We will provide you with a copy of the relevant additional terms and conditions at the time when we make our connection offer.

### **7 WRONGFUL AND ILLEGAL USE OF ENERGY**

#### **7.1 Illegal use of energy or interference**

You must not and must take reasonable steps to ensure others do not:

- (a) illegally use energy supplied to the premises; or
- (b) interfere or allow interference with any of our equipment at the premises, except as may be permitted by law; or
- (c) use the energy supplied to your premises or any energy equipment in a manner that:
  - (i) unreasonably interferes with the connection or supply of energy to another customer; or



- (ii) causes damage or interference to any third party; or
- (d) use customer connection services provided by us in a way that is not permitted by law or this contract; or
- (e) tamper with, or permit tampering with, any *meters* or associated equipment.

## 7.2 Consequences for wrongful or illegal use

If you do not comply with clause 7.1 above, we may, in accordance with the energy laws take any or all of the following actions:

- (a) estimate the amount of energy obtained wrongfully or illegally and take debt recovery action against you for that amount; and
- (b) undertake (or agree that you undertake) any necessary rectification work at your cost; and
- (c) arrange for the immediate disconnection of the premises.

## 8 OUR LIABILITY

- (a) The quality and reliability of your electricity supply and the quality, pressure and continuity of your gas supply is subject to a variety of factors that may be beyond our control, including accidents, emergencies, weather conditions, vandalism, system demand, the technical limitations of the distribution system and the acts of other persons, including at the direction of a *relevant authority*.
- (b) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of energy, its quality, fitness for purpose or safety, other than those set out in this contract.
- (c) Unless we have acted in bad faith or negligently, the National Energy Retail Law excludes our liability for any loss or damage you suffer as a result of the total or partial failure to supply energy to your premises, which includes any loss or damage you suffer as a result of the defective supply of energy.

## 9 ACCESS TO THE PREMISES

### 9.1 Your obligations

Under the energy laws, you must provide us and our authorised representatives (together with all necessary equipment) safe and unhindered access to the premises, including taking appropriate action to prevent menacing or attack by animals at the premises, at any reasonable time to allow us to:

- (a) read, test, maintain, inspect or alter any *metering* installation at the premises; and
- (b) calculate or measure energy supplied or taken at the premises; and
- (c) check the accuracy of *metered* consumption at the premises; and
- (d) replace *meters*, control apparatus and other energy equipment of ours; and
- (e) connect or disconnect the premises; and
- (f) examine or inspect an energy installation at the premises; and
- (g) inspect, make safe, operate, change, maintain, remove, repair or replace any of our works at the premises; and
- (h) undertake repairs, testing or maintenance of the distribution system; and
- (i) clear vegetation from the distribution system including any equipment owned by us; and

- (j) take action to determine the appropriate tariff or charging category for the premises; and
- (k) perform services requested by you or your retailer.

## 9.2 Our obligations

If we or our representatives seek access to the premises under clause 9.1 above, we will:

- (a) comply with all relevant requirements under the energy laws; and
- (b) carry or wear official identification; and
- (c) show the identification if requested.

# 10 INTERRUPTION TO SUPPLY

## 10.1 Distributor may interrupt supply

We may *interrupt* the supply of energy to your premises where permitted under the energy laws, including for a *planned interruption* or where there is an *unplanned interruption* or in accordance with the conditions of any applicable tariff or under a contract with your retailer.

## 10.2 Planned interruptions (maintenance, repair, etc)

- (a) We may make *planned interruptions* to the supply of energy to the premises under the Rules for the following purposes:
  - (i) for the maintenance, repair or augmentation of the transmission system or the distribution system, including maintenance of *metering* equipment; or
  - (ii) for the installation of a new connection or a connection alteration to another customer.
- (b) If your energy supply will be affected by a *planned interruption*, we will give you at least 4 business days notice by mail, letterbox drop, press advertisement or other appropriate means.

## 10.3 Unplanned interruptions

- (a) We may *interrupt* the supply of energy to your premises in circumstances where we consider that a customer's energy installation or the distribution system poses an immediate threat of injury or material damage to any person, property or the distribution system, including:
  - (i) for unplanned maintenance or repairs;
  - (ii) for health or safety reasons;
  - (iii) in an emergency;
  - (iv) as required by a *relevant authority*;
  - (v) to shed demand for energy because the total demand at the relevant time exceeds the total supply available; or
  - (vi) to restore supply to a customer.
- (b) If an *unplanned interruption* is made, we will use our best endeavours to restore energy supply to the premises as soon as possible.
- (c) We will make information about *unplanned interruptions* (including the nature of any emergency and, where reasonably possible, an estimate of when energy supply will be restored) available on a 24 hour telephone information service.

#### **10.4 Your right to information about interruptions**

- (a) If you request us to do so, we will use our best endeavours to explain:
  - (i) an *interruption* to the supply of energy to the premises; or
  - (ii) a supply of energy to the premises of a quality in breach of any relevant standards under the energy laws.
- (b) If you request an explanation be in writing we must, within 10 business days of receiving the request, give you either:
  - (i) the written explanation; or
  - (ii) an estimate of the time it will take to provide a more detailed explanation if a longer period is reasonably needed.

### **11 OUR CHARGES**

#### **11.1 Payment**

The amounts you are billed under your contract with your retailer include our charges for customer connection services.

#### **11.2 Determination of our charges**

We will determine our charges for a billing cycle in accordance with the energy laws.

#### **11.3 Compliance with tariff requirements**

- (a) If there are any conditions that are relevant to any tariff or charging category that applies to you for the supply of energy to your premises we must advise your retailer of those conditions.
- (b) You must comply with any conditions referred to in paragraph (a).
- (c) If you do not comply with the conditions referred to in paragraph (a), we may change the tariff that applies to you.

### **12 DISCONNECTION OF SUPPLY**

#### **12.1 When can we disconnect?**

Subject to us satisfying the requirements in the Rules, we may disconnect your premises if:

- (a) your retailer informs us that it has a right to arrange for disconnection under your contract with your retailer and requests that we disconnect the premises; or
- (b) you use energy supplied to the premises wrongfully or illegally in breach of clause 7; or
- (c) if you fail to pay any direct charges (where relevant) to us under this contract; or
- (d) if you provide false information to us or your retailer such that you would not have been entitled to be connected if you had not provided the false information; or
- (e) if you do not provide and maintain space, equipment, facilities or anything else you must provide under the energy laws or this contract in order for us to provide customer connection services; or
- (f) if you fail to give us safe and unhindered access to the premises as required by clause 9 or any requirement under the energy laws; or
- (g) in an emergency or for health and safety reasons; or
- (h) if required to do so at the direction of a *relevant authority*; or

- (i) if we are otherwise permitted by the energy laws to disconnect the premises.

**Note:**

The energy laws allow distributors and other authorised people to disconnect or arrange the disconnection of premises in circumstances additional to those set out above.

## 12.2 Notice and warning of disconnection

If you are a small customer, we may disconnect your premises under clauses 12.1(c), 12.1(d), 12.1(e) or 12.1(f) only if:

- (a) we have sent you a *disconnection warning notice* that:
  - (i) requires you to rectify, within 6 business days after the date of issue on the notice, the issue that could lead to disconnection; and
  - (ii) carries a warning of the consequences of failing to comply with the notice; and
- (b) in relation to safe and unhindered access only, we have used our best endeavours to contact you to arrange an appointment with you for access to your premises in addition to providing a *disconnection warning notice*; and
- (c) you fail to comply with the *disconnection warning notice* within 6 business days after the date of issue.

## 12.3 Life support equipment

If you are a small customer, we must not disconnect your premises if they are registered as having *life support equipment*, except in an emergency.

## 12.4 When we must not disconnect

- (a) Subject to paragraph (b), and otherwise in accordance with the Rules, if you are a small customer we must not disconnect the premises during the following times ('the protected period'):
  - (i) on a business day before 8.00am or after 3.00pm; or
  - (ii) on a Friday or the day before a public holiday; or
  - (iii) on a weekend or a public holiday; or
  - (iv) on the days between 20 December and 31 December (both inclusive) in any year; or
  - (v) if you are being disconnected for a failure to pay, during an extreme weather event.
- (b) Your premises may be disconnected within the protected period:
  - (i) for reasons of health and safety; or
  - (ii) in an emergency; or
  - (iii) as directed by a *relevant authority*; or
  - (iv) if you are in breach of clause 7 which deals with wrongful and illegal use of energy; or
  - (v) if your retailer makes such a request on your behalf; or
  - (vi) if your premises contain a commercial business that only operates within the protected period and where access to the premises is necessary to effect disconnection; or
  - (vii) where the premises are not occupied.

## 12.5 Our rights after disconnection

The disconnection of the premises does not limit or waive any of the parties' rights and obligations under this contract arising before disconnection, including any of your obligations to pay amounts to us or your retailer.

### **12.6 Disconnection fee**

If you have not complied with a *disconnection warning notice* and we arrive at the premises to disconnect the premises but do not do so because you rectify the matter referred to in the *disconnection warning notice*, you will be liable to pay a reasonable fee for our attendance at the premises.

## **13 RECONNECTION AFTER DISCONNECTION**

### **13.1 Where we must reconnect**

- (a) If you are a small customer, we must arrange for reconnection of the premises if, within 10 business days of your premises being disconnected:
  - (i) where your retailer asked for the disconnection—if we are asked by your retailer to reconnect the premises; or
  - (ii) in other circumstances—if:
    - (A) you ask us to arrange for reconnection of your premises; and
    - (B) you rectify the matter that led to the disconnection; and
    - (C) you pay any reconnection charge.
- (b) We may terminate this contract 10 business days following disconnection if the requirements in paragraph (a) are not met.

### **13.2 Timeframe for reconnection**

If you are a small customer and at the time of the request for reconnection:

- (a) you or your retailer have made arrangements for payment of the relevant reconnection charge; and
- (b) you have complied with our requirements under the relevant energy laws; and
- (c) the necessary infrastructure to re-energise the premises remains in place; and
- (d) you provide safe and unhindered access to the premises,

we must re-energise the premises within [required alteration: insert the applicable service standard as to time for re-energisation], unless you request a later time.

### **13.3 Wrongful disconnection**

If we disconnect the premises where we did not have a right to do so, we must reconnect the premises as soon as possible and without charge.

## **14 NOTICES AND BILLS**

- (a) Notices and bills (where relevant) under this contract must be sent in writing, unless this contract or the Rules say otherwise.
- (b) A notice or bill sent under this contract is taken to have been received by you or by us (as relevant):
  - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (which excludes depots) (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
  - (ii) on the date two business days after it is posted; or

- (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically and the use of electronic communication has been agreed between us.

## **15 PRIVACY ACT NOTICE AND ACCESS TO INFORMATION**

### **15.1 Privacy of personal information**

We will comply with all relevant privacy legislation in relation to your personal information. You can find a summary of our privacy policy on our website. If you have any questions, you can contact our privacy officer.

#### **15.2A Access to information - electricity only**

Upon request, we must give you information about your energy consumption or our charges for customer connection services for up to 2 years free of charge. We may charge you a reasonable fee for information requested;

- (a) more than 4 times in the previous 12 months; or
- (b) that is different in manner and form to any minimum requirements we are required to meet; or
- (c) by a representative you have authorised to act on your behalf, and that request is part of a request the representative makes to us in relation to more than one customer.

#### **15.2B Access to information - gas only**

Upon request, we must give you information about your energy consumption or our charges for customer connection services. We may charge you a reasonable fee for information requested more than once in any 12 month period.

## **16 COMPLAINTS AND DISPUTE RESOLUTION**

### **16.1 Complaints**

If you have a complaint relating to the supply of energy to the premises, or this contract generally, you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

**Note:**

Our standard complaints and dispute resolution procedures are published on our website.

### **16.2 Our obligations in handling complaints or disputes**

If you make a complaint, we must respond to your complaint within the required timeframes in our standard complaints and dispute resolution procedures and inform you:

- (a) of the outcome of your complaint and the reasons for our decision; and
- (b) that, if you are not satisfied with our response and you are a small customer, you have a right to refer the complaint to [required alteration: insert name and contact details of the relevant energy ombudsman].

## **17 FORCE MAJEURE**

### **17.1 Effect of force majeure event**

If, either you or we cannot meet an obligation under this contract because of an event outside the control of the party ('a **force majeure event**');

- (a) the obligation, other than an obligation to pay money (including, in our case, a

payment for failure to meet a guaranteed service level), is suspended to the extent it is affected by the event for so long as the event continues; and

- (b) the affected party must use its best endeavours to give the other prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which its obligations are affected and the steps taken to remove, overcome or minimise those effects.

## **17.2 Deemed prompt notice**

If the effects of a force majeure event are widespread we will be taken to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the event or otherwise as soon as practicable.

## **17.3 Obligation to overcome or minimise effect of force majeure event**

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

## **17.4 Settlement of industrial disputes**

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

# **18 APPLICABLE LAW**

*The laws of [required alteration: insert name of participating jurisdiction in which the distributor's distribution system is located] govern this contract.*

# **19 GENERAL**

## **19.1 Our obligations**

Some obligations placed on us under this contract may be carried out by another person. If an obligation is placed on us to do something under this contract, then:

- (a) we are taken to have complied with the obligation if another person does it on our behalf; and
- (b) if an obligation is not complied with, we are still liable to you for the failure to comply with this contract.

## **19.2 GST**

- (a) Amounts specified in the standing offer prices from time to time and other amounts payable under this contract may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount payable under this contract is stated to include GST.
- (b) Where an amount paid by you or by us under this contract is payment for a “taxable supply” as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

## **19.3 Amending this contract**

- (a) This contract may only be amended from time to time in accordance with the procedures set out in the National Energy Retail Law.
- (b) We must inform you of any material amendments to this contract as required by the National Energy Retail Law.

## **Simplified explanation of terms**

**billing cycle** means the regular recurrent period for which we charge for customer connection services;

**business day** means a day other than a Saturday, a Sunday or a public holiday;

**connection point** means the point at which a distribution system connects to an energy installation or equipment that serves the premises of one or more customers;

**customer** means a person who buys or wants to buy energy from a retailer;

**customer connection services** include services relating to the flow of energy to your premises;

**disconnection** means an action to prevent the flow of energy to the premises, but does not include an *interruption*;

**emergency** means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the distribution system or transmission system, or that destroys or damages, or threatens to destroy or damage, any property;

**energy** means electricity or gas (as relevant to this contract);

**energy laws** means national and State and Territory laws and rules relating to energy and the legal instruments made under those laws and rules;

**force majeure event** means an event outside the control of a party;

**GSL scheme** has the meaning given in the National Energy Retail Law;

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

**interruption** means a temporary unavailability or temporary curtailment of the supply of energy from a distribution system to a customer, but does not include disconnection;

**National Energy Retail Law** means *the Law* of that name that is applied by each participating State and Territory;

**National Electricity Rules** means the rules made under the National Electricity Law;

**National Gas Rules** means the rules made under the National Gas Law;

**premises** means the address at which customer connection services are provided to you and, to avoid doubt, may include your electrical or gas installation;

**relevant authority** means any person or body who has the power under law to direct us, including the Australian Energy Market Operator and State or Federal Police;

**retailer** means a person that is authorised to sell energy to customers;

**Rules** means the National Energy Retail Rules made under the National Energy Retail Law;

**small customer** means:

- (a) a residential customer; or
- (b) a business customer who consumes energy at or below a level determined under the National Energy Retail Law;

**small generator** means an embedded generating unit of the kind contemplated by Australian Standard AS 4777 (Grid connection of energy systems via inverters);

**standard connection contract** means a contract on the terms and conditions and in the form of this document.