Negotiated Connection Establishment Contract (general terms):

connection of subdivision
(Developer reticulates and gifts reticulation)
Negotiated Connection Establishment Contract:
Connection of Subdivision
(Developer reticulates and gifts reticulation):
general terms

Table of Contents

1. WHAT DOCUMENTS MAKE UP THIS CONTRACT? .......................................................... 1
2. WHEN DOES THIS CONTRACT START AND FINISH? ...................................................... 1
3. WHAT SERVICES IS THIS CONTRACT FOR? .................................................................... 1
4. AGREEMENT AS TO WORKS ............................................................................................. 3
5. WORKS PROGRAM ............................................................................................................. 4
6. CHANGES TO THE SCOPE ................................................................................................. 6
7. SPECIAL PROVISIONS FOR TRANSFERABLE ASSETS .................................................. 7
8. PRECONDITIONS TO CONSTRUCTION ............................................................................. 9
9. INSPECTIONS AND AUDITS ........................................................................................... 10
10. RECTIFICATION ................................................................................................................ 10
11. PROCESS FOR ISSUE OF CERTIFICATE OF ACCEPTANCE ......................................... 11
12. HOW MUCH WILL THIS COST? ....................................................................................... 13
13. GOODS AND SERVICES TAX ........................................................................................... 15
14. INSURANCE REQUIREMENTS .......................................................................................... 16
15. LAND INTERESTS ............................................................................................................. 16
16. INFORMATION REQUIREMENTS ...................................................................................... 17
17. LIABILITY .......................................................................................................................... 17
18. COMPLAINTS AND DISPUTE RESOLUTION ................................................................... 19
19. COMPLIANCE WITH LAWS ............................................................................................ 19
20. DEFAULT AND TERMINATION ......................................................................................... 20
21. AMENDMENT AND ASSIGNMENT .................................................................................. 21
22. NOTICES ........................................................................................................................ 21
23. GENERAL ......................................................................................................................... 21
24. GLOSSARY ....................................................................................................................... 23
25. INTERPRETATION ............................................................................................................. 30
Negotiated Connection Establishment Contract: Connection of Subdivision (Developer reticulates and gifts reticulation): general terms

1. WHAT DOCUMENTS MAKE UP THIS CONTRACT?
   (a) The contract includes the terms of the connection offer letter, the site-specific terms and these general terms, and is a negotiated connection establishment contract under Chapter 5A of the NER.
   (b) If there is any inconsistency between this contract and the Developers Handbook, this contract will prevail.

2. WHEN DOES THIS CONTRACT START AND FINISH?
   2.1. Contract term
       This contract:
       (a) starts when we receive your acceptance of the relevant connection offer in the manner, and within the relevant timeframe for acceptance, set out in the connection offer letter; and
       (b) ends on the expiry date (unless terminated earlier).

2. Early termination
   (a) This contract will be terminated as follows:
       (i) by you at any time before the certificate of acceptance is issued, by giving us at least 3 months’ prior notice;
       (ii) if we consider that the information in the connection application is incomplete, false or misleading in a material respect – when we notify you of this;
       (iii) if we have not, due to your failure to comply with this contract, either started the Ergon Energy activities or completed the Ergon Energy activities by the relevant deadline dates set out in the works program;
       (iv) if any approvals or land interests required for us to carry out the Ergon Energy activities are not, despite our reasonable efforts to obtain them, obtained by the relevant deadline dates set out in the works program – when we notify you of this;
       (v) if any approvals or land interests required for you to carry out the DD&C Works are not, despite your reasonable efforts to obtain them, obtained by the relevant deadline dates set out in the works program — when you notify us of this;
       (vi) if you and we enter into a replacement contract for us to provide the same, or similar type of, connection services for the same real estate development – when that replacement contract takes effect; and
       (vii) if a party is entitled to terminate this contract by written notice under any provision of this contract – when the notice is received.
   (b) If this contract is terminated:
       (i) we may disconnect, dismantle, decommission and remove any of the assets installed by us under this contract that are only relevant to the connection of the real estate development to our distribution system; and
       (ii) you acknowledge that we cannot (due to changing conditions on our distribution system) guarantee that the capacity referred to in clause 3.1(c)(iii) will necessarily be approved in respect of any subsequent connection application.

3. WHAT SERVICES IS THIS CONTRACT FOR?
   3.1. Provision of connection service and consideration
       (a) This contract is for us to provide you with the requested connection service, which principally involves the Ergon Energy activities.
The relevant works under this contract are:

(i) you arranging for the DD&C Works (such as design and construction and testing of the electrical reticulation within the real estate development) at your cost (as these are contestable services and you have elected to procure these works yourself rather than request us to do them);

(ii) us carrying out the Ergon Energy activities required to enable connection of the electrical reticulation in your real estate development to our distribution system in exchange for a component of the price;

(iii) you transferring the transferable assets to us, free of charge, for us to own and be responsible for the ongoing operational and maintenance undertakings, which will relieve you of these obligations; and

(iv) us carrying out the final commissioning of the transferable assets in exchange for a component of the price.

The scope of the Ergon Energy activities has been determined by us based on:

(i) our knowledge of our distribution system in the vicinity of the real estate development from a desktop perspective (i.e. without a detailed site inspection);

(ii) publicly available information concerning the requirements of local, State and Federal governments and relevant environmental, cultural and world heritage issues;

(iii) the electrical maximum demand, voltage and number of phases for each lot within the real estate development being as set out in our Distribution Design Manual, which is available on our website (www.ergon.com.au);

(iv) certain underlying assumptions about the relevant conditions at or near the real estate development and the impact of any confirmation or otherwise of those assumptions on the relevant works, which will occur either during the design stage or during the construction stage (for example and without limitation, the location of the connection point, the density and location of vegetation, the relevant technical parameters of the soil, the presence of hard rock, patterns of drainage, other artificial or natural surface and subsurface structures and conditions and the time taken to obtain necessary approvals or land interests); and

(v) information provided by you, and it will be fine-tuned during the site inspection, design, construction and other relevant processes, including to comply with our policies, good electricity industry practice, relevant energy laws and Australian Standards, and may be affected by force majeure events.

3.2. Services that are not included

This contract does not apply to the connection of any generating units to our distribution system at the connection point – if you wish to do this, you must make a separate connection application for this.

3.3. Certificate of electricity supply

If requested by you, and provided that you have:

(a) complied with your obligations under this contract (including, in particular, providing the performance security); and

(b) confirmed that any land interests to be procured by you for us, as set out in the DD&C Works, will be provided,

we will provide you with a certificate of electricity supply for the relevant local government.
4. AGREEMENT AS TO WORKS

4.1. General

The parties agree that we are responsible for carrying out the Ergon Energy activities (which will be funded by you), and you are responsible for carrying out the DD&C Works at your cost.

4.2. Manner of carrying out works

Subject to anything expressly to the contrary in this contract, each party must:

(a) obtain all of the approvals and land interests;
(b) design, install, construct, test and otherwise perform that party’s works; and
(c) for us, carry out the final commissioning,

...to ensure that the works and any assets established as a consequence of the works comply with:

(d) this contract, the specifications and the technical and safety obligations;
(e) all relevant approvals, land interests, Australian Standards, laws and good electricity industry practice.

4.3. Liaison personnel

(a) Each party must nominate at least one person to review the progress of, and coordinate, the works, being, initially, the persons set out as such in the site-specific terms, or as subsequently notified by one party to the other.

(b) Each party must give the other party the name and contact details of their liaison personnel.

(c) The parties each authorise their liaison personnel to adopt rules, procedures, timetables and schedules to coordinate and plan works in relation to the installation and interfacing of equipment, testing and commissioning procedures and any other tasks in respect of which such coordination is necessary or highly desirable to ensure safety and timely completion.

(d) Notwithstanding anything else in this contract, the liaison personnel are not authorised to amend this contract or bind the parties on any matter except in relation to the progress and coordination of the works.

(e) The liaison personnel must regularly meet to carry out their responsibilities, and must record in writing any rules, procedures, timetables, schedules or other relevant matters and provide a copy of these to the other party.

(f) The liaison personnel for one party have equal authority to the liaison personnel for the other party, and all decisions must be unanimous.

4.4. General provisions for DD&C Works

(a) You must:

(i) arrange for the design, installation and testing of all work necessary to complete the DD&C Works (and any other activities required to allow us to provide the connection service):

   (A) at your own risk and expense;

   (B) such that the DD&C Works are started and finished by the relevant deadline dates set out in the works program;

   (C) in accordance with all relevant laws, including, without limitation, those pertaining to health and safety, planning, cultural heritage, nature conservation and the environment, and all technical and safety obligations; and
4.5. General provisions for Ergon Energy activities

(a) We must:
   (i) endeavour to obtain all approvals necessary to carry out the Ergon Energy activities; and
   (ii) give you any information that you reasonably request about your connection that is in our possession or control as soon as reasonably practical following a written request from you in accordance with relevant privacy and right to information laws.

(b) Provided that we act reasonably, we are entitled to determine:
   (i) the design, specifications and any other requirements for the Ergon Energy activities; and
   (ii) the point of origin, the route, the length, and any facilities required for the connection point and any other assets installed by us under this contract.

(c) Until the issue of the certificate of acceptance, our obligations extend down to the connection point (as defined by us) and not beyond.

(d) We may carry out any other works or other activities required to deal with an emergency as part of providing the Ergon Energy activities.

(e) We may subcontract or assign our rights or obligations under this contract as we determine.

5. WORKS PROGRAM

5.1. Expected timeframes

(a) The progress of the works will broadly be as follows (but subject to the matters set out in clauses 5.1(b) and 5.2):
   (i) upon formation of this contract and receipt of the amounts stated in Table A of the relevant part of the site-specific terms, we will schedule the Ergon Energy activities into our internal works program and advise you of the expected dates to complete each of the relevant milestones set out in the site-specific terms;
   (ii) upon execution of this contract, you must give us a schedule of expected dates to complete each of the relevant milestones set out in the site-specific terms;
   (iii) you must complete the DD&C Works by the DD&C Works completion date;
   (iv) we will use our best endeavours to complete the Ergon Energy activities by the Ergon Energy completion date (however, provided that we have used such best endeavours, we will not be liable in connection with any delay to the progress of the Ergon Energy activities or any failure to complete the Ergon Energy activities by the Ergon Energy completion date, and any such failure will not constitute a default).

(b) If you fail to complete the DD&C Works by the DD&C Works completion date and, as a consequence, we are unable to complete the Ergon Energy activities by the Ergon Energy completion date, then we may undertake the Ergon Energy activities at a time suitable to us.
Negotiated Connection Establishment Contract:
Connection of Subdivision
(Developer reticulates and gifts reticulation):

(c) Each party must provide the other party with updates to their relevant sections of the works program, if so requested.

(d) You:
   (i) acknowledge that the completion of the Ergon Energy activities will depend on when various components of the DD&C Works and your obligations under this contract are completed; and
   (ii) must do all things necessary to be done by you, including, without limitation, providing access, obtaining relevant approvals and land interests, and carrying out other relevant DD&C Works and obligations under this contract, to allow the above timeframes to be achieved.

(e) The parties may from time to time agree to update or amend any of the site-specific terms to meet the objectives of the parties. Note that any costs incurred by us in connection with any agreed amendment of the site-specific terms will become part of the price.

5.2. Qualifications on timeframes

Despite clause 5.1(a):

(a) we do not have to start the Ergon Energy activities until:
   (i) you have paid our tax invoices for:
       (A) the expenses directly and reasonably incurred by us in assessing your connection application and making a connection offer; and
       (B) the amount specified as being payable upon acceptance in the site-specific terms; and
   (ii) if a certificate of electricity supply is required, you have provided a performance security;

(b) we do not have to finish the Ergon Energy activities until:
   (i) you have complied with your obligations under this contract (including, without limitation, providing any necessary land interests that you are required to provide to us, as set out in the site-specific terms so that we can carry out the Ergon Energy activities)); and
   (ii) we have obtained all necessary approvals and land interests required to proceed with the Ergon Energy activities;

(c) if there is a relevant force majeure event, we may delay the start and/or finish of the Ergon Energy activities by as long as that force majeure event affects the provision of the connection service;

(d) if there is a latent issue that affects the carrying out of the Ergon Energy activities, we may delay the start and/or finish of the Ergon Energy activities by as long as required to address that latent issue; and

(e) if we become aware of any material information or circumstances (including, without limitation, any inaccuracy in the connection application or anything that is discovered at or near the real estate development that will affect the relevant works or the carrying out of the Ergon Energy activities) which, had we known of it before this contract started, would have resulted in us not entering this contract, then we may take such reasonable actions as we consider appropriate in the circumstances.

5.3. Ongoing obligations to keep the other party informed about progress

(a) Each party must keep the other party informed of that party’s progress in carrying out their respective works in light of the agreed milestones.

(b) If a party believes that it will not be able to achieve a milestone, then it must immediately notify the other party of that fact and comply with the relevant provisions of clause 6.
6. CHANGES TO THE SCOPE

6.1. Material changes

(a) Each party is entitled to make changes to its works at its own cost and without notice to the other party, so long as they do not result in a material change.

(b) The parties acknowledge that there may be material changes to the Ergon Energy activities and/or DD&C Works, including, for example and without limitation, where:

(i) changes are identified during the site inspection, design, construction and other relevant processes, including as a result of the confirmation or otherwise of various assumptions made in respect of the works, as referred to in clause 3.1(c)(iv) (for example and without limitation, redesign of reinforcements that might be required to cater for the actual site conditions);

(ii) heavy vegetation clearing is, and/or tree removals are, required;

(iii) these changes are needed to remove, overcome or mitigate the effects of, or caused by, a force majeure event;

(iv) there is a delay in obtaining, or inability to obtain, any required approvals or land interests;

(v) there are prolonged delays in commencing or completing the Ergon Energy activities that are attributable to your actions;

(vi) there are changes to any approved documentation or works plans;

(vii) something adversely affects the ability of a party to meet a milestone or relevant completion date, which, in our case, may require us to subcontract a part of the Ergon Energy activities (which will have both cost, timing and scope impacts on those activities);

(viii) there is a substantive discrepancy between the amounts paid by you and the amounts which we are entitled to receive under this contract;

(ix) you make relevant changes to the works on your side of the connection point;

(x) you make a specific request for the change;

(xi) there is a need to realign the timing and/or content of the Ergon Energy activities with the DD&C Works; or

(xii) there is a relevant change in law.

6.2. When a change notice must be issued

Each party must, as soon as practicable after becoming aware of any event or circumstance which may result in a material change, give the other party a change notice, which sets out the following details (to the extent known by the party at the time):

(a) the event or circumstance giving rise to the requirement for the change;

(b) the impact that this event or circumstance is expected to have on the works (including, for example, any consequential changes to, or delays in, the works, or any changes to the cost of the works);

(c) potential mechanisms for mitigating the impact on the works (provided that these are consistent with good electricity industry practice), and any particular advantages or disadvantages of these suggested mechanisms (for example and without limitation, us subcontracting part of the Ergon Energy activities may result in shorter timeframes but higher costs); and

(d) where there is a change to approved documentation, a marked up copy of that documentation.
6.3. Addressing a change notice

(a) Within 10 business days of a change notice being issued, the parties must commence liaison with each other in respect of the material change, including:

(i) sharing any further information about the material change;

(ii) arranging to meet to agree upon the appropriate actions to take to proceed with the works to achieve the purposes of this contract in a manner acceptable to each party (acting reasonably), provided that it is reasonable for us to withhold our agreement if the proposed actions may, or would, result in:

(A) the DD&C Works not complying with the requirements of this contract;

(B) an adverse effect on the proposed connection, our other customers or the distribution system;

(C) an increase in the cost of completing the Ergon Energy activities; or

(D) a change to the Ergon Energy activities that is not acceptable to Ergon Energy; and

(iii) upon reaching agreement, document this agreement.

(b) Where the agreed actions result in changes to the scope or timing of the Ergon Energy activities, we must use reasonable endeavours to determine the estimated change in the price, and provide these estimates to you.

(c) Unless otherwise agreed, or where necessary or highly desirable in the circumstances, the parties must not commence any changes to the works in connection with a material change prior to the agreement being documented as referred to above.

(d) If the parties cannot reach agreement, either party may terminate this contract by written notice to the other party.

7. SPECIAL PROVISIONS FOR TRANSFERABLE ASSETS

7.1. General

(a) You acknowledge that we wish to ensure that any transferable assets are compatible with the existing distribution system, and, accordingly, you must ensure that the following is met for any DD&C Works relevant to the transferable assets:

(i) only designers and contractors are used who are listed in our approved suppliers register;

(ii) we are notified of the name and address of any designer or contractor engaged to carry out any of these works, prior to that designer or contractor starting any such works; and

(iii) these works are done in accordance with:

(A) all approvals and technical and safety obligations;

(B) this contract;

(C) the final design documentation;

(D) the specifications and any construction standards specified by us;

(E) materials complying (as a minimum) with Form PW000400R100 Approved Products List.

(b) You warrant that, when completed, the transferable assets will be in accordance with the requirements of this contract and fit for their purpose.

7.2. Approved suppliers register

We have lodged an exclusive dealing notification to the Australian Competition and Consumer Commission in accordance with section 93(1) of the Competition and Consumer Act 2010 (Cth) in
Negotiated Connection Establishment Contract: Connection of Subdivision
(Developer reticulates and gifts reticulation): general terms

relation to the requirement that you must, and must ensure that any contractor does, engage contractors and designers from the approved suppliers register. As at the date of this contract, that notification has not been revoked.

7.3. Design review process

(a) You must, at least one month prior to the expected time for starting the construction component of any DD&C Works relevant to the transferable assets, submit the preliminary design documentation to us, together with a certificate of design – electrical reticulation and, if any of the transferable assets comprise street lighting, a certificate of design – street lighting, for our review.

(b) The preliminary design documentation and the certificates of design must be:

(i) certified by an RPEQ engaged by you at your cost who has experience in the relevant types of work; and

(ii) in a format acceptable to us, acting reasonably (provided that we must give you details of such acceptable formats on request).

(c) Our review does not relieve you of your obligations under this contract.

(d) We must, within a reasonable time of receiving the preliminary design documentation, review this and advise you either:

(i) of any changes which we require to the preliminary design documentation, together with the reason for those changes; or

(ii) that the preliminary design documentation is acceptable to us, at which point it will become the final design documentation.

(e) If we notify you that changes are required, you must make the necessary changes and, before starting the construction component of the DD&C Works, resubmit the amended preliminary design documentation (which must be recertified by an RPEQ) to us for our review, and clause 7.3(d) will apply to that resubmitted preliminary design documentation.

(f) Please note that additional charges will apply to resubmission of the preliminary design documentation or requests for further information, which we will calculate in accordance with clause 12.2(b).

(g) If you wish to amend the final design documentation, you must:

(i) submit to us a revised copy of the relevant design documentation, marked up to show the proposed changes and the final installation to be constructed; and

(ii) obtain our written approval to the changes, which we will not unreasonably withhold, provided that the changes:

(A) do not have a material adverse effect on the provision of the Ergon Energy activities, any provision of customer connection services or the distribution system; and

(B) do not result in an increase in the cost of carrying out the Ergon Energy activities; and

(iii) not commence or continue any works proposed to be changed until we have advised that the proposed changes are acceptable to us.

7.4. Street lighting requirements

(a) Where the transferable assets include street lighting, you must ensure that the design for any street lighting is:

(i) approved by the relevant street lighting customer;
Negotiated Connection Establishment Contract:  
Connection of Subdivision  
(Developer reticulates and gifts reticulation): general terms

(ii) in accordance with AS/NZS 1158, unless the relevant street lighting customer has approved any discrepancies from that standard and completed a non-standard street lighting indemnity deed;

(iii) positioned so that it does not interfere with the proposed location of any driveways; and

(iv) certified by an RPEQ (engaged by you at your cost who has experience in the relevant types of work) as being in accordance with the relevant standards or as requested by us.

(b) Any non-standard light fittings must be metered in accordance with the QECMM Documents, and may form part of the transferable assets. You should note that where replacement of these light fittings is required in the future, we will replace these with standard light fittings.

7.5. Approvals and land interests to be obtained prior to construction

(a) You must, prior to starting the construction component of any DD&C Works relevant to the transferable assets, provide satisfactory evidence to us that:

(i) for any such works outside the boundary of the real estate development, (including in a publicly controlled place), that:

(A) for a publicly controlled place – the local government or other entity with responsibility for the place; or

(B) for a place other than a publicly controlled place – the owner and each lessee or occupier of the place,

have stated in writing that they have no objection to those works; and

(ii) appropriate approvals and land interests have been obtained by you to permit you to undertake those works (including providing copies of all of the approvals and land interests required to be obtained to carry out the DD&C Works and to access, install, own, operate, maintain, replace and remove the transferable assets).

(b) We must, acting reasonably and within a reasonable time after receiving the evidence, notify you as to whether that evidence is satisfactory to us and we consider that the approvals and land interests are in an appropriate form.

8. PRECONDITIONS TO CONSTRUCTION

8.1. Preliminary meeting

(a) At least one week prior to starting the construction component of the DD&C Works, a site meeting must be held with representatives of us, you and your contractors to:

(i) ensure that you and your representatives (including contractors) fully understand the obligations under, and the requirements of, this contract;

(ii) obtain your reconfirmation of the schedule of milestone activities submitted under clause 5.1(a)(ii); and

(iii) facilitate consultation, cooperation and coordination between the parties about safety and health risks.

(b) If we, acting reasonably, consider that the purpose of the meeting set out above has been met, we must ratify the outcome of the meeting as soon as practicable after the meeting.

8.2. General requirements

(a) You may only start the construction component of the DD&C Works after we have advised in writing that:

(i) we have advised in writing that the preliminary design documentation is acceptable and has become the final design documentation;
(ii) we have advised in writing that the evidence described in clause 7.5(a) is satisfactory to us; and

(iii) we have ratified the outcome of the meeting under clause 8.1(b).

(b) You:

(i) acknowledge that certain components of the transferable assets will, as part of the DD&C Works, be concealed, covered, buried or otherwise treated in a manner that will result in those components not being readily visible to a person attempting to view those components, and that the purpose of clause 8.2(b)(ii) is to provide us with reasonable assurance that we will not assume any risk in excess of its acceptable risk profile;

(ii) must, prior to any DD&C Works that relate to the transferable assets being treated as contemplated in clause 8.2(b)(i), notify us that such treatment will occur and the expected date of such treatment, provided that such notification must be given sufficiently prior to the expected date of such treatment to enable us to carry out an audit of those components of the DD&C Works; and

(iii) must not treat any transferable assets as contemplated in clause 8.2(b)(i) unless we have either carried out an audit, or notified you that we do not intend to undertake such an audit.

(c) If we receive a notice under clause 8.2(b)(ii), we must, within five business days, respond to you as to whether we intend to carry out an audit or not.

9. INSPECTIONS AND AUDITS

9.1. Inspections

(a) While we (and other third parties) periodically carry out inspections for the purpose of auditing and assessing the extent to which contractors are complying with the energy laws, we do not represent or warrant that:

(i) we (or any third party) will carry out an inspection at your real estate development;

(ii) any inspection carried out by us or any third party will identify any or all faults or defects, or that the electrical installation and relevant assets connecting the electrical reticulation in the real estate development to our distribution system are free from faults or defects if none are identified in the course of any such inspection, and you remain responsible and liable for all work undertaken by your contractors.

(b) Whether or not we have carried out an inspection at your real estate development, we may, at any time, notify you of any work in relation to the electrical installation or the connection assets that must be completed by you (including through your electrical contractor) in order to comply with this contract. Failure to rectify such a defect may result in disconnection of the real estate development from our distribution system in accordance with the energy laws.

9.2. Audits

We are, at our discretion, entitled to undertake an audit of any DD&C Works that relate to the transferable assets at any time without notice to you or your contractors including, without limitation, prior to issuing a certificate of acceptance.

10. RECTIFICATION

10.1. Ability to rectify non-compliances

(a) If, prior to transfer of the transferable assets, we discover or become aware of any non-compliance of the transferable assets with this contract, the final design documentation, the specifications, the technical and safety obligations, relevant approvals or relevant laws:

(i) we must notify you of this non-compliance;
(ii) we will reject the certificate of completion; and

(iii) you must ensure that the non-compliance is rectified within the time specified by us, acting reasonably (and, in any case, before the certificate of acceptance is issued).

(b) You may continue to perform other work during the period of rectification of the non-compliance, unless otherwise advised by us.

(c) Where it is necessary for us to take action in an emergency, we must provide details to you of the action taken as soon as practicable thereafter.

(d) If, during the defects rectification period, we discover any transferable asset defect, we must provide you with details of those defects.

10.2. Failure to rectify

(a) If:

(i) you fail to rectify any non-compliance notified under clause 10.1(a) within the time specified by us; or

(ii) there is an emergency; or

(iii) clause 10.1(d) applies,

we may, at our election, do one or more of the following:

(iv) rectify the non-compliance and recover the costs of doing so as part of the price;

(v) for clause 10.2(a)(i), terminate the contract; and

(vi) exercise all other remedies that may be available to us.

(b) Any action taken by us under this clause is without prejudice to any other rights or remedies that we may have against you.

11. PROCESS FOR ISSUE OF CERTIFICATE OF ACCEPTANCE

11.1. No Encumbrances

From the date of this contract, you must not, unless we otherwise agree in writing (at our sole discretion) create or grant any encumbrance over any transferable assets or agree to do so.

11.2. Preconditions to issue of certificate of acceptance

Notwithstanding anything else in this contract, each of the following must be satisfied before the certificate of acceptance can be issued:

(a) you have given us:

(i) a certificate of completion – civil works;

(ii) a certificate of completion – electrical works;

(iii) all things necessary for us to operate and maintain the transferable assets as part of its distribution system, including, as required, keys, access cards and the like;

(iv) detailed marked up drawings illustrating any changes from the final design documentation, provided that the mark-ups comply with the relevant requirements in the specifications;

(v) detailed “as constructed” plans in respect of the transferable assets signed and dated by your appropriate representative, and, if the “as constructed” plans materially differ from the final design documentation, certification by an RPEQ, engaged by you at your cost who has experience in the relevant types of work comprising the transferable assets, that the transferable assets have been designed in accordance with this contract, and are fit for service;
Negotiated Connection Establishment Contract:
Connection of Subdivision
(Developer reticulates and gifts reticulation):
general terms

(vi) a cable location log;
(vii) copies of test certificates, test results and inspection and test plans, including, without
limitation, earthing resistance test results and a certificate of completion – electrical
testing;
(viii) manuals for any materials and equipment;
(ix) copies of any technical documentation received from any manufacturers or suppliers of
materials or equipment forming part of the transferable assets;
(x) manufacturer test certificates for any materials and equipment;
(xi) completed asset data sheets for each item of equipment included in the transferable
assets, in the form provided by us to you during formulation of the inspection and test
plans;
(xii) the warranties referred to in clause 11.2(c), in a form which enables us to claim under
those warranties;
(xiii) an enforceable undertaking that the transferable assets are free from any encumbrances;
(xiv) copies of all assessments, agreements and management plans that have been carried
out under relevant laws, including, without limitation, native title, cultural heritage and
environmental laws; and
(xv) any other documents or items that are reasonably required by us to enable us to access,
own, install, operate, maintain, replace and remove the transferable assets in the same
manner as for the rest of our distribution system; and

(b) where any of the transferable assets are located on land that is not owned by us, we are
satisfied that we will, upon issue of the certificate of acceptance, hold appropriate and relevant
land interests to access, own, operate, maintain, replace and remove such transferable assets;

(c) you have:
(i) obtained from the contractor or any sub-contractor to the contractor or any supplier or
manufacturer of any of the materials or equipment forming part of the transferable assets
any warranties obtained in respect of such works, materials or equipment;
(ii) ensured that any such warranties will be transferred to us upon issue of the certificate of
acceptance; and
(iii) paid all monies due and payable by you under this contract, and provided us with all
securities required under this contract;

(d) we:
(i) have given you a notice stating that, in our reasonable opinion, the Ergon Energy
activities (apart from transfer and final commissioning) have been completed;
(ii) have completed all audits of the transferable assets that we wish to undertake;
(iii) are, as far as is reasonably possible (taking into account that final commissioning has not
yet occurred) satisfied that the transferable assets have been completed in accordance
with, and otherwise comply with, the requirements of this contract and are suitable for use
with our relevant assets to permit the connection of the electrical reticulation in the real
estate development to our distribution system and the transfer of the transferable assets
to us; and
(iv) have received sufficient information to populate our internal asset registers with the
transferable assets and expand our network operating model to incorporate the relevant
details, and are satisfied that our asset registers and network operating model include all
the relevant information about the transferable assets to enable us to operate and
maintain those assets as part of our distribution system; and
11.3. Non-performance report
If you have not complied with any of the matters set out in clause 11.2 that are your responsibility, we may issue you with a notice setting out the outstanding matters, and you must rectify those matters before we can issue a certificate of acceptance.

11.4. Issue of a certificate of acceptance
(a) Once the preconditions set out in clause 11.2 have been satisfied, we must promptly issue a certificate of acceptance, which will be evidence of your performance of its obligations under this contract except in respect of the following:
   (i) the presence or absence of any transferable asset defect;
   (ii) any negligence, bad faith, wilful misconduct, fraud, breach of law or failure to comply with any relevant approval, land interest or this contract; or
   (iii) the suitability or otherwise of the approvals and land interests obtained by you.
(b) Upon issue of the certificate of acceptance:
   (i) ownership in the transferable assets will transfer to us in accordance with clause 23.7(b); and
   (ii) you grant for all time to us an irrevocable, royalty-free and fully assignable licence to use any copyright and other intellectual property comprised in any design, materials, processes, documents and methods of working relevant to the transferable assets for any purpose required by us, and you must ensure that your representatives, designers and contractors grant us a corresponding licence.

11.5. Final commissioning and preconditions to energisation
(a) We are responsible for carrying out final commissioning after issuing the certificate of acceptance.
(b) Any additional costs incurred by us as a result of any non-compliance of the DD&C Works or any delay in the final commissioning due to that non-compliance become part of the price.
(c) Each of the following must be satisfied before any connection assets and the connection point can be energised:
   (i) we must (acting reasonably) consider that sufficient works have been carried out by both parties and that the connection assets and connection point have been appropriately tested in a not electrically connected condition to allow us to physically connect and energise the connection point to complete the final commissioning and for future operational purposes; and
   (ii) we have completed all audits of the transferable assets that we require to complete our due diligence and are satisfied (acting reasonably) with the outcomes of this due diligence.

12. HOW MUCH WILL THIS COST?

12.1. Cost of DD&C Works
You must carry out the DD&C Works at your cost.

12.2. Connection charges
(a) You must pay us the price for the Ergon Energy activities (which comprises the connection charges and any other costs referred to in this contract).
(b) Our estimate of the price, and the due dates for payment of the components of the price, are specified in the site-specific terms. Where the relevant charges are subject to economic regulation, they are calculated in accordance with our Connection Policy and ACS Price List, which are available on our website (www.ergon.com.au). Otherwise, the charges will be agreed between the parties.

(c) Please note that the charges specified in the site-specific terms are only an estimate based on the scope (which is based on the matters referred to in clause 3.1(c)) and are likely to vary as a result of fine tuning during the detailed design process, and may also vary where there are time delays or where changes are required to the scope of this contract or the relevant connection services to comply with good electricity industry practice or relevant energy laws (refer the change provisions in clause 6), or otherwise under this contract where an event occurs and any costs that we incur as a consequence of that event will become part of the price.

12.3. Additional costs of early termination

(a) If this contract is terminated before the certificate of acceptance has been issued, any of the following costs that are relevant will become part of the price:

(i) all costs incurred by us in relation to the connection service (including the Ergon Energy activities) up to the date of termination; and

(ii) the total of the following estimated or actual costs incurred by us as a result of your failure to proceed with the DD&C Works:

(A) the reasonable costs incurred by us to finish the DD&C Works or Ergon Energy activities such as are necessary to provide a supply of electricity to any residential purchaser of any lot within the real estate development;

(B) in connection with terminating contracts with subcontractors under which the subcontractors were to carry out any part of the Ergon Energy activities;

(C) the reasonable costs to recover installed and reusable assets that are dedicated to you;

(D) the reasonable costs to recover and dispose of unusable components of the connection service that are dedicated to you; and

(E) the reasonable costs incurred by us to reconfigure the distribution system, which costs are attributable to the failure to proceed with this contract, less the value of any reusable components that can be used by us as the basis for determining network charges payable by other users as and from the date of termination, provided that we attach relevant supporting documentation to the tax invoice(s) for these costs.

(b) For the avoidance of any doubt, the costs referred to in clause 12.3(a) include costs payable by us to third parties arising directly out of the connection service after the date of termination, the liability for which was incurred before the date of termination.

(c) We must use reasonable endeavours to minimise and mitigate the costs incurred by us as a consequence of your failure to proceed with the DD&C Works.

12.4. Net amount payable upon completion

(a) Upon issuing the certificate of acceptance, we will carry out a reconciliation of the amounts received from you under this contract and the amounts to which we are entitled to receive in accordance with this contract in respect of the carrying out of the Ergon Energy activities, and thus calculate the net amount payable upon completion.

(b) We will account for the following in calculating the net amount payable upon completion:

(i) the transformer equalisation payment; and

(ii) any other monies owed by you to us, or vice versa, under this contract.
Negotiated Connection Establishment Contract:  
Connection of Subdivision  
(Developer reticulates and gifts reticulation):  
general terms

(c) Within 30 business days of issuing the certificate of acceptance, we will advise you of the net amount payable upon completion, together with, if you owe money to us, a statement (in the form of a tax invoice) of the amount that you owe us.

(d) If the net amount payable upon completion shows that we owe money to you:

(i) you must submit a tax invoice to us for the net amount payable upon completion; and

(ii) upon receiving the tax invoice referred to in clause 12.4(d)(i), we will pay any monies owed by us to you.

(e) If the net amount payable upon completion shows that you owe money to us, you must pay that money in the manner, and by the date, set out in the relevant statement.

12.5. Tax invoices

(a) We will issue tax invoices for any component of the price payable by you in connection with this contract, and you must pay us in the manner, and by the date, set out in the tax invoice.

(b) Where we are entitled to recover costs under this contract (such as when they are specified to be part of the price), we must:

(i) advise you of those costs as soon as reasonably possible after we have determined those costs; and

(ii) provide you with a tax invoice under clause 12.5(a) and supporting documentation for those costs.

12.6. Performance security

(a) If you request a certificate of electricity supply (as referred to in clause 3.3), you must provide us with a performance security to secure your performance of the obligations under this contract before we issue the certificate of electricity supply.

(b) A performance security must be for the amount stated in the site-specific terms and in the form of a cash deposit, bank guarantee, surety bond or other form of security acceptable to us.

(c) We may draw down upon the performance security whenever you owe money to us under this contract and this amount remains unpaid for at least five business days after the due date for payment specified in the relevant tax invoice.

(d) Subject to your compliance with this contract, we must return the performance security to you within 20 business days of issuing the certificate of acceptance.

13. GOODS AND SERVICES TAX

(a) Relevant words used in this clause have the meaning defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) If a party is a GST group member, relevant references to GST and input tax credits include references to GST and input tax credits for the representative member of the GST group.

(c) All amounts in this contract are GST exclusive unless otherwise indicated.

(d) If a GST exclusive amount in this contract is consideration for a taxable supply, then the party required to pay the amount must, subject to the supplier issuing a tax invoice, pay both the GST exclusive amount and, at the same time, an additional amount equal to the GST payable on the supply.
Negotiated Connection Establishment Contract:  
Connection of Subdivision  
(Developer reticulates and gifts reticulation):  
ergy general terms

(e) For the avoidance of doubt, if an amount of non-monetary consideration is provided for a taxable supply made under this contract, clause 13(d) applies in respect of the GST payable relating to the non-monetary consideration. The parties agree that the GST inclusive market value of any amount of non-monetary consideration will be determined by us in accordance with the principles accepted by the Australian Taxation Office. You must provide, or procure the contractor to provide, any information or assistance as is reasonably necessary for the purpose of determining the GST inclusive value of any non-monetary consideration.

(f) Where non-monetary consideration is provided, the parties must share information as required to determine the appropriate amount of GST.

(g) Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this contract, the amount to be paid or credited is the cost or expense (reduced by any relevant input tax credit) plus the amount attributable to GST (as referred to above).

(h) If an adjustment event occurs, the supplier must issue a valid adjustment note and the parties must then make appropriate payments to reflect the required adjustment of GST.

(i) If, after the recipient either pays any GST on, or claims an input tax credit for, acquisitions made under this contract, the supply to which either GST paid attached or the entitlement to the input tax credit arose is determined by the Australian Taxation Office not to be a taxable supply, the recipient can recover from the supplier an amount equal to the amount either paid in respect of the GST or claimed as an input tax credit.

14. INSURANCE REQUIREMENTS

(a) You must, while the DD&C Works are being carried out and up until the date on which the certificate of acceptance is issued, obtain and maintain:

(i) public liability insurance to the value of $10 million and on terms acceptable to us, covering liability to third parties (including us) arising from third party property and third party injury claims arising from your negligence in connection with the carrying out of the DD&C Works; and

(ii) all other insurances required by law in respect of any persons, plant or equipment employed in the carrying out of the DD&C Works.

(b) You must ensure that the entity that carries out the design works in respect of the DD&C Works carries a policy of professional indemnity insurance that covers liability howsoever arising in connection with the provision of the professional services or breach of professional duty by that entity carrying out the design of the DD&C Works, has a limit of liability of not less than $1 million for any one claim and in the aggregate, and is maintained for a period of 6 years after the issue of the certificate of acceptance.

(c) Written evidence of the above insurances must be provided to us on request.

15. LAND INTERESTS

(a) You consent to us and our representatives:

(i) (together with any plant, equipment or vehicles) having non-exclusive access to land and improvements controlled by you (including, without limitation, to any metering equipment owned by us) in connection with the connection service (including to confirm compliance with the technical and safety obligations or to install any plant or equipment on the real estate development) and the energy laws; and

(ii) accommodating on your real estate development all plant and equipment necessary for the connection (including, without limitation, metering equipment).

(b) You must, if required by us, grant or procure the granting to us of an easement or other interest over land (such as by providing a consent to works, which is a simple legal document giving us permission to build and maintain infrastructure on private property) on terms consistent with our
design standards that are part of the specifications, satisfactory to us and at no cost to us, to secure tenure for any transferable assets and any assets installed by us on the real estate development, provided that, if an easement is required:

(i) it must be granted in perpetuity by the registered owner of the land;
(ii) it must be as set out on our relevant standard easement conditions registered with the Queensland Department of Natural Resources and Mines (dealing numbers 710384570 (freehold) and 711950329 (State land, leasehold and reserves)); and
(iii) you must procure a survey plan of that easement, suitable for registration, and any other necessary documentation, which must be sent to us for review, approval and execution prior to lodgement.

(c) You must ensure that:

(i) we, and our representatives, can access the land and improvements as described in clause 15(a)(i) in a manner that is safe, unhindered and unobstructed (including protecting against animal threats and attacks); and
(ii) you take reasonable precautions to protect from harm all plant and equipment (including, without limitation, metering equipment) that is installed on the real estate development by us or our representatives pursuant to this contract.

16. INFORMATION REQUIREMENTS

(a) You must give us all information:

(i) about any risks, hazards or other actual or potential concerns that could impact in any way on the nature, cost or timing of any part of the Ergon Energy activities, as soon as possible (and in any case before we start the Ergon Energy activities); and

(ii) that we reasonably ask you for in connection with this contract.

(b) You must notify us immediately if:

(i) any information that you previously gave us stops being accurate; or
(ii) you become aware of any matter or thing that might affect the nature, cost or timing of any part of the connection service, or anything we must do under this contract.

(c) The information and notification requirements in clauses 16(a) and 16(b) apply not just to core matters related to the physical connection but also to ancillary matters such as relevant control, washdown and quarantine procedures designed to prevent the spread of noxious weeds, plant diseases, invasive animals and pests.

(d) You must ensure that all information you give us is correct, and that you do not mislead or deceive us in any way.

(e) You should quote the Ergon Energy Work Request No. set out on the cover page in all communications with us.

17. LIABILITY

17.1. General

(a) This clause 17 survives the expiry or earlier termination of this contract.

(b) Despite any provision of this contract, we will not be liable to you for any liability arising from delays to the progress or completion of the Ergon Energy activities for any reason, to the full extent permitted by law, except to the extent that this is the result of our failure to observe good electricity industry practice, or our negligence, bad faith, wilful misconduct, fraud, breach of laws or failure to comply with any relevant approval or this contract.
Negotiated Connection Establishment Contract:
Connection of Subdivision
(Developer reticulates and gifts reticulation):
general terms

(c) You acknowledge that any involvement by us in relation to the DD&C Works, including, without limitation, the preliminary design documentation under clause 7.3 and your approvals and land interests under clause 7.5, is:

(i) undertaken by us purely to provide reasonable assurance to us that we will not, upon transfer of the transferable assets, assume any risk in excess of our acceptable risk provide;

(ii) not to be taken to constitute any review, supervision, approval, consent, ratification or endorsement, and

we are not liable to you in connection with any such activities, and this does not restrict our ability to recover costs under this contract in relation to any failure by you to comply with this contract.

17.2. Indemnity

You indemnify us in respect of, and must pay us on demand for:

(a) all liability incurred by us in connection with your failure to comply with this contract or breach of warranty, or failure to comply with any other contract you are a party to, any approvals and any laws, except to the extent it arises from our negligence or wilful misconduct;

(b) any payments we are required to make under the Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld);

(c) any claims against us by any of your designers, contractors or other representatives;

(d) any loss to us or any claims against us for personal injury or death, or loss of, or damage to, any other property or loss of supply arising out of or as a consequence of the performance of the DD&C Works or the supply or installation of any equipment or material by or on behalf of you, except to the extent it arises from our negligence or wilful misconduct.

17.3. Competition and Consumer Act and other guarantees

(a) The Competition and Consumer Act 2010 (Cth) and other consumer protection laws provide certain statutory guarantees, conditions, warranties or rights that cannot be excluded or limited. Unless one of those laws requires it, we give no guarantee, condition, warranty or undertaking, and we make no representation to you, regarding any matter, including as to:

(i) the condition or suitability of electricity or the connection service; or

(ii) the quality, fitness or safety of electricity or the connection service, other than as set out in this contract.

(b) Any liability we have to you under these laws that cannot be excluded but that can be lawfully limited is (at our option) limited to:

(i) providing equivalent goods or services provided under this contract in respect of the real estate development; or

(ii) paying you the cost of replacing the goods or services provided under this contract in respect of the real estate development, or acquiring equivalent goods or services.

(c) We are not otherwise liable to you for any loss you suffer if we have not been negligent or have not acted in bad faith.

(d) Sections 97 and 97A of the Electricity Act 1994 (Qld), sections 119 and 120 of the NEL, section 316 of the NERL, and any other limitations of liability or immunities granted under the energy laws, are not limited in their operation or application by anything contained in this contract, and may also limit or exclude our liability in some cases.
17.4. No liability for indirect or consequential loss

Except where otherwise expressly stated in this contract, neither party is liable to the other under, or in connection with, this contract or under contract, tort (including negligence), breach of statute or other cause of action at law or in equity for any of the following:

(a) loss of profits, loss of contract, loss of opportunity, loss of goodwill, loss of business, loss of reputation, loss of revenue, loss of use of property, loss of production or anticipated savings, or any loss or corruption of data or loss of privacy of communications;

(b) increased costs of working or labour costs;

(c) costs of capital or costs of business interruption;

(d) any indirect, incidental, special or consequential damage, cost, expense or loss; and

(e) damage, cost, expense, loss or damage that otherwise is not a direct and immediate consequence of the breach,

suffered by the other party, however arising, due to any causes including the default or sole or concurrent negligence of a party and whether or not foreseeable.

17.5. Contributory negligence

A party’s (“first party”) liability to another party for loss or damage of any kind arising out of this contract or in connection with the relationship established by it is reduced to the extent (if any) that the other party causes or contributes to the loss or damage. This reduction applies whether the first party’s liability is in contract, tort (including negligence), under any statute or otherwise.

18. COMPLAINTS AND DISPUTE RESOLUTION

(a) If you have a query or complaint relating to this contract, you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures, which are available on our website (www.ergon.com.au).

(b) We must handle a complaint made by you in accordance with the relevant Australian Standards and our standard complaints and dispute resolution procedures, which are available on our website (www.ergon.com.au). We must provide you with a copy of these procedures upon request.

(c) If you are not satisfied with the response to any query, complaint or dispute raised with us, and it is within the purview of the Energy and Water Ombudsman Queensland, you may refer the complaint or dispute to this Ombudsman.

(d) This clause does not limit your rights under relevant energy laws to refer a dispute regarding this contract or the connection charges payable to us to the AER.

(e) We must inform you of the outcome of any complaint made by you to us.

(f) You can contact us using the relevant contact details set out on our website (www.ergon.com.au).

19. COMPLIANCE WITH LAWS

(a) Each party must comply with its relevant obligations under the laws, relevant approvals and land interests, and the technical and safety obligations.

(b) You:

(i) acknowledge that health and safety for all persons and property, including the public, is of paramount importance to us;

(ii) commit to the highest standards of safety and health in respect of the design, construction, installation and performance of the DD&C Works; and
Negotiated Connection Establishment Contract:
Connection of Subdivision
(Developer reticulates and gifts reticulation):
general terms

(iii) warrant that you are familiar with, and has the capability and resources to comply with, its obligations for safety and health under relevant laws and this contract.

(c) You must comply with, and must ensure that your designers and contractors comply with, all laws that are relevant to health and safety (including, without limitation, the Work Health and Safety Act 2011 (Qld) and the Electrical Safety Act 2002 (Qld)).

(d) You must, if we reasonably request, demonstrate your compliance with the obligations referred to in this clause by providing us with written evidence of measures taken to achieve compliance.

(e) The parties acknowledge that their intent is as follows with regard to the operation of laws relevant to health and safety:

(i) you will be the person responsible for carrying out the DD&C Works;

(ii) we will be the person responsible for the design and construction of the Ergon Energy activities; and

(iii) you will retain management and control of the relevant workplace relating to the real estate development, and all plant, equipment and materials relevant to the DD&C Works, until we issue the certificate of acceptance.

(f) You must ensure that, at all times during the term of this contract, the real estate development and the DD&C Works comply with all laws, any applicable approvals or land interests, the specifications and this contract.

(g) The parties must consult and coordinate with each other and any other concurrent duty holders in relation to health and safety matters.

20. DEFAULT AND TERMINATION

20.1. Default notice

If a default occurs, the non-defaulting party may give the defaulting party a written notice (default notice) specifying the default that has occurred.

20.2. Cure Periods

(a) After receiving a default notice, the defaulting party has:

(i) for a financial default, 10 business days from the date of receipt of the default notice; or

(ii) for a non-financial default that is capable of remedy, the period stated in the default notice,

to remedy the default.

(b) The period of time stated in a default notice for a non-financial default must be a reasonable period of time, taking into account the nature of the default.

(c) In the case of a non-financial default that is capable of remedy, the defaulting party must diligently pursue a reasonable course of action to remedy the default, and must use good electricity industry practice.

(d) If the defaulting party stops diligently pursuing a reasonable course of action to remedy the non-financial default, the cure period will end once the non-defaulting party sends a notice to the defaulting party ending the relevant cure period.

20.3. Remedies

(a) If a default is not cured within the relevant cure period, the non-defaulting party may do any one or more of the following:

(i) terminate this contract by written notice;

(ii) sue the defaulting party for any outstanding amount owing under this contract; and
Negotiated Connection Establishment Contract: Connection of Subdivision
(Developer reticulates and gifts reticulation): general terms

(iii) exercise all other remedies available to it.

(b) These rights are without prejudice to the other party's rights at law.

21. AMENDMENT AND ASSIGNMENT

21.1. Amendment

(a) Except where otherwise expressly provided in this contract, this contract can only be amended, supplemented, replaced or novated by another document signed by the parties.

(b) The parties must regularly review the technical and safety obligations to ensure that they are correct and consistent with the laws and reflect the relevant operating arrangements.

21.2. Assignment

(a) Subject to clause 21.2(c), assignment or novation of all or part of this contract requires the other party's consent, which cannot be unreasonably withheld if the assignee/novatee is technically and financially able to comply with the assignor/novator's obligations and the assignment/novation will not adversely affect the rights or obligations of the consenting party.

(b) A change of control of a party is deemed to be an assignment/novation of the party's rights under this contract to which the assignment/novation provisions of this clause applies (except for clause 21.2(d)).

(c) Whilst we are (directly or indirectly) majority owned by the Queensland Government or one or more Ministers of that Government, we may assign or novate all or part of this contract by law or to an entity who is acquiring most or all of the relevant part of our business unit and is technically and financially able to comply with our obligations under this contract.

(d) If a party consents to an assignment/novation, the assignor/novator must cause the assignee/novatee to enter into a deed in favour of the consenting party under which the assignee/novatee covenants to comply with the obligations of the assignor/novator under this contract.

22. NOTICES

(a) A communication between the parties (whether described as a notice, notification, consent, waiver or other type of communication) is only effective if it is:

(i) in writing and addressed to the recipient;

(ii) either (for a hard copy) signed by the person or (for an electronic copy) includes a digital signature; and

(iii) sent by pre-paid mail, fax or electronic means and, for fax or electronic means, the sender is not notified of any failure to send.

(b) A compliant communication is regarded as given and received:

(i) if sent by fax or electronic means by 5:00 pm (recipient's time) on a Business Day – that day; otherwise on the next Business Day; and

(ii) if sent by pre-paid mail within Australia – 3 Business Days after posting; otherwise 7 Business Days after posting.

(c) Relevant contact details are set out in the site-specific terms, or as otherwise notified.

23. GENERAL

23.1. Governing law

This contract is governed by the law in force in Queensland. Each party submits to the exclusive jurisdiction of the courts having jurisdiction in Queensland and any courts that may hear appeals therefrom.
23.2. Obligations and rights
(a) Some obligations placed on a party under this contract may be carried out by a third party, and, if so:
   (i) that party is deemed to have complied with the obligation if another person does it; and
   (ii) that party is still liable to the other party if the obligation is not complied with.
(b) Any right that a person may have under this contract is in addition to, and does not replace or limit, any other right that the person may have.

23.3. Severance of unenforceable clauses
Any provision of this contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this contract enforceable, unless this would materially change the intended effect of this contract.

23.4. Costs and expenses
(a) Subject to clause 23.4(b) each party must pay its own expenses incurred in connection with the negotiation, preparation, execution, and registration of this contract, the transactions contemplated by this contract and any amendment to, or any consent, approval, waiver, release or discharge of or under, this contract.
(b) Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this contract or any transaction or instrument contemplated by this contract, must be paid by you.
(c) A party may recover a payment under an indemnity in this contract before it makes the payment in respect of which the indemnity is given.

23.5. Entire agreement
This contract contains the entire agreement between the parties about its subject matter (and incorporates by reference the provisions of the Developers Handbook) and replaces any previous understanding, agreement, representation or warranty relating to that subject matter. Furthermore, if this contract is inconsistent with any other document or agreement between the parties, this contract prevails to the extent of the inconsistency.

23.6. Cooperation and waivers
(a) Each party must do anything (including execute any document), and must ensure that its representatives do anything (including execute any document), that the other party may reasonably require to give full effect to this contract.
(b) A right may only be waived in writing and signed by the party giving the waiver, and no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
(c) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again, and the exercise of a right does not prevent any further exercise of that right or of any other right.

23.7. Ownership
(a) Any plant or equipment installed by a party under this contract that is not transferred under clause 23.7(b) remains the property of that party and, as between the parties, that party retains all rights and title to, and interest in, those assets.
(b) You retain all rights and title to, and risk and interest in, any assets downstream of the connection point up until the issue of the certificate of acceptance, at which time all rights and title to, and risk and interest in, the transferable assets transfer to, and vest in, us.
(c) We are not obliged to transfer the transferable assets back to you.
(d) You must, at your own expense, to do anything that we ask (including obtaining consents, signing and producing documents and arranging signature of documents) as may be necessary or desirable to effect the transfer of the transferable assets referred to above.

23.8. Force majeure event

We will be relieved from complying with any obligation under this contract to the extent that we are prevented from performing the obligation by any force majeure event.

23.9. Privacy of personal information

(a) We will comply with all relevant privacy legislation in relation to your personal information.

(b) You can find a summary of our privacy policy on our website (www.ergon.com.au).

(c) If you have any questions, you can contact us using the relevant contact details set out on our website (www.ergon.com.au).

23.10. Confidentiality

You must keep this contract, and the terms of all dealings with us in connection with this contract, confidential. You must also comply with any relevant confidentiality provisions in the energy laws.

23.11. Retention of property

All materials, plant, equipment or other items provided or installed by us as part of the Ergon Energy activities remain our property unless this contract states otherwise.

23.12. Accrued rights and obligations

Rights and obligations that accrued before the expiry, or earlier termination, of this contract, continue despite that expiry or termination.

23.13. Execution

(a) This contract may be executed in counterparts, and all executed counterparts constitute one document.

(b) Each person executing under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

(c) Where a party to this contract is a corporation, that party warrants that it has the power to enter into and give effect to this contract.

23.14. Termination

(a) Any term of this contract that, by its nature, is intended to survive the expiry or termination of this contract, does survive the expiry or termination of this contract.

(b) Termination or expiry of all or part of this contract does not affect any rights that arose before the termination or expiry (including, without limitation, the right to be paid for services rendered before termination or expiry), or that otherwise relate to any breach or non-observance of this contract occurring before termination or expiry, or that relate to this clause and any provisions concerning GST, compliance with laws, liability and indemnity.

24. GLOSSARY

Except in relation to the names of pieces of legislation, italicised terms in this contract have the meaning given in this contract or the energy laws (in particular the NER). If a term is not used in this contract, but is defined in the Developers Handbook, it has the meaning given to it in the Developers Handbook.

ACS means alternative control service;

ACS price list means Ergon Energy’s Price List for Alternative Control Services, a copy of which is available on our website (www.ergon.com.au);
AER means the Australian Energy Regulator established under section 44AE of the Competition and Consumer Act 2010 (Cth);

alternative control service has the meaning given to that term in Chapter 10 of the NER;

approval means any consent, declaration, authorisation, exemption, waiver or other approval required under any law, statute, act, rule, order or regulation which is enacted, issued or promulgated by the State of Queensland, the Commonwealth of Australia or any relevant local authority (including, but not limited to, town planning approvals, building approvals, vegetation taking permits and soil disposal permits);

approved suppliers register means the register of contractors that have been assessed, accepted and rated by us as being suitable to undertake electrical design and construction works associated with the transferable assets;

business day has the meaning set out in Chapter 5A of the NER and means a day other than a Saturday, Sunday or a relevant public holiday;

certificate of acceptance means a certificate of acceptance – civil works and/or a certificate of acceptance – electrical works (as relevant);

certificate of acceptance – civil works means the certificate of that name issued by us under clause 11.4(a), which will be in our approved form (Form PW001200T101, which is available on our website (www.ergon.com.au)) and which certifies that we have accepted the relevant works;

certificate of acceptance – electrical works means the certificate of that name issued by us under clause 11.4(a), which will be in our approved form (Form PW001200T103, which is available on our website (www.ergon.com.au)) and which certifies that we have accepted the relevant works;

certificate of completion – civil works means the certificate of that name issued by you under clause 11.2(a)(i), which must be in our approved form (Form PW001200T100, which is available on our website (www.ergon.com.au)) and which certifies that the civil works component of the DD&C Works has been completed in accordance with this contract. This certificate must attach all attachments listed in that approved form including, without limitation, the relevant version of the construction issue plan for those works;

certificate of completion – electrical testing means the certificate of that name issued by you under clause 11.2(a)(vii), which must be in our approved form (Form PW001200R100, which is available on our website (www.ergon.com.au)) and which certifies that certain electrical testing has been completed in accordance with this contract. This certificate must attach all attachments listed in that approved form including, without limitation, low voltage and high voltage certificates of testing;

certificate of completion – electrical works means the certificate of that name issued by you under clause 11.2(a)(ii), which must be in our approved form (Form PW001200T102, which is available on our website (www.ergon.com.au)) and which certifies that the DD&C Works (other than the civil works) have been completed in accordance with this contract. This certificate must attach all attachments listed in that approved form including, without limitation, the relevant version of the “as constructed plan”, together with earthing resistance test results and a cable location log.

certificate of design – electrical reticulation means the certificate of that name issued by you under clause 7.3(a), which must be in our approved form (Form PW000400T100, which is available on our website (www.ergon.com.au)) and which certifies that the design of the DD&C Works has been completed in accordance with this contract. This certificate must attach all attachments listed in that approved form including, without limitation, relevant approvals, the construction issue plan and LV drop calculations in electronic and hard copy forms;

certificate of design – street lighting means the certificate of that name issued by you under clause 7.3(a), which must be in our approved form (Form PW000400T101, which is available on our website (www.ergon.com.au)) and which certifies that the design of the street lighting component of the DD&C Works has been completed in accordance with this contract. This certificate must attach all attachments listed in that approved form including, without limitation, relevant street lighting customer approvals and a non-standard street lighting indemnity deed;
Negotiated Connection Establishment Contract: Connection of Subdivision
(Developer reticulates and gifts reticulation): general terms

certificate of electricity supply means a certificate of that name issued by us confirming that, on completion of the DD&C Works, you will have satisfied our requirements for the supply of electricity to each of the individual lots within the real estate development;

change notice means a notice issued under clause 6.2;

change of control means, for a corporation that is not (directly or indirectly) majority owned by the Queensland Government or one or more of the Ministers of that Government, a change of:

(a) control of the composition of the board of directors of the corporation;
(b) control of more than half the voting rights attaching to shares in the corporation; or
(c) control of more than half the issued shares of the corporation (excluding any part that carries no right to participate beyond a specified amount in the distribution of either profit or capital), other than:
(d) a change where the ultimate controlling entity of the corporation remains the same; and
(e) a change resulting from the transfer of shares listed on a recognised stock exchange;

connection charges means any relevant connection charges identified in the ACS price list;

connection establishment contract means a contract between the parties under Chapter 5A of the NER that provides for the provision of a new connection or connection alteration;

connection point means the point where the Developer’s electrical installation is connected to our distribution system, the specific location of which will be determined through our design process but which is tentatively specified in the site-specific terms;

connection service means a service relating to a new connection to permit the connection of the electrical reticulation within the real estate development to our distribution system at the connection point, as described in the Ergon Energy activities;

Connection Policy means the Ergon Energy Connection Policy, a copy of which is available on our website (www.ergon.com.au);

contract means the relevant connection establishment contract comprising the site-specific terms and these general terms;

contractor means an entity who is involved in the construction, installation or commissioning of the DD&C Works, other than design works;

control means a power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable;

DD&C Works means all works to be completed by you associated with the establishment of electrical reticulation within the real estate development and the connection of that electrical reticulation to our distribution system. The core DD&C Works are set out in the site-specific terms. The DD&C Works include all items that are necessary and incidental to those core works, and the obtaining of all approvals and land interests necessary to carry out those core and ancillary works;

DD&C Works completion date means the date for completion of the DD&C Works, as set out in the site-specific terms;

default means a financial default or a non-financial default;

default notice means a notice issued under clause 20.1;

defects rectification period means:

(a) for any works associated with electrical infrastructure, the period of 24 months; and
(b) for civil works (that is, of the nature described in RSC07, UDC Civil Works Specification), the period of 12 months,
after the date of the certificate of acceptance;

design documentation means all design documentation, including specifications, plans, drawings, calculations, dimensions, layouts and other technical information required for the proper completion of the DD&C Works;

designer means an entity who is involved in the design of the DD&C Works;

Developer means the person or entity stated in the site-specific terms;

Developers Handbook means the document of that name promulgated by us, a copy of which is available on our website (www.ergon.com.au);

distribution system means our electricity distribution network, including any connection assets, where relevant;

Electricity Distribution Network Code means the code of that name under the Electricity Act 1994 (Qld), which is available on the Queensland Competition Authority’s website (www.qca.org.au);

encumbrance means any:

(a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or flawed deposit arrangement;
(b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors, including any right of set-off;
(c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy;
(d) security interest under the Personal Property Securities Act 2009 (Cth); or
(e) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist, other than liens arising by operation of law;

Energex means Energex Limited ABN 40 078 849 055, but only while we and Energex are both (directly or indirectly) majority owned by the Queensland Government or one or more Ministers of that Government;

energy laws means the laws relevant to energy, including (as relevant), the Electricity Act 1994 (Qld), Electricity Regulation 2006 (Qld), Electrical Safety Act 2002 (Qld), Electrical Safety Regulation 2013 (Qld), NEL, NER, NERL, NERR and any rules, regulations, instruments and plans and applicable Australian Standards (including, without limitation, the AS/NZS 3000 Wiring Rules and AS 4777);

Ergon Energy activities means all works to be completed by us associated with the supply of electricity external to the boundary of the real estate development to enable the real estate development to be connected to our distribution system at the connection point and to accept the transfer of the transferable assets. The core Ergon Energy activities are set out in the site-specific terms;

Ergon Energy completion date means the date for completion of the Ergon Energy activities, as set out in the site-specific terms;

expiry date means the date on which all of the following have been completed:

(a) all works under this contract have been completed, tested and commissioned;
(b) all amounts payable by one party to another under this contract have been paid;
(c) any transferable assets have been transferred to us; and
(d) the defects rectification period has ended;

final commissioning means the process of testing and commissioning:
Negotiated Connection Establishment Contract: Connection of Subdivision (Developer reticulates and gifts reticulation): general terms

(a) the assets installed by us that are dedicated to the connection of the electrical reticulation installed by you at the real estate development to our distribution system; and

(b) (after the certificate of acceptance has been issued and the electrical reticulation has been transferred to us) that electrical reticulation, a part of which is dependent upon energisation of the connection point;

financial default means a failure by you to pay us an amount of money under this contract;

final design documentation means the design documentation approved by us under clause 7.3(d)(ii);

force majeure event means any event, act, circumstance or omission, or combination of them, that is beyond the reasonable control of an affected party, and that is not the result of a failure to observe good electricity industry practice or any of negligence, bad faith, wilful misconduct, fraud, breach of law or failure to comply with any relevant authorisation or this contract. Typical force majeure events can include (without limitation) the obtaining of relevant approvals and land interests, the terms of those approvals and land interests, weather conditions and the availability of plant or equipment;

general terms means the terms and conditions set out in this document;

good electricity industry practice means:

(a) for us, the exercise of that degree of skill, diligence, prudence and foresight that could reasonably be expected from a significant proportion of operators of facilities similar to the distribution system, taking into account the size, duty, age, location and technological status of the distribution system and any other relevant factors; and

(b) for you, the exercise of that degree of skill, diligence, prudence and foresight that could reasonably be expected from a significant proportion of operators of facilities similar to the electrical reticulation within the real estate development, taking into account the size, duty, age, location and technological status of the electrical reticulation and any other relevant factors;

government agency means:

(a) a government or government department or other body;

(b) a governmental, semi-governmental or judicial person; or

(c) a person (whether autonomous or not) who is charged with the administration of a law;

Incremental Revenue Offset means the amount of incremental revenue (if any) specified in the site-specific terms, calculated in accordance with our Connection Policy;

land interest means all land, interests in land (such as easements), landowner consents and any other access rights necessary to carry out the works and access, install, own, operate, maintain, replace and remove the relevant assets;

latent issue means any physical conditions on the real estate development or its surroundings (including artificial things but excluding weather conditions or the effect of weather conditions), which differ materially and substantially from the physical conditions which we reasonably expected (at the date of the offer for the connection service and without the benefit of a site investigation) to exist in that area;

law means any legally binding law, legislation, statute, act, rule, order or regulation that is enacted, issued or promulgated by the State of Queensland, the Commonwealth of Australia or any relevant local authority;

liaison personnel means the people nominated by each party in accordance with clause 4.3(a);

material change means any change to any works (including, without limitation, to the scope, cost, timing and manner of provision of the works) that is not of a minor or insignificant nature;

Mount Isa-Cloncurry supply network means that part of the supply network (as the term “supply network” is defined in the Electricity Act 1994 (Qld)) that is:
Negotiated Connection Establishment Contract: Connection of Subdivision
(Developer reticulates and gifts reticulation): general terms

(a) located in the Mount Isa-Cloncurry region and not connected to the national grid;
(b) owned and operated by Ergon Energy; and
(c) subject to economic regulation;

NEL means the National Electricity (Queensland) Law, as defined in the Electricity – National Scheme (Queensland) Act 1997 (Qld);

NER means the National Electricity Rules under the NEL;

NERL means the National Energy Retail Law (Queensland), as defined in the NERL (Qld) Act;

NERL (Qld) Act means the National Energy Retail Law (Queensland) Act 2014 (Qld);

NER standard connection contract has the meaning given to that term in the NERL (Qld) Act;

NERL (Qld) Act means the National Energy Retail Law (Queensland) Act 2014 (Qld);

NER standard connection contract has the meaning given to that term in the NERL (Qld) Act;

net amount payable upon completion means the reconciliation amount calculated by us in accordance with clause 12.4;

non-financial default means:

(a) with respect to us, a failure to comply with a provision of this contract that has or could reasonably be expected to have a material adverse effect on our capacity to carry out the Ergon Energy activities in accordance with this contract; and

(b) with respect to you, a failure to comply with a provision of this contract that has, or could reasonably be expected to have, a material adverse effect on the security of any part of the distribution system, the performance of any part of the distribution system, or our capacity to carry out the Ergon Energy activities in accordance with this contract,

but does not include a financial default;

non-standard street lighting indemnity deed means the deed of that name, which must be in our approved form (Form PW000400T102), which is available on our website (www.ergon.com.au) and under which the relevant street lighting customer undertakes to indemnify us for any costs, losses, damages etc. that we incur in connection with the design of the street lighting not meeting the requirements of AS/NZS 1158;

performance security means the security referred to in clause 12.6, which is to secure your performance of the obligations under this contract, in case we are required to complete the DD&C Works to comply with the certificate of electricity supply;

preliminary design documentation means design documentation that has not yet been approved by us under clause 7.3(d)(ii);

price means the amount payable by you to us, an estimate of which is set out in the site-specific terms, together with a breakdown of the estimated price components;

QECM Documents means:

(a) the Queensland Electricity Connection and Metering Manual: Service and Installation Rules, a copy of which is available on our website (www.ergon.com.au); and

(b) where the connection is on a part of Ergon Energy’s distribution system that is not part of either the national grid or the supply network located in the Mount Isa-Cloncurry area, Ergon Energy’s “Guidelines for Electrical Installations at Isolated Systems” PW000202R114, which can be obtained from Ergon Energy’s general customer service on 13 74 66;

real estate development means the real estate development (as that term is defined in the NER) the subject of this contract, as set out in the site-specific terms;

reimbursement scheme contribution means a contribution made by a customer under a reimbursement/pioneer scheme, as those terms are defined in the Connection Policy (essentially, the
Negotiated Connection Establishment Contract: 
Connection of Subdivision 
(Developer reticulates and gifts reticulation): 
general terms

contribution made by a customer designed to recompense earlier customers for the use of existing assets funded by those earlier customers) and to the value set out in the site-specific terms;

representative means the agents, contractors, sub-contractors, designers, employees, officers and other representatives of a party;

RPEQ means an engineer registered with the Board of Professional Engineers under the Professional Engineers Act 2002 (Qld) in the area of electrical engineering;

site-specific terms means the terms of the “Negotiated Connection Establishment Contract: connection of subdivision (Developer reticulates and gifts reticulation): site-specific terms” executed by the Developer;

specifications means the design standards and construction standards issued and amended by us from time to time to ensure a quality of design and construction acceptable for connection to the distribution system and the supply of electricity to our customers, including, without limitation:

(a) RSC06, UDC Main Specification;
(b) RSD01, UDC Design specification;
(c) RSC07, UDC Civil Works specification;
(d) RSC08, UDC Electrical Works specification;
(e) RSC09 Horizontal Directional Drilling
(f) RSC10, UDC Electrical Testing specification;
(g) Form PW000400R100 Approved Products List;
(h) PW000102R101 Design Planning Manual; and
(i) the Public Lighting Design Manual, Ergon Energy reference NA000403R434;

street lighting means lighting that is designed to illuminate a road (as that term is defined in the Local Government Act 2009 (Qld)) or a State-controlled road (as that term is defined in the Transport Infrastructure Act 1994 (Qld));

street lighting customer means the State or a local government (as those terms are defined in the NERL (Qld) Act) that consumes energy at street lighting premises (as that term is defined in the NERL (Qld) Act);

technical and safety obligations means the obligations set out in:

(a) the QECMM Documents;
(b) the energy laws;
(c) relevant Australian Standards and codes of practice, including, without limitation, the AS/NZS 3000 Wiring Rules;
(d) any relevant construction manuals available on our website (www.ergon.com.au);
(e) the specifications; and
(f) the metrology procedures;

transferable asset defect means anything in relation to any transferable assets that causes or constitutes a breach of the obligations, undertakings or warranties in this contract (including, without limitation, any relevant warranties;

transferable assets means the assets to be constructed as part of the DD&C Works that comprise the electrical reticulation within the real estate development, which must be suitable to transfer electricity from our distribution system to each lot (and, if required by us, vice versa) comprising the real estate development, and which are transferred to us under clause 23.7(b);
transformer equalisation payment is the amount calculated in accordance with the methodology set out in the Developers Handbook which you are required to pay for each lot in which electricity is supplied from a previously installed transformer;

works means the Ergon Energy activities and the DD&C Works, as relevant; and

works program means the works program and component milestones as initially advised under clauses 5.1(a)(i) and 5.1(a)(ii), and as amended by agreement between the parties.

25. INTERPRETATION

Unless the context otherwise requires, the following interpretation rules apply to this contract:

(a) headings are for convenience and do not affect interpretation;

(b) a reference to:
   (i) any law is to that legislation (including subordinate legislation) as amended or replaced;
   (ii) a clause, schedule or appendix is a reference to that part of this contract;
   (iii) a document or agreement is to that document or agreement as amended, supplemented, replaced or novated, and includes references to any clause, schedule or appendix within that document or agreement;
   (iv) a party includes a permitted substitute or assignee of that party;
   (v) a person includes any type of entity or body of persons including any executor, administrator or successor in law of the person;
   (vi) anything (including a right, obligation or concept) includes each part of it;
   (vii) a day is to a calendar day and a month is to a calendar month;

(c) a singular word includes the plural, and vice versa;

(d) examples are not exclusive;

(e) a reference to ‘A$’, ‘$A’, ‘dollar’ or ‘$’ is a reference to Australian currency; and

(f) if a day on or by which a party must do something under this contract is not a business day, the person must do it on or by the next business day.