

Negotiated Connection Establishment Contract (transferable assets): Large Customers comprising CACs, ICCs and EGs: [insert site]



NMI: [insert]

Work Request No. [insert]

Ergon Energy Corporation Limited
ABN 50 087 646 062

[insert counterparty]

ABN [insert]

WITHOUT PREJUDICE

**NOTE TO COUNTERPARTIES: THIS DOCUMENT MAY BE UNILATERALLY
VARIED BY ERGON ENERGY UP UNTIL THE DATE OF OFFER TO COMPLY
WITH THE CURRENT ERGON ENERGY TEMPLATE.**

**Please note: This *contract* is for use only by ICCs, CACs or EGs (Major
Customers) and not by SACs or NSPs, and only in conjunction with the
negotiated Part 4 ongoing connection contract.**

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1. PARTIES TO THIS CONTRACT

This *contract* is between:

- (a) Ergon Energy Corporation Limited ABN 50 087 646 062, of 420 Flinders St, Townsville QLD 4810 (*Ergon Energy* or *we*, *our* or *us*); and
- (b) [insert name] ABN [insert ABN], of [insert registered address] (the *Customer* or *you* or *your*).

[Drafting note: Additional clauses may be required if the *Customer* is other than a corporation (such as a joint venture, partnership or trust.)]

2. RECITALS

- (a) You want to [establish a new connection/proceed with a connection alteration of the connection point] between your premises and our distribution system.
- (b) This *contract* sets out the arrangements between the parties in relation to the carrying out of the works to achieve the above.

3. INTERPRETATION

3.1. Definitions

Italicised terms (other than references to *laws* and Latin phrases) are defined in the following order of priority:

- (a) in this clause;
- (b) in the *ongoing connection contract (mutatis mutandis)*;
- (c) in the *NEL* or the *NER*; and
- (d) in the *NERL* or the *NERR*.

Words used in the *Corporations Act 2001* (Cth) have the meaning defined in that Act. If a word is defined, other grammatical forms of that word have that meaning.

accredited auditor has the meaning given to that term in the *Electrical Safety Act 2002* (Qld);

ACS component means those *Ergon Energy activities* that are classified as *alternative control services*;

amounts received means amounts received by *us* from *you* attributable to the *construction charges*;

approved contractor means a contractor on *our approved contractors panel* or a contractor nominated by *you* that *we* have confirmed as being satisfactory under clause 7.3(d);

approved contractors panel means *our* list of *approved contractors*, as set out in Item 1(h) of Schedule 1;

approved supplier means, for *prescribed materials and equipment*, a supplier on *our approved suppliers panel* or a supplier nominated by *you* that *we* have confirmed as being satisfactory under clause 7.3(d);

approved suppliers panel means *our* list of *approved suppliers*, as set out in Item 1(i) of Schedule 1;

change notice means a notice of an actual or potential *material change* given under clause 8.5(c);

[*concept scope and design* means the document that sets out the preliminary design and preliminary estimate for the works required to achieve the outcome referred to in the Recitals, being the document prepared by [insert] entitled "[insert]" and dated [insert];]

connection alteration means an alteration to an existing *connection*, including an addition, upgrade, *extension*, expansion, *augmentation* or any other kind of alteration;

connection application means an application made by *you* to *us* for the *new connection* or *connection alteration* (as relevant) referred to in the Recitals;

connection service means a *customer connection service* relating to the establishment of a *new connection* or a *connection alteration*;

consent obtaining date means [insert];

construction charges means the charges payable by *you* to *us* under this *contract* for the *Ergon Energy activities*, being the charges for the *ACS component* (determined in accordance with clause 19.1(a)(i)) and the *unregulated component* (determined in accordance with clause 19.1(a)(iii)) of those works;

contract means this document as executed and as amended or supplemented from time to time;

Customer means the entity set out in clause 1(b);

Customer's activities means all works to be completed by *you* to facilitate the *new connection* or *connection alteration* (as relevant) referred to in the Recitals and to transfer the *transferable assets* to *us*, including:

- (a) the activities described as such in Item 2(d) of Schedule 2; and
- (b) all items necessary and incidental to the completion of such activities, including the obtaining of any *authorisations* and any relevant *land acquisitions*.

The *Customer's activities* comprise *works* relevant to the *transferable assets*, and *works* relevant to other assets that are not to be *transferred* to *us*;

Customer's completion notice means the notice described in clause 11.2(a);

date of transfer means the date on which the *transferable assets* are transferred to *us* under this *contract*;

default notice means a notice given under clause 22.1;

defects rectification period means **[2/3]** years from the *date of transfer*;

design documentation means all design documents, specifications, plans, drawings, calculations, dimensions, layouts and other technical information required for the performance of those *Customer's activities* relevant to the *transferable assets* and, for the avoidance of doubt, includes the construction plans referred to in the *design specifications*;

design specifications means the documents prepared by *us* that set out the minimum standards to be adhered to in the design of the *transferable assets*;

[*detailed response* means the relevant "detailed response" (as that term is defined in rule 5.3A.2(a) of the *NER*, being the document prepared by [insert] entitled "[insert]" and dated [insert].)]

encumbrance means any:

- (a) security interest as defined in the *Personal Property Securities Act 2009* (Cth);
- (b) mortgage, lien, charge, pledge, claim, restriction against transfer, encumbrance or other third party interest;
- (c) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or flawed deposit arrangement;
- (d) 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;
- (e) right that a person (other than the owner) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (f) 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;

Ergon Energy activities means all works to be completed by *us* to facilitate the *new connection* or *connection alteration* (as relevant) referred to in the Recitals and to accept the transfer of the *transferable assets*, including:

- (a) the activities described as such in Items 2(a) to 2(c) of Schedule 2; and
- (b) all items necessary and incidental to the completion of such activities, including the obtaining of any *authorisations* and any relevant *land acquisitions*;

Ergon Energy completion notice means the notice described in clause 11.2(b).

Ergon Energy defect means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the *Ergon Energy activities*;
- (b) any loss or damage to the *Ergon Energy activities*; or
- (c) any aspect of the *Ergon Energy activities* that is not in accordance with the requirements of this *contract*,

except to the extent that this is caused or contributed to by *you*;

final commissioning means the process of testing and commissioning the *works* (and any relevant associated electrical infrastructure at the *premises*) that is carried out at the end of the *works*, a part of which is dependent upon energisation of the *connection point* or the *connection assets*;

final design documentation has the meaning set out in clause 7.5(c)(ii).

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

liaison personnel means the people nominated by each party in accordance with clause 15;

long lead time items means any materials or equipment that are required to carry out the *works* which is expected to take in excess of [insert time period] from the time of ordering to the time of arrival at the place at which the relevant *works* are being carried out;

material change means anything that meets one or more of the following requirements:

- (a) it comprises a *force majeure event* or an action to overcome, avoid or mitigate the effects of a *force majeure event*;
- (b) it will, or is likely to, result in:
 - (i) a change having to be made to the other party's *works* (including, without limitation, in order to re-align the timing of each party's *works*);
 - (ii) a party's *works* not meeting a milestone or *target completion date* for those *works*;
 - (iii) a substantive discrepancy between the *amounts received* and the *construction charges*;
- (c) it is a change to the *Ergon Energy activities* that is done to meet a *Customer* request (including, without limitation, a request to carry out additional *works* to overcome, or avoid, a delay in completion of the *works*); and
- (d) it is a change in the *works* that arises in connection with a change in *law* occurring after the date of this *contract*, where the specific relevant impact of the change in *law* was not reasonably capable of assessment prior to such date,

where "change" refers to any change, whether it is an addition, increase, correction, substitution, decrease, omission or deletion;

new connection means the establishment of a new *connection point* between *your premises* and *our distribution system*;

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:
 - (i) the security of any part of *our distribution system*;
 - (ii) the performance of any part of *our distribution system*; or
 - (iii) *our* capacity to carry out the *Ergon Energy activities* in accordance with this *contract*,

but does not include a *financial default*.

notice of acceptance means a notice issued in accordance with clause 11.5(a);

Ongoing Connection Contract means a *connection contract* between the parties (to be dated on or about the date of this *contract*) under either of Chapters 5 or 5A of the *NER* or Part 4 of the *NERR* that

deals with the provision of *supply services* at the relevant *connection point* after completion of the *works*;

[*planning report* means the document that sets out an assessment of options to achieve the outcome referred to in the Recitals, being the document prepared by [insert] entitled “[insert]” and dated [insert];]

[*preliminary response* means the relevant “preliminary response” (as that term is defined in rule 5.3A.2(a) of the *NER*, being the document prepared by [insert] entitled “[insert]” and dated [insert];]

prescribed materials and equipment means the materials and equipment set out in Item 1(j) of Schedule 1;

revenue metering installation means a *metering installation* that is used as the primary source of *metering data* for determining revenues at the *connection point*;

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

scope of works means the *works* set out in:

- (a) for a *connection application* under rule 5.3A of the *NER*, the *preliminary response* and the *detailed response*; and
- (b) for a *connection application* under Chapter 5A of the *NER*, the *planning report* and *concept scope and design*,

as further detailed in Schedule 2 and as amended by the parties;

SCS component means those *Ergon Energy activities* that are classified as *standard control services*;

security means a cash deposit, bank guarantee, surety bond or other form of security referred to in clause 19.8(a) and includes any new or substitute *security* provided in accordance with clauses 20.3 or 20.6;

security amount means, for a *security*, the relevant amount set out in Item 1(b) of Schedule 1;

security end date means, for a *security*, the date on which that *security* is to end, as set out in Item 1(b) of Schedule 1;

security for construction charges means a *security* to be given by *you* to *us* to secure the *construction charges* until payment of the relevant tax invoice, as envisaged in clause 19.5;

security for defects means a *security* to be given by *you* to *us* to cover estimated costs that may be incurred by *us* in rectifying any *transferable asset defects* during the *defects rectification period*;

security for removal means a *security* to cover any loss or damage that may be suffered by *us* as a result of *us* removing assets in accordance with this *contract*. For the avoidance of doubt, the *security for removal* covers any amounts payable under clause 18.3;

security for stranded assets means a *security* to be given by *you* to *us* to secure the estimated amount of future revenue recoverable by *us* in respect of the *works* attributable to the *distribution network*;

security start date means, for a *security*, the relevant date for provision of that *security*, as set out in Item 1(b) of Schedule 1;

specifications means the specifications that the design of the *transferable assets*, or the materials and equipment forming part of the *transferable assets*, must meet, as described more fully in Item 1(g) of Schedule 1. For the avoidance of doubt, this includes the *design specifications*, where relevant. Note that the *specifications* may specify specific plant and secondary systems equipment required to ensure that the *transferable assets* are compatible with *our* existing *distribution system* and relevant standards applying to *our distribution system*;

statement means a statement under clause 19.5(a);

target completion date means, for a party, the relevant date set out in Item 1(a) of Schedule 1;

technical construction requirements means the technical requirements set out in Schedule 4 of this *contract*;

transferable asset defect means anything in relation to the *transferable assets* that causes or constitutes a breach of the obligations, undertakings or warranties in this *contract* (including, without limitation, the warranties contained in clause 27);

transferable assets means the assets to be constructed by *you* that are specified as such in Item 2(e) of Schedule 2;

unregulated component means those *Ergon Energy activities* that are not subject to economic regulation under the *NER*;

works means the *Ergon Energy activities* and the *Customer's activities*;

works program means the program for completion of the *works* as initially set out in 3 or as revised by the parties, which is intended to include key dates for completion of critical elements of the *works*; and

works protocol means the protocol for carrying out the *works* that is developed by the parties in accordance with clause 16.

3.2. Incorporation of provisions from the *Ongoing Connection Contract*

The following clauses of the *Ongoing Connection Contract* are incorporated into this *contract* as if set out in full in this *contract*, *mutatis mutandis*:

[Drafting note: check clause references.]

- (a) clause 3.2 (Rules for interpreting this *contract*);
- (b) clause 3.3 (Multiple parties);
- (c) clause 12 (GST);
- (d) clause 17 (Dispute resolution);
- (e) clause 18 (Confidentiality, privacy and access to information);
- (f) clause 19 (Notices and tax invoices);
- (g) clause 20 (Amendment and assignment) (provided that clause 20(a) is subject to clause 8.3(c)(i)); and
- (h) clause 21 (General).

4. SCOPE AND OPERATION OF THIS *CONTRACT*

4.1. Application of this contract

This *contract* is a connection contract for the provision of the *new connection* or *connection alteration* (as relevant) referred to in the Recitals, which principally involves *you* carrying out the *Customer's activities* and *us* carrying out the *Ergon Energy activities*.

4.2. What is not covered by this contract

This *contract* does not cover:

- (a) the provision of *supply services* (as this is covered by the *ongoing connection contract*);
- (b) the sale of energy to the *premises* at the *connection point* (as this is a matter for *you* and/or *your retailer*); or
- (c) the purchase of any electricity exported from the *premises* into the *distribution system* at the *connection point*.

5. TERM

5.1. When this contract starts

Unless otherwise specified in this *contract*, the rights and obligations under this *contract* start on the day on which this *contract* is fully executed.

5.2. When this contract finishes

- (a) Subject to any relevant *energy laws*, this *contract* will terminate on the date on which all of the following have been completed:
 - (i) all *works* under this *contract* have been completed, tested and commissioned;
 - (ii) all amounts payable by one party to another under this *contract* have been paid;
 - (iii) the *transferable assets* have been transferred to *us* under this *contract*; and
 - (iv) the *defects rectification period* has ended,

unless terminated earlier in accordance with this *contract*.

- (g) Rights and obligations accrued before the end of this *contract* continue despite the ending of this *contract*.

6. INTRODUCTORY INFORMATION

6.1. Intent of the works

The parties acknowledge that:

- (a) the *works* are to enable the *new connection* or *connection alteration* (as relevant) referred to in the Recitals, to enable the provision of *supply services* as contemplated in the *Ongoing Connection Contract*, and the *connection point* will comprise a single connection without complete redundancy (so the circumstances referred to in clause [6.10(c)] of the *Ongoing Connection Contract* may affect the provision of these *supply services*); and
- (b) the reliability of the *distribution system* under normal operating conditions will be determined by *us* in accordance with the *energy laws*.

6.2. Contract based on certain information

The parties acknowledge and agree that:

- (a) this *contract* (in particular, the *scope of works* and the estimate of the *construction charges*) has been determined by *us* based on:
- (i) *our* knowledge of *our distribution system* in the vicinity of the *premises* 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) information contained in the relevant *connection application* and:
- (A) for a *connection application* under rule 5.3A of the *NER*, the *preliminary response* and the *detailed response*; and
- (B) for a *connection application* under Chapter 5A of the *NER*, the *planning report* and *concept scope and design*;
- (iv) certain underlying assumptions about the works that will not be fully verified until the completion of the detailed design stage or later (for example, the location of the *connection point* and the time taken to obtain necessary *authorisations*, *land acquisitions* and *long lead time items*); and
- (v) information provided by *you*,

and both the *scope of works* and the resultant *construction charges* will be further revised and defined during the progress of the *works*, for example as a result of site inspections, detailed design, construction and other relevant processes, including to comply with *our* policies, *good electricity industry practice*, relevant *energy laws*, *Australian Standards* and the terms of any *authorisations*, and may be affected by *force majeure events*.

6.3. Responsibility for works

- (a) *We* must carry out the *Ergon Energy activities* in exchange for the *construction charges*.
- (b) *You* are responsible for carrying out the *Customer's activities* at *your* cost.
- (c) In connection with rule 5.3.5(b) of the *NER*:
- (i) *we* advise *you* that the relevant planning and environmental laws are complex, and *we* strongly recommend that *you* seek *your own* independent legal advice on any planning and environmental *laws* relevant to the *Customer's activities*; and
- (ii) *you* agree that *we* have satisfied *our* obligations under the abovementioned rule.

6.4. Manner of carrying out the works

- (a) Subject to any express contrary provisions in this *contract*, each party must:
- (i) obtain all of the *authorisations* and *land acquisitions* required for their *works*; and

- (ii) design, install, construct, test and commission and otherwise perform that party's works to comply with this *contract*, all relevant *authorisations*, *land acquisitions*, *Australian Standards*, *laws* and *good electricity industry practice* and to achieve the outcome contemplated in the *Ongoing Connection Contract*.
- (b) We may determine the design and specification of, and any other requirements for, the *Ergon Energy activities*, provided there is compliance with clause 6.4(a).
- (c) We may subcontract any part of the *Ergon Energy activities* at our discretion.

7. REQUIREMENTS APPLICABLE TO TRANSFERABLE ASSETS

7.1. Application

This clause 7 only applies in relation to *transferable assets* and the *works* relevant to *transferable assets*.

7.2. Design documentation to comply with design specifications

- (a) As soon as possible after this *contract* starts, we must give you a copy of the *design specifications* (including any attachments).
- (b) You must ensure that the *design documentation* complies with the *design specifications*.

7.3. Manner of carrying out relevant works

- (a) You acknowledge that we wish to ensure that the *transferable assets* are compatible with our existing *distribution system*, and, accordingly, you must ensure that any of the *Customer's activities* relevant to the *transferable assets* are carried out:
 - (i) by appropriately qualified personnel;
 - (ii) by an *approved contractor*;
 - (iii) in accordance with the *design specifications*, any other *specifications* and any construction standards specified by us;
 - (iv) in respect of any construction works, in accordance with the *final design documentation*;
 - (v) where the materials and equipment:
 - (A) are *prescribed materials and equipment*, using materials and equipment sourced from an *approved supplier*; and
 - (B) are not *prescribed materials and equipment*, using materials and equipment either as specified by us, or from appropriate manufacturers and suppliers, where you have satisfied us that the materials and equipment meet the *specifications* and any other requirements of this *contract*.
- (b) If you wish to source *prescribed materials and equipment* from a supplier other than an *approved supplier*, you may notify us of the identity of the relevant supplier.
- (c) If you wish to use a contractor for any *Customer's activities* that relate to *transferable assets* other than an *approved contractor*, you may notify us of the identity of the relevant contractor.
- (d) If we receive a notification under either of clauses 7.3(b) or 7.3(c), we must, within twenty *business days*, advise you of whether such supplier or contractor (as relevant) is (at our sole discretion) satisfactory to us.
- (e) If any part of the *Customer's activities* that relate to *transferable assets* is subcontracted to a new or replacement designer or contractor, you must notify us of the name, address and contact details of the designer or contractor prior to that entity starting any work.

7.4. Design review process

- (a) You and us must regularly liaise during the preparation of the *design documentation* to enable you to provide us with *design documentation* that achieves the following:
 - (i) meets relevant *laws*, *Australian Standards*, *specifications* and other requirements of this *contract*;
 - (ii) a design that, when constructed, can be integrated into our physical *distribution system*;
 - (iii) is in a format that is compatible with our internal computer systems and programs;

- (iv) reduces the likelihood that we will advise you that any substantive changes are required under clause 7.5(c)(i); and
 - (v) is otherwise satisfactory to us.
- (b) We and you must notify each other of at least one person each to carry out the liaison referred to in clause 7.4(a).
- (c) The persons nominated under clause 7.4(b) must:
- (i) meet on a regular basis in order to carry out their responsibilities; and
 - (ii) ensure that decisions made in relation to the *design documentation* are put in writing.

7.5. Submission of *design documentation*

- (a) You must ensure that the *design documentation* has been certified by an RPEQ (engaged by you at your cost, who has experience in the relevant types of work comprising the *transferable assets*) and complies with the format requirements set out in Schedule 5.
- (b) You must submit the *design documentation* and RPEQ certification to us for our review at least [20] business days before starting the construction of any *Customer's activities* that relate to the *transferable assets*.
- (c) We must, acting reasonably and within a reasonable time after receiving the *design documentation* (or any resubmitted *design documentation* under clause 7.5(d)), either:
- (i) advise you of any changes that we require to the *design documentation*, including additional information, and the reason for those changes; or
 - (ii) notify you that the *design documentation* is acceptable to us (at which point the *design documentation* will become the *final design documentation*).
- (d) If we notify you under clause 7.5(c)(i) that changes are required, you must make those changes and resubmit the RPEQ re-certified *design documentation* to us for our review.
- (e) We must use the *final design documentation* to populate our internal asset registers with the *transferable assets*, expand our network operating model to incorporate the relevant details of the *transferable assets* in accordance with our internal systems, and verify and manage the data (and the costs of doing this are part of the *construction charges*).

7.6. Authorisations and land acquisitions to commence works

- (a) You must, before starting any construction works relevant to *transferable assets*, provide satisfactory evidence to us that the appropriate *authorisations* and *land acquisitions* have been obtained by you to permit the *Customer's activities*.
- (b) We must, acting reasonably and within a reasonable time after receiving this evidence, notify you whether the evidence is satisfactory to us.

7.7. Preconditions to construction

The construction component of the *Customer's activities* relevant to the *transferable assets* must not start until:

- (a) we have notified you under clause 7.5(c)(ii) that the *design documentation* is acceptable to us and under clause 7.6(b) that the evidence is satisfactory to us;
- (b) the meeting referred to in clause 14.1(a) has been held and we have ratified the outcome of the meeting under clause 14.1(b); and
- (c) you have given us copies of all of the *authorisations* required for the *Customer's activities* relevant to the *transferable assets* and the accessing, installation, ownership, operation, maintenance, replacement and removal of the *transferable assets*, including, without limitation, the following:
 - (i) Ergon Energy Approval of Principal Contractor Safety Management Plan (SMP) and Environmental Management Plan (EMP) for the construction project; and
 - (ii) copies of all relevant *authorisations* for staff involved in construction project, including, but not limited to, electrical licenses, Ergon Energy authorisations, and other relevant licenses including Construction Industry White Cards,

and we have satisfied *ourselves* that all necessary *authorisations* have been obtained in the appropriate form.

7.8. Notification of concealment of works

- (a) You acknowledge that:
 - (i) the purpose of clause 12 is to provide reasonable assurance to *us* that *we* will not assume any risk in excess of its acceptable risk profile; and
 - (ii) certain components of the *transferable assets* will, as part of the *Customer's activities*, 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.
- (b) You must, before any materials or equipment included in the *Customer's activities* relevant to the *transferable assets* are treated as contemplated in clause 7.8(a)(ii), notify *us* that such treatment will occur and the expected date of such treatment.
- (c) The notification under clause 7.8(b) must be given to *us* sufficiently prior to the expected date of such treatment to enable *us* to carry out an audit of the materials and equipment under clause 12.
- (d) No materials or equipment included in the *Customer's activities* relevant to the *transferable assets* may be treated as contemplated in clause 7.8(a)(ii), unless *we* either carry out an audit as contemplated in clause 7.8(b) or *notify you* that *we* do not intend to undertake such an audit.
- (e) If *we* receive a notice under clause 7.8(b), *we* must, within five *business days*, advise *you* as to which of the actions contemplated in clause 7.8(d) *we* intend to pursue.

8. GENERAL PROVISIONS APPLICABLE TO WORKS

8.1. Scheduling the initial *Ergon Energy activities*

After receiving payment of the amounts invoiced under clause 19.3(a) (or, if a *statement* is issued under that clause, receiving a *security for construction charges* in accordance with that *statement*), *we* must schedule the following components of the *Ergon Energy activities* into *our* works schedule and commence these *Ergon Energy activities* in accordance with that works schedule:

- (a) preparation of a detailed design and estimate;
- (b) acquisition of any relevant *land acquisitions*; and
- (c) procuring any *long lead time items* identified at the time.

8.2. Provision of revised information after completion of *detailed design and estimate*

Upon completing the *detailed design and estimate*, *we* must give *you*:

- (a) revisions to Schedules 2 and 3;
- (b) a reconciliation of the *amounts received* attributable to *Ergon Energy activities* completed at that time against the *construction charges* attributable to those activities (to which the reconciliation process set out in clause 19.2(d) applies); and
- (c) a revised estimate for that component of the *construction charges* attributable to the remainder of the *Ergon Energy activities* (principally the construction and *final commissioning* phases).

8.3. Election to proceed or terminate

- (a) Within [20] *business days* of receiving the information referred to in clause 8.2, *you* must notify *us* whether *you* elect to proceed with the *works* or to terminate this *contract* immediately.
- (b) If *we* do not receive a notification within the above timeframe, this *contract* will automatically terminate at the end of that timeframe.
- (c) If *we* receive a notification to proceed within the above timeframe:
 - (i) this *contract* is amended as notified under clause 8.2;
 - (ii) if the revised estimate referred to in clause 8.2(c) is more than the relevant *amounts received* attributable to the remainder of the *Ergon Energy activities*, *we* will issue a tax invoice for the difference (or, if agreed under clause 19.5, a *statement*).

- (iii) we must schedule the remaining components of the *Ergon Energy activities* into our works schedule and, provided that we have either received payment of the tax invoice, or a *security for construction charges* in respect of the *statement*, referred to in clause 8.3(c)(ii), commence those *Ergon Energy activities* in accordance with that works schedule.

8.4. Updating the works and the works program

- (a) The parties acknowledge and agree that:
 - (i) the *works* in 2 and the *works program* in 3 will not list all activities or components of the *works*, or milestones for the *works*;
 - (ii) the parties must liaise and update the *works program* as required; and
 - (iii) each party must use reasonable endeavours to carry out their *works* in accordance with the *works program*, including completing their *works* by the relevant *target completion date*.
- (b) A failure by us to complete any of the *Ergon Energy activities* by a milestone date or *target completion date* because of a delay caused by you is not a *default* by us.

8.5. Changes to works

- (a) This clause does not apply to the matters dealt with under clauses 8.2 and 8.3.
- (b) Each party may make changes to its *works* at its own cost and without notice to the other party, provided this does not cause a *material change*.
- (c) As soon as practicable after becoming aware that a *material change* has occurred, or is likely to occur, a party must give the other party a *change notice*, setting out the following (to the extent known at the time):
 - (i) the event or circumstance giving rise to the requirement for the change;
 - (ii) the expected impact on the *works* (including changes, delays and changes in cost); and
 - (iii) potential mechanisms for mitigating the impact that are consistent with *good electricity industry practice*, and any particular advantages or disadvantages of these suggested mechanisms.
- (d) Within eight *business days* of the date of a *change notice*, the parties must start liaising with each other in respect of the *material change*.
- (e) As part of the abovementioned liaison, the parties must:
 - (i) share any further information about the *material change*;
 - (ii) use all reasonable endeavours to regularly meet (via communications technology or in person) and agree with each other as to the optimal and appropriate actions to take to:
 - (A) remove, overcome or minimise the effects of the event; and
 - (B) proceed with the *works* in a manner that is, as far as practicable, acceptable to each party and designed to meet the requirements of the *Ongoing Connection Contract*, provided that such agreement must not be unreasonably withheld, but that it is reasonable for us to withhold our agreement if the proposed actions may, or would, result in:
 - (I) the *Customer's activities* not complying with the requirements of this *contract*;
 - (II) an adverse effect on the proposed connection or the *distribution system*; or
 - (III) a change to the *Ergon Energy activities* that is not acceptable to us; and
 - (iii) upon reaching agreement under clause 8.5(e), document this agreement in accordance with clause 20(a) of the *Ongoing Connection Contract*, as incorporated into this *contract* by clause 3.2(g) of this *contract*.
- (f) Where the agreed actions under clause 8.5(e)(ii)(B) change the recoverable costs of the *Ergon Energy activities* (using the principles set out in clause 19.1, then we must use reasonable endeavours to determine an estimate for the revised *construction charges* and carry out a reconciliation of the *amounts received* against the *construction charges*, and notify you of this.

- (g) Unless otherwise agreed, or where necessary or highly desirable to manage the event or circumstance, the parties must not commence any changes to the *works* in connection with a *material change* prior to documenting these under clause 8.5(e)(iii).

9. METERING

9.1. Installation

You must cause a *revenue metering installation* to be installed as close as possible to the *connection point*, and maintained, in order to measure and record the amount of electricity transferred across the *connection point* in accordance with the *energy laws* and must ensure compliance with:

- (a) for connection points for type 7 *metering installations* where you are, or are taken to be, an excluded customer under the *Electricity Act 1994* (Qld), or where the *connection point* is in an isolated power system, Chapter 5 of the Electricity Distribution Network Code under that Act; and
- (b) for any other load, Chapter 7 of the *NER* and documents relevant to that Chapter, including, without limitation, any of the following that are relevant:
 - (i) MSATS Procedures: CATS Procedure Principles and Obligations;
 - (ii) MSATS Procedures: Procedure for the Management of WIGS NMLs; and
 - (iii) NEM *metrology procedures*.

9.2. Retailer and responsible person

- (a) If we are not the *responsible person* for the purposes of the *NER*, you must inform us in writing of who is the *responsible person*.
- (b) If there is, or will be, a *retailer* for the *premises*, you must inform us in writing of the identity of that *retailer*.
- (c) The notifications under clauses 9.2(a) and 9.2(b) must be made at least 30 *business days* prior to the expected date to start *final commissioning*.
- (d) If your *retailer* changes, you must notify Ergon Energy of that change within 10 *business days* of that change occurring.

10. ERGON ENERGY DEFECTS

- (a) We must notify you as soon as we become aware of any *Ergon Energy defect*.
- (b) We must, at our cost, remedy or rectify any *Ergon Energy defect*.
- (c) You are not liable to us, and we are not entitled to make a claim against you, in connection with any *Ergon Energy defect*, or the remedying or rectification of any *Ergon Energy defect*.

11. COMPLETING CONSTRUCTION AND TESTING AND COMMISSIONING

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. Obligations upon completion of works

- (a) You must give us a notice once you reasonably consider that sufficient *Customer's activities* relevant to the *connection point* (apart from *final commissioning*) have been completed in accordance with this *contract* to facilitate *final commissioning*, and you are ready to commence *final commissioning* in coordination with us.
- (b) We must give you a notice once we reasonably consider that sufficient *Ergon Energy activities* (apart from *final commissioning*) have been completed and we are ready to commence *final commissioning* in coordination with you.

11.3. Preconditions to final commissioning

- (a) Notwithstanding anything else in this *contract*, each of the following must be satisfied before *final commissioning* can start:
 - (i) the parties have complied with clause 11.2;

- (ii) all monies due and payable by *you* under this *contract* have been paid, where an amount is not taken to have been paid for the purposes of this clause unless either:
 - (A) a tax invoice was issued for that amount and paid in accordance with clause 19.3(b) and clause 19.3(c) has been satisfied; or
 - (B) where clause 19.5 applies and the relevant tax invoice was not paid, *we* have drawn down on the *security for construction charges* and have received the full *construction charges* due; and
- (iii) the *revenue metering installation* referred to in clause 9.1 has been installed and is ready to be commissioned;
- (iv) *you* have given *us* the *security for defects* referred to in Item 1(c) of Schedule 1;
- (v) *we* are 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 distribution system* to permit the connection of the *premises* to the *distribution system*; and
- (vi) *we* have received sufficient information for *us* to comply with clause 7.5(e), and *we* 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 its *distribution system*.

11.4. Final commissioning and preconditions to energisation

- (a) The parties must liaise to determine an appropriate time to carry out the *final commissioning* of the *connection point* and any *connection assets*.
- (b) The provisions of rule 5.8 of the *NER* apply to *you* and *us* in relation to the *final commissioning*, and, for the purposes of that rule, as between *you* and *us*, *you* are deemed to be a *Registered Participant*, a *Generator* and a *Customer* under the *NER* and *we* are deemed to be only a *Network Service Provider* under the *NER*.
- (c) *You* acknowledge that rule 5.8.1(a) of the *NER* (incorporated into this *contract* by virtue of clause 11.4(b)) requires *you* to ensure that any new or replacement equipment installed at the *premises* is inspected and tested to demonstrate compliance with this *contract* and the *Ongoing Connection Contract*.
- (d) The parties must cooperate to develop appropriate procedures for such commissioning tests, including negotiation of relevant parameter settings and protection grading, test procedures and proposed test equipment.
- (e) *You* and *we* must cooperate to develop a commissioning program under rule 5.8.4 of the *NER* for the *final commissioning*, and to commence this *final commissioning* in a coordinated fashion.
- (f) Any additional costs incurred by *us* as a result of any non-compliance of the *Customer's activities* or any delay in the *final commissioning* due to that non-compliance are added to the *construction charges*.
- (g) Each of the following must be satisfied before any *connection assets* and the *connection point* can be energised:
 - (i) the preconditions set out in clause 11.3 have been completed;
 - (ii) if required by *us*, *you* have agreed to provide sufficient load to facilitate energisation;
 - (iii) all necessary commissioning and testing of the *revenue metering installation* referred to in clause 9.1 has been done and the *revenue metering installation* is capable of measuring electricity flows;
 - (iv) *you* have given *us* all *securities* that *you* are required to provide under the *Ongoing Connection Contract*, in accordance with that contract;
 - (v) if *you* are not the *Market Participant* for the *connection point* and *you* will be importing electricity from the *distribution system* at the *connection point*, *you* have entered into an electricity retail sale agreement with a *retailer* for the *premises* and advised *us* of the identity of that *retailer*;
 - (vi) *we* are aware of the identity of:

- (A) the *financially responsible Market Participant* for the *connection point*; and
 - (B) the *responsible person* in respect of the *metering installations* for the *connection point*;
- (vii) we have received either a “new connection” or “re-energisation” (as applicable) service order request from the *financially responsible Market Participant* for the *connection point* in accordance with the *B2B Procedures*;
 - (viii) we must consider (acting reasonably) that sufficient *works* have been carried out by both parties and that the *connection assets* and *connection point* have been appropriately tested and commissioned 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;
 - (ix) if, at the proposed time of energisation of the *connection point*, *you* will be connecting high voltage electrical equipment (as that term is defined in the *Electrical Safety Act 2002* (Qld)) to the *connection point*, *you* have, at *your* own cost, provided *us* with a certificate from an *accredited auditor* confirming that such high voltage electrical equipment complies with clause 221 of the *Electrical Safety Regulation 2013* (Qld);
 - (x) *you* must have obtained *our* approval of the settings to be applied to *your* protection and control equipment (unless *we* agree otherwise);
 - (xi) 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;
 - (xii) *you* have given *us* the following in respect of the *transferable assets*:
 - (A) all things necessary for *us* to operate and maintain the *transferable assets* as part of *our distribution system*, including, as required, keys, access cards and the like;
 - (B) detailed marked up drawings illustrating any changes from the *final design documentation*, provided that the mark-ups comply with *our* relevant specifications referred to in 5;
 - (C) copies of test certificates, test results and inspection and test plans;
 - (D) manuals for any materials and equipment;
 - (E) copies of any technical documentation received from any manufacturers or suppliers of materials or equipment;
 - (F) manufacturer test certificates for any materials and equipment;
 - (G) 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;
 - (H) the warranties referred to in clause 27, in a form which enables *us* to claim under those warranties;
 - (I) the security for defects;
 - (J) an enforceable undertaking that the *transferable assets* are free from any *encumbrances*;
 - (K) 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
 - (L) 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
 - (xiii) 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 *notice of acceptance*, hold appropriate and relevant *land acquisitions* to access, own, operate, maintain, replace and remove such *transferable assets*, as contemplated in clause 14.3(b).

11.5. Notice of acceptance and energisation

- (a) Once the preconditions set out in clause 11.4(g) have been satisfied, we must promptly issue a *notice of acceptance*, which will be evidence of the performance of *your* 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 *authorisation*, *land acquisition* or this *contract*; or
 - (iii) the suitability or otherwise of the *authorisations* and *land acquisitions* obtained by *you*.
- (b) Upon issue of the *notice of acceptance*, the parties must promptly carry out all necessary and desirable actions:
 - (i) to energise the *connection point*; and
 - (ii) if required by *us*, for *you* to provide sufficient load to enable the relevant entity to carry out on-load checks or similar on the relevant *metering installations* and finalise the testing and commissioning of the *metering installations*.
- (c) All title in, and rights relating to, the *transferable assets* remains with *you* until the time of issue of the *notice of acceptance*, at which time the risk of, and all interest, title and ownership in, those assets will pass from *you* to *us*, and we will be under no obligation to transfer these assets back to *you*.
- (d) From the time when the *notice of acceptance* is issued, *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 any relevant *representatives* of *you* involved in the *works* in relation to the *transferable assets* grant *us* a corresponding licence.
- (e) Within 12 weeks of the issue of a *notice of acceptance*, *you* must give *us* detailed “as constructed” plans in respect of the *transferable assets*, together with 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, constructed and tested in accordance with *our* requirements and are fit for service.
- (f) If *you* do not comply with clause 11.5(e), then we may arrange for the preparation of the detailed “as constructed” plans in respect of the *transferable assets* and certification by an *RPEQ*, as contemplated in that clause, provided that:
 - (i) notwithstanding clause 19.4(a), *our* costs of carrying out such activities will be added to the *construction charges* without the necessity for *us* to provide an estimate of those costs, and such costs will be a debt due and payable by *you*; and
 - (ii) *you* must use *your* best endeavours to facilitate liaison between *us* and any relevant contractor to the extent that we consider reasonably necessary to prepare the “as constructed” plans.

12. AUDITS

- (a) We are, at *our* discretion, entitled to undertake an audit of those *Customer’s activities* that relate to the *transferable assets* at any time, without notice to *you*.
- (b) Without limitation, we are entitled to undertake an audit under clause 12(a) prior to issuing a *notice of acceptance*.

13. RECTIFICATION

13.1. Ability to rectify non-compliances

- (a) If:
 - (i) during *final commissioning*, we discover;
 - (ii) an audit carried out by *us* reveals; or
 - (iii) we otherwise become aware of,

any non-compliance of the *transferable assets* with this *contract*, the *final design documentation*, the *specifications*, the *technical requirements*, relevant *authorisations* or relevant *laws*, we must notify *you* of this non-compliance, and *you* must ensure that the non-compliance is rectified within the time specified by *us*, acting reasonably.

- (b) If, during the *defects rectification period*, we discover any *transferable asset defects*, we may rectify those *transferable asset defects*, and must provide details of the *transferable asset defects* to *you*.
- (c) *You* may continue to perform other work during the period of rectification of the non-compliance, unless otherwise advised by *us*.

13.2. Failure to rectify

- (a) If:
 - (i) *you* fail to rectify any non-compliance notified under this clause 13 within the time specified by *us*; or
 - (ii) there is an *emergency*; or
 - (iii) clause 13.1(b) 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 from *you* by either or both as a debt due from the *you*, or by drawing down on the *security for defects*;
 - (v) for clause 13.2(a)(i), terminate this *contract* and recover damages from *you*, including, but not limited to, the costs of *our* performing any *Customer's activities* or other works necessary to rectify the non-compliance; and
 - (vi) exercise all other remedies that may be available to *us*.
- (b) Any action taken by *us* under this clause 13.2 is without prejudice to any other rights or remedies that *we* may have against *you*.
- (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.

14. COOPERATION AND ONGOING OBLIGATIONS

14.1. Preliminary meeting

- (a) At least one week prior to the commencement of the *works*, a site meeting must be held with *representatives* of *us* and *you* to ensure that *you* fully understand *your* obligations under, and the requirements of, this *contract*, and to 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 in clause 14.1(a) above has been met, *we* must ratify the outcome of the meeting as soon as practicable after the meeting.

14.2. 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 Schedule 3.
- (b) If a party believes that it will not be able to achieve a milestone contained in Schedule 3, then it must immediately notify the other party of that fact and comply with the relevant provisions of clause 8.5.

14.3. Parties to cooperate

The parties must do everything required (including executing any documents), and must ensure that its *representatives* do everything required (including executing any documents), in order for:

- (a) *us* to obtain the *land acquisitions* necessary for the *Ergon Energy activities*; and
- (b) *you* to transfer all of the *land acquisitions* relevant to the *transferable assets* to *us* as part of the transfer under clause 11.5(c), or otherwise obtain these *land acquisitions* in *our* name and on terms satisfactory to *us*.

15. LIAISON PERSONNEL

- (a) Each party must nominate at least one person to review the progress of the *works* and coordinate the *works*, being the persons set out in Item 1(d) of Schedule 1 or as subsequently notified by one party to the other.
- (b) The parties each authorise their *liaison person* 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.
- (c) 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*.
- (d) 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.
- (e) The *liaison personnel* for one party have equal authority to the *liaison personnel* for the other party, and all decisions must be unanimous.

16. WORKS PROTOCOL

- (a) *We* and *you* must, prior to carrying out any construction, jointly develop and implement a *works protocol* with a view to ensuring:
 - (i) compliance with all *laws*;
 - (ii) the personal safety of the *representatives* of *us* and *you*;
 - (iii) the personal safety of the general public; and
 - (iv) satisfactory operation of the *premises* and the *distribution system*.
- (b) The minimum requirements of the *works protocol* are set out in Schedule 6.

17. LAND ACCESS

17.1. Access to *your premises*

- (a) This clause applies except where there is a relevant *emergency*. Where there is an *emergency*, *we* will use *our* reasonable endeavours to comply with this clause to the extent reasonably practicable in the situation.
- (b) *We* may access the *premises*, and may install equipment on the *premises* (in an agreed location) or audit *your* activities relevant to the *transferable assets*, in accordance with this clause to comply with *our* obligations or exercise *our* rights under this *contract* or any *laws*.
- (c) *We* must use reasonable endeavours to provide your 24-hour contact set out in Item 1(f) of Schedule 1 at least 7 days' notice of *our* intention to exercise *our* rights under this clause, together with a brief description of the purpose of access and nature of any works to be done.
- (d) *You* must provide *our representatives* with all assistance and safe access that is reasonably required by *us* so that *we* can complete the necessary tasks.
- (e) Any access under this clause must be in accordance with all relevant *laws* and *authorisations* and any other access requirements that *you* advise to *us*, provided that:
 - (i) *we* consider that your requirements are reasonable in the circumstances, and give appropriate consideration to the type of work proposed to be done by *us*;
 - (ii) *your* requirements do not impose drug and alcohol testing obligations on *our representatives* that are more onerous than those required internally by *us* (and, for this purpose, *we* must give *you* copies of *our* Drug and Alcohol Policy Business Rules (Reference ES001001R100 Ver 5); and

- (iii) where *your* requirements impose obligations on *us* that exceed the obligations imposed on *our representatives* under *our* internal policies and procedures (including, without limitation, in respect of site and general inductions), *you* must reimburse *us* for the costs of *our* compliance with such rules and guidelines (to the extent of the excess obligation), including, without limitation, any associated costs of travel, accommodation and equipment procurement.
- (f) *You*:
 - (i) acknowledge that *we* cannot require *our* personnel to undergo any drug or alcohol testing that is more invasive than that set out in *our* Drug and Alcohol Policy Business Rules (Reference ES001001R100 Ver 5.) (which *we* will provide *you* with a copy of on request); and
 - (ii) agree that, should the operation of clause 17.1(e) result in any of *our* employees being asked to undertake drug or alcohol testing under this clause 17 that is more invasive than that set out in the above Business Rules, then that employee has the right to refuse such testing, and, should the employee refuse such testing, *you* may (at *your* election) either:
 - (A) immediately escort that employee from the premises and notify *us* of this fact; or
 - (B) agree to a temporary waiver of that testing for that employee for that particular access instance.
- (h) If clause 17.1(f)(ii)(A) applies, then *we* must use *our* reasonable endeavours to make appropriate alternative arrangements at *your* cost, taking into consideration the particular circumstances of, and need for, the access, together with the availability of replacement personnel.
- (i) When working on the *premises*, *our representatives* must minimise disruption to *you* and *your representatives*.
- (j) Provided *our representatives* comply with the relevant access requirements, *you* must give those *representatives* access (free of charge) to [potable water, toilet facilities, emergency telephone facilities], provided that *we* are liable for any loss of or damage to those facilities that *our representatives* cause.
- (k) *You* must promptly inform *us* if *you* become aware that there is, or will be, a change materially affecting access to any of *our* assets at the *premises*.

17.2. Access to third party land

- (a) If *you* require access to any land belonging to, or under the control of, a third party, for the purposes of carrying out the *Customer's activities*, it is solely *your* responsibility to procure any relevant *land acquisitions*, and *you* must comply with any conditions that may be imposed on such consent and with all applicable *laws*.
- (b) *We* are responsible for acquiring all *land acquisitions* for the *Ergon Energy activities*.
- (c) Certain costs to *us* in connection with acquiring the *land acquisitions* for *our connection assets* are included in the *construction charges*.
- (d) Certain costs to *us* in connection with acquiring the *land acquisitions* for the *distribution network* are included in the network charges recoverable by *us* from *our Distribution Customers* in accordance with the *energy laws*.

17.3. Land tenure

The parties must do anything necessary or highly desirable (including, without limitation, executing documents) to facilitate *our* obtaining any *land acquisitions* relevant to the *Ergon Energy activities*, on terms satisfactory to *us*.

17.4. Ancillary facilities

- (a) [You must provide us with [list any services required eg AC supply] at no cost to us.]

18. TERMINATION

18.1. Automatic termination

This *contract* will terminate in any of the circumstances below:

- (a) (**works finished**) under clause 5.2(a);
- (b) (**no election to proceed with construction**) under clause 8.3(b); and
- (c) (**termination of ongoing connection contract**) if the *Ongoing Connection Contract* is actively terminated (otherwise than through termination for effluxion of time).

18.2. Rights to terminate

- (a) You may terminate this *contract* under any of the following:
 - (i) (**not proceed with construction**) by making an election under clause 8.3(a); or
 - (ii) (**uncured default**) under clause 22.3(a)(i);
 - (iii) (**on notice**) at any time by giving *us* at least one month's prior notice.
- (b) We may terminate this *contract*:
 - (i) (**failure to rectify non-compliances**) under clause 13.2(a)(v);
 - (ii) (**uncured default**) under clause 22.3(a)(i);
 - (iii) (**non-occurrence of certain events**) by notifying *you* if *we* have not:
 - (A) by the *consent obtaining date*, acquired all *authorisations* and *land acquisitions* necessary to carry out the *Ergon Energy activities* (despite all reasonable efforts to obtain them), and an alternative solution cannot be agreed upon in accordance with clause 8.5(e) or by the end of the dispute resolution process under the clause referred to in clause 3.2(d);
 - (B) commenced the *Ergon Energy activities* within [insert] months of the date of this *contract*, due to either *your* failure to comply with this *contract* or all necessary *authorisations* and *land acquisitions* not being granted; or
 - (C) completed the *Ergon Energy activities* within [insert] months of the date of this *contract*, due to either *your* failure to comply with this *contract* or all necessary *authorisations* and *land acquisitions* not being granted.

18.3. Process to be followed upon termination

- (a) This clause 18.3 survives the termination of this *contract*.
- (b) This clause 18.3 applies if, before the *works* are complete, this *contract* is terminated as referred to in any of clauses 18.1(b), 18.1(c), 18.2(a)(i), 18.2(a)(iii), 18.2(b).
- (c) We must cease the carrying out of all existing *Ergon Energy activities* and must use reasonable endeavours to minimise and mitigate the costs incurred by *us* as a consequence of the termination.
- (d) If the *long lead time items* have not been received by *us* as at the date of termination, we must either:
 - (i) cancel the procurement of the *long lead time items* at minimal cost; or
 - (ii) if cancellation at a minimal cost is not possible, advise *you* of the cost impact of cancellation and whether the *long lead time items* are of a type that *we* normally hold as spares and would (acting reasonably) be prepared to accept as spares, and comply with *your* instructions to either cancel or not cancel;
- (e) If the *long lead time items* have been received by *us* as at the date of termination:
 - (i) we must promptly advise *you* whether the *long lead time items* are of a type that *we* normally hold as spares and would (acting reasonably) be prepared to accept as spares; and
 - (ii) you must, within [20] *business days* of the termination, notify *us* of one of the following:
 - (A) provided that *we* are happy to accept the *long lead time items* as spares, for *us* to retain ownership of the *long lead time items*;

- (B) otherwise – whether *you* want:
 - (I) to acquire the *long lead time items* – in which case *we* must make those items available for collection by *you* at the place where they are located (or, if they have not yet arrived in Australia, at the first *Ergon Energy* location that they arrive at) for a period of no more than **[20]** Business Days; or
 - (II) *us* to dispose of them at *your* cost – in which case *we* must dispose of those items in a manner determined by *us* at *our* sole discretion.
- (f) *We* must carry out a reconciliation of the *amounts received* against the *construction charges* (to which the reconciliation process set out in clause 19.2(d) applies), taking into account the following (and provided that nothing in the below is to make the *construction charges* lower than the amount recoverable in respect of the *ACS component* and the *unregulated component*):
 - (i) (**long lead time items**): if *we* are to:
 - (A) retain the *long lead time items*, the cost of these *long lead time items* is to be deducted from the *construction charges*, but the cost of relocating these items to an appropriate depot is to be added to the *construction charges*;
 - (B) dispose of the *long lead time items*, such disposal costs are to be added to the *construction charges*;
 - (C) transfer the *long lead time items* to *you*, such transfer costs are to be added to the *construction charges*;
 - (ii) (**termination of subcontracts**): all costs incurred or to be incurred by *us* in connection with terminating contracts with subcontractors under which the subcontractors were to carry out any part of the *Ergon Energy activities* are to be added to the *construction charges*;
 - (iii) (**recovery, reinstatement, reconfiguration and disposal costs**): all costs incurred or to be incurred by *us* that are attributable to the failure to proceed with this *contract* in connection with:
 - (A) the recovery of installed and reusable materials or equipment included in the *Ergon Energy activities* and the re-installation of such items into the *distribution system*;
 - (B) the recovery and disposal of unusable materials or equipment included in the *Ergon Energy activities*; and
 - (C) the reconfiguration of the *distribution system* or other site remediation activities, are, to the extent permissible under the *energy laws*, to be added to the *construction charges*;
 - (iv) the value of any reusable materials or equipment included in the *ACS component* or the *unregulated component* of the *Ergon Energy activities* that can be used by *us* as the basis for determining network charges payable by other users as and from the date of termination are to be deducted from the *construction charges*,

and advise *you* of the outcome of the reconciliation.

19. CHARGES AND BILLING

19.1. Charging methodology

The parties acknowledge that:

- (a) the *Ergon Energy activities* are divided into:
 - (i) an *ACS component*, where *we* calculate the charges based on the maximum allowable revenue under the *energy laws*, and *you* must pay these charges before *we* start the *Ergon Energy activities*;
 - (ii) an *SCS component*, where *we* must calculate the charges in accordance with the *energy laws*, and recover these over time from *our Distribution Customers* (which will include *you*); and

- (iii) an *unregulated component*, where the charges are not subject to economic regulation and are either agreed between the parties or, if not so agreed, comprise *our* reasonable costs of carrying out the relevant *Ergon Energy activities*, and *you* must pay these charges before *we* start the *Ergon Energy activities*; and
- (b) the *construction charges* payable by *you* comprise the charges in respect of the *ACS component* and the *unregulated component* of the *Ergon Energy activities*.

19.2. Initial estimate and changes to *construction charges*

- (a) As at the date of this *contract*, *our* best estimate of the *construction charges* is set out in Item 1(b) of Schedule 1.
- (b) *You* acknowledge that the above estimate is an estimate only and that the actual figures will vary due to a number of factors, including, without limitation, the actual work required to complete the *Ergon Energy activities*, and as contemplated in the provisions of this clause 19.
- (c) If, upon completion of the *Ergon Energy activities*, *we* reasonably believe that there is a material discrepancy between the *amounts received* and the *construction charges*, *we* must carry out a reconciliation of these amounts (to which the reconciliation process set out in clause 19.2(d) applies) as soon as reasonably practicable after such completion, and give *you* information about the outcome of this reconciliation.
- (d) If a reconciliation under this *contract* shows a discrepancy of more than \$200 between the *amounts received* and the *construction charges*, the parties must, as soon as reasonably practicable after that reconciliation, arrange for the issue of tax invoices with a due date no less than 30 days from the date of those invoices, where such tax invoices are designed to remove the discrepancy and put the parties in the position so that the *amounts received* equal the *construction charges*.
- (e) For the avoidance of doubt, any costs attributable to the rectification of *our* own defective works, or a failure by *us* to comply with this *contract*, must not be included in the *construction charges*.

19.3. Billing

- (a) *We* must, as soon as practicable after the date of this *contract*, prepare a tax invoice for the estimated *construction charges* (or, if agreed under clause 19.5, a *statement*) and submit it to *you*.
- (b) *You* must pay any tax invoices *we* issue under this *contract* by paying the amount directly to *us* either in cash or by direct electronic payment to the following bank account (or any other bank account nominated by *us* from time to time), by the due date set out in the tax invoice:

Ergon Energy	
Account:	Ergon Energy Corporation Limited General Account
BSB No:	064-710
Account No:	00001233 East St Rockhampton Commonwealth Bank
Fax Advice to:	Ergon Energy – Rockhampton
Attention:	Accounts Receivable
Fax No:	(07) 4932 7123
Ph No:	(07) 4932 7289

- (c) *You* must, in response to any *statement* *we* issue under this *contract*, provide *us* with a *security for construction charges* in accordance with that *statement*.
- (d) Details of any payment to *us* must be faxed to *us* on the same day as the payment is made.
- (e) If requested, each party must supply to the other such supporting material, data and information in respect of any tax invoices or *statements* under this *contract* that the other party reasonably requires.

19.4. Out-of-scope activities

The parties acknowledge and agree that:

- (a) if you ask us to undertake activities outside the scope of the *Ergon Energy activities* at that time, we must:
 - (i) give you an estimate of the *construction charges* that will be attributable to those activities; and
 - (ii) if you accept the estimate and require us to carry out those activities, use our reasonable endeavours to comply with this request at your cost;
- (b) for the avoidance of doubt, the following are taken to be activities requested by you under clause 19.4(a) and we must provide you with an estimate in accordance with that clause:
 - (i) the removal of any assets by us under clause 23; and
 - (ii) any costs incurred by us in connection with the establishment and operation of this contract in compliance with legislative and regulatory requirements (including, without limitation, amounts payable to third parties in respect of consideration of the impacts of this contract and amounts in respect of equipment that any relevant regulator requires us to install in respect of the connection).

19.5. Use of securities in temporary lieu of payments to bank account

Notwithstanding clause 19.3, we may, in our absolute discretion, elect to accept a payment method in relation to *construction charges* whereby:

- (a) instead of issuing a tax invoice for all or part of the *construction charges*, we will issue you with a statement for the relevant *security amount* for a *security for construction charges*;
- (b) you then provide the *security for construction charges*, which is taken to provide sufficient security for us to commence the relevant *Ergon Energy activities*;
- (c) at the end of the relevant stage of the *Ergon Energy activities*, we will issue you a tax invoice for the relevant *construction charges*; and
- (d) you pay the tax invoice in accordance with clause 19.3(b) and notify us of such payment in accordance with clause 19.3(c), which payment will entitle you to request the return of the relevant *security for construction charges*;
- (e) upon receiving your request for a return of the *security for construction charges*, we will arrange for this to be returned to you; and
- (f) if the tax invoice is not paid, we may draw down on the *security for construction charges* under clause 20.4(b).

19.6. Consequences of delayed payment

- (a) If we do not receive a payment when it is due, then this is a *default*, and:
 - (i) we are entitled to suspend any of the *Ergon Energy activities* until the payment is made; and
 - (ii) interest will accrue in accordance with clause 19.8.
- (b) If we exercise our right to suspend any of the *Ergon Energy activities* under clause 19.6(a)(i):
 - (i) you must reimburse us for any costs related to that suspension (including, but not limited to, demobilisation costs, remobilisation costs, and additional subcontractor charges); and
 - (ii) where this reimbursement results in a change to the recoverable costs of the *Ergon Energy activities* (using the principles set out in clause 19.1), we must use reasonable endeavours to determine an estimate for the revised *construction charges*, and carry out a reconciliation of the *amounts received* against the *construction charges* (to which the reconciliation process set out in clause 19.2(d) applies) and notify you of this.

19.7. Disputed Items

- (a) If the relevant services are not subject to economic regulation and an amount shown on a tax invoice we issued under this contract is disputed by you on a *bona fide* basis, you must pay the amount not in dispute, and 50% of the amount in dispute, to us and provide us with a detailed statement of your objection to the disputed amount.

- (b) The parties must discuss the dispute in good faith.
- (c) For the avoidance of doubt, the dispute resolution clause referred to in clause 3.2(d) applies to any disputes under this clause.

19.8. Default interest

- (a) Subject to clause 19.8(c), interest on an unpaid amount accrues each day in a *default interest period* at the *default rate* for that *default interest period*, and is capitalised (if not paid) on the last day of that *default interest period*.
- (b) Subject to clause 19.8(c), if a liability of a party becomes merged in a judgment or order, the party, as an independent obligation, must pay interest on the amount of that liability, from and including the date of the judgement or order until it is paid in full, at the higher of the *default interest rate* and the rate under the judgement or order.
- (c) Clauses 19.8(a) and 19.8(b) do not operate to impose interest where the unpaid amount constitutes a refund of monies paid.
- (d) Interest under this clause accrues daily and is calculated on the basis of the actual number of days on which interest has accrued and of a 365-day year.

20. SECURITIES

20.1. Provision of security

On or before a relevant *security start date*, you must give us a cash deposit, bank guarantee, surety bond or other form of security acceptable to us for the *security amount* for that *security* to secure on demand and without reference to you, the performance of your obligations to pay any amounts owing to us under this *contract* or the *Ongoing Connection Contract*, as described in Schedule 1.

20.2. Requirements of security

Unless otherwise specified by us, a *security* must be given by a financial institution or an insurer acceptable to us, irrevocable, unconditional, payable on demand and otherwise on terms and conditions acceptable to us.

20.3. Maintenance of security

- (a) Subject to clause 20.3(b), you must ensure that a *security* is continuously maintained in full force and effect from the relevant *security start date* until the relevant *security end date*.
- (b) If we draw on the *security for defects*, you must immediately provide us with a further *security* to ensure that the total amount secured by that *security* held by us is at least equal to the *security amount* for that *security*.
- (c) You must ensure that a *security for construction charges* is continuously maintained in full force and effect until the earliest to occur of:
 - (i) you paying the relevant amount in accordance with clause 19.3(b); or
 - (ii) us drawing on it in accordance with this *contract* in satisfaction of the amount for which it is provided.

20.4. Right to draw on security

- (a) We may draw on a *security for defects* in satisfaction of any amounts incurred by us under clause 13.2(a).
- (b) We may draw on a *security for construction charges* in satisfaction of any amount for which that *security* is provided.
- (c) We may draw on a *security for removal* to cover any loss or damage that we may suffer as a result of removing any assets in accordance with this *contract*, including, without limitation, the amount calculated in accordance with clause 18.3.
- (d) We may draw on a *security for stranded assets* to cover any amount of future revenue that would have been recoverable by us from you under the *Ongoing Connection Contract* where circumstances arise that mean that we will not be able to recover that amount of revenue as part of the network charges from you under the *Ongoing Connection Contract* (such as where connection does not occur, or occurs for a limited time).
- (e) We may draw on a *security* in satisfaction of any one or more of the following amounts:

- (i) amounts owing by *you* to *us* under this *contract* or the *Ongoing Connection Contract*;
 - (ii) the amount of any damages awarded by a court against *you* in *our* favour in relation to or arising out of this *contract* or the *Ongoing Connection Contract*; or
 - (iii) the reimbursement of any costs incurred or losses suffered by *us* as a result of *your* failure to comply with *your* obligations under this *contract* or the *Ongoing Connection Contract*.
- (f) *We* may not exercise *our* rights under this clause 20.4 unless
- (i) *we* have given *you* a written notice of the amount owing; and
 - (ii) *you* have not paid the amount owing within 10 *business days* of receiving the notice.
- (g) The exercise of *our* rights under this clause 20.4 does not limit any of *our* other rights against *you*.

20.5. Return of security

We must return a *security*, or the amount remaining (if any) after drawdown under the provisions of clause 20.4 to *you* in response to a request from *you* after the relevant *security end date*, provided that:

- (a) *we* must return a *security for construction charges* within 20 *business days* of the relevant amount being paid using a methodology set out in clause 19.3(b); and
- (b) this obligation does not apply if *we* are is entitled to make a claim on the relevant *security*. In that event, *we* do not have to return the *security* until all outstanding claims have been finalised.

20.6. Change in circumstances

- (a) At any time during the term of this *contract*, *we* may ask *you* to provide a new or substitute:
 - (i) *security for defects* for an amount greater than or less than the *security amount* for the *security for defects*, taking into account any *transferable asset defects* that have been identified during the *defects rectification period* and the cost of rectifying those *transferable asset defects*;
 - (ii) *security for removal* for an amount greater than or less than the *security amount* for the *security for removal*, taking into account the estimated cost of recovery and removal of the assets in accordance with this *contract*.
 - (iii) *security for stranded assets* for an amount greater than or less than the *security amount* for the *security for stranded assets*, taking into account the likelihood of recovering the future revenue in respect of that part of the *distribution network* constructed as part of the *works* as part of the network charges from *you* under the *Ongoing Connection Contract*.
- (b) *We* must act reasonably in making a request under this clause 20.6.
- (c) *You* must comply with a request under this clause 20.6 within 10 *business days* of receiving the request.
- (d) For the avoidance of doubt, the dispute resolution clause referred to in clause 3.2(d) applies to any disputes under this clause.

21. FORCE MAJEURE EVENTS

21.1. Suspension of obligations

- (a) If a party to this *contract* is unable wholly or in part to perform on time as required any *non-financial obligation* under this *contract* by reason of the occurrence of a *force majeure event*, then for the duration of that *force majeure event*, the rights and *non-financial obligations* of the parties under this *contract* will be suspended in whole or in part, as the case may require, to the extent that the ability of the affected party to perform any of its *non-financial obligations* is adversely affected by the *force majeure event*.
- (b) A *force majeure event* will not extend the term of this *contract*.
- (c) A *force majeure event* does not affect any *financial obligations* under this *contract*.

- (d) Suspension of any *non-financial obligations* under clause 21.1(a) will not affect any rights or obligations that may have accrued prior to that suspension or, if the *force majeure event* affects only some *non-financial obligations*, any other obligations or rights of the parties.
- (e) The period of suspension under clause 21.1(a) of the *non-financial obligations* of the affected party will exclude any delay in the affected party's performance of those *non-financial obligations* that is attributable to a failure by the affected party to comply with clause 21.2.

21.2. Mitigation of *force majeure event*

- (a) Subject to clause 21.2(c), the affected party will use all reasonable endeavours to remove, overcome or minimise the effects of a *force majeure event* as quickly as possible.
- (b) The other party will cooperate and give such assistance as the affected party may reasonably request in connection with the *force majeure event*.
- (c) Nothing in this clause 21 requires the affected party to settle any industrial dispute in any way it does not want to.

21.3. End of *force majeure event*

The affected party must, as soon as reasonably possible after the end of a *force majeure event*, resume performance of any obligation suspended as a result of it.

22. DEFAULT

22.1. Default

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

22.2. Cure periods

- (a) After receiving a *default notice*, the defaulting party has:
 - (i) in the case of a *financial default*, 10 *business days* from the date of receipt of the *default notice*; or
 - (ii) in the case of 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* under clause 22.2(a)(ii) 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 period of time under clause 22.2(a)(ii) will end once the non-defaulting party sends a notice to the defaulting party ending the relevant cure period.

22.3. Remedies

- (a) If a *default* is not cured within the relevant cure period set out in clause 22.2(a), the non-defaulting party may do any one or more of the following:
 - (i) terminate this *contract*,
 - (ii) sue the defaulting party for any outstanding amount owing under this *contract*, and
 - (iii) exercise all other remedies available to it.
- (b) The rights given under clause 22.3(a) are without prejudice to the other party's rights at law.

23. OWNERSHIP OF EQUIPMENT

23.1. Party owns its equipment

- (a) Any plant or equipment installed by a party under this *contract* that is not transferred under either of clauses 11.5(c) or 23.1(b):
 - (i) remains the property of the party; and

- (ii) may be decommissioned and removed by the party once:
 - (A) this *contract* has been terminated (other than under clause 5.2(a)); or
 - (B) the *Ongoing Connection Contract* has been terminated or has expired (and has not been replaced with another *connection contract* between the parties that requires that plant or equipment to provide *connection services*).
- (b) We retain all rights, title and interest in any *long lead time items* unless and until those *long lead time items* are made available for you to collect under clause 18.3(e)(ii)(B)(I), in which case the rights, title and interest in those *long lead time items* transfers to you when you arrive to collect them.
- (c) Any plant or equipment transferred to us under clause 11.5(c):
 - (i) becomes and remains *our* property; and
 - (ii) may be decommissioned and removed by us once:
 - (A) this *contract* has been terminated (other than under clause 5.2(a)); or
 - (B) the *Ongoing Connection Contract* has been terminated or has expired (and has not been replaced with another *connection contract* between the parties that requires that plant or equipment to provide *connection services*).

23.2. You have no rights in the *Ergon Energy activities*

The Customer acknowledges that it does not, at any time, have any rights in or title to:

- (a) the components of the *Ergon Energy activities*; or
- (b) any other equipment, plant, materials or components in connection with the *Ergon Energy activities*.

23.3. Responsibility for assets

After the *notice of acceptance* is issued, we remain responsible for *our* assets and become responsible for the *transferable assets*, and you remain responsible for *your* assets (except for the *transferable assets*).

24. INSURANCE REQUIREMENTS

24.1. Customer insurance requirements

- (a) You must, while the *Customer's activities* are being carried out and up until the completion of *final commissioning*, ensure that the following insurances are obtained and maintained:
 - (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 in connection with the *Customer's activities*; and
 - (ii) all other insurances required by law in respect of any persons, plant or equipment employed in connection with the *Customer's activities*.
- (b) You must ensure that the entity that carries out the design works in respect of the *transferable assets* carries a policy of professional indemnity insurance that:
 - (i) 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 component of the *Customer's activities*;
 - (ii) has a limit of liability of not less than \$1 million for any one claim and in the aggregate; and
 - (iii) is maintained for a period of 6 years after the issue of the *notice of acceptance*.

24.2. *Ergon Energy* insurance requirements

We must, while the *Ergon Energy activities* are being carried out and up until the completion of *final commissioning*, obtain and maintain:

- (a) public liability insurance in the sum of \$10 million covering liability to third parties (including you) arising from third party property and third party injury claims arising from *our* negligence in connection with the *Ergon Energy activities*; and

- (b) all other insurances required by law in respect of any persons, plant or equipment employed in connection with the *Ergon Energy activities*.

24.3. Evidence of insurance

Upon request by one party, the other party must provide a copy of relevant certificates of currency (or other written evidence reasonably satisfactory to the recipient) evidencing the insurance required to be effected and maintained under this clause 24.

25. COMPLIANCE WITH LAWS

25.1. Parties to comply

- (a) Each party must comply with its relevant obligations under the *energy laws* and all other relevant *laws* and *authorisations*.
- (b) The parties acknowledge that the *NER* contains certain provisions that are relevant to the operation of this *contract*, and that need to be incorporated into this *contract* to enable *us* to properly comply with *our* obligations as a registered *Network Service Provider* under the *NER*.
- (c) For any period (from time to time) during the term of this *contract* during which *you* are not a *Registered Participant*, the provisions of Chapters 4, 5, 7 and 8 of the *NER* (as varied by Chapters 8A, 9 and 11 of the *NER* and incorporating the relevant definitions in Chapter 10 of the *NER*) that relate to:
 - (i) the rights or obligations of a *Customer* and/or a *Generator* (as relevant) in relation to a *Network Service Provider* (or vice versa); or
 - (ii) technical or operational specifications that are relevant to the *premises* or facilities provided by *you* that are the subject of this *contract*,are incorporated into this *contract* in accordance with clause 25.1(d) and allowing for the changes in detail to the *NER* that must follow.
- (d) Any provisions that are incorporated into this *contract* under clause 25.1(c) must be read and construed in accordance with the following:
 - (i) references to *Customer* and/or *Generator* (as relevant) or analogous terms are to be taken to be references to *you* as appropriate;
 - (ii) references to *Market Customer* will not be taken to be a reference to *you*;
 - (iii) references to *Network Service Provider* or analogous terms are to be taken to be references to *us*;
 - (iv) any other terms relevant to the abovementioned terms must be construed accordingly;
 - (v) to the extent the provision purports to impose an obligation on a party to interact in some manner with a third party, comply with a requirement of a third party, provide information to a third party or be subject to the jurisdiction of a third party, that requirement will have no effect; and
 - (vi) this clause 25.1(d) does not affect *our* obligation to comply with the *NER* as a registered *Network Service Provider*.
- (e) In addition, in order to interpret the above provisions, the following provisions of the *NER* apply to the extent necessary to give meaning to any provisions incorporated into this *contract* in accordance with clause 25.1(c) above:
 - (i) clauses 4.1.1, 5.1.2, 7.1.1 and 8.1.3;
 - (ii) Chapter 9, to the extent that it modifies any provisions incorporated into this *contract* in accordance with clause 25.1(c) above; and
 - (iii) Chapter 10 and any other provisions that are specifically referred to in Chapter 10 and are necessary to give meaning to the definitions set out in Chapter 10.

25.2. Inconsistency

- (a) If there is any inconsistency between a party's obligations under the *law* (including those obligations incorporated by clause 25.1) and any other provision of this *contract*, the obligation under the *law* (including those obligations incorporated by clause 25.1) prevails. Any failure to comply with the other obligation under this *contract* resulting from compliance with an inconsistent obligation under the *law* (including those obligations incorporated by clause 25.1) does not give rise to a breach of this *contract*.
- (b) If a party becomes aware of any inconsistency between its obligations under the *law* (including those obligations incorporated by clause 25.1) and another obligation of this *contract*, it must notify the other party as soon as practicable.

25.3. Interaction with Ongoing Connection Contract

For the avoidance of doubt:

- (a) if there is any inconsistency between a party's obligations under this *contract* and under the *Ongoing Connection Contract*, the party must comply with the more stringent of the obligations; and
- (b) under no circumstances is the presence of similar clauses both:
 - (i) within this *contract*; or
 - (ii) within both the *Ongoing Connection Contract* and this *contract*,meant to result in any party receiving a duplicate benefit or suffering a duplicate penalty for a single action.

25.4. Technical inconsistencies

Any inconsistency between this *contract* and Schedule 5.2 or Schedule 5.3 of the *NER* is treated as follows:

- (a) if compliance with the relevant provision of this *contract* would adversely affect the quality or security of *network service* to other *Network Users*, the *NER* is to apply; and
- (b) otherwise, this *contract* is to prevail.

26. FORM OF INFORMATION

- (a) *You* acknowledge that *our* internal business systems are designed to accept and process certain types of information in certain formats.
- (b) All information required to be provided, or that is provided, by *you* to *us* under or in connection with this *contract* must be in a format that is acceptable to *us*, acting reasonably.
- (c) If, at any time, *you* request details from *us* about the appropriate format for the information referred to in clause 26(b), then *we* must, within a reasonable time after receiving that request (taking into account the timeframes within which *you* must provide such information), provide *you* with sufficient details of the appropriate format to enable *you* to provide the information in the requested format.
- (d) *We* may set out certain specifications for the formats of information in Schedule 5.

27. WARRANTIES

- (a) *You* warrant that the *design documentation* has been prepared in accordance with the requirements of clauses 6.4(a)(ii) and 7 and that the design of the *Customer's activities* is suitable for the purpose for which it is intended.
- (b) Upon the issue of the *Customer's completion notice*, *you* warrant to *us* that the *transferable assets* have been constructed in accordance with the requirements of this *contract*, the *technical construction requirements*, the *final design documentation*, all relevant *authorisations*, all relevant *Australian Standards*, all relevant *laws* and *good electricity industry practice*, and that the *transferable assets* are fit for their purpose.
- (c) *You* must:

- (i) obtain from all of *your* contractors or sub-contractors involved in the *Customer's activities* relevant to the *transferable assets*, and *your* suppliers or manufacturers of any of the materials or equipment forming part of the *transferable assets*, any warranties that would usually be provided in respect of those items; and
- (ii) ensure that any such warranties are transferred to *us* as a prerequisite to the issue of a *notice of acceptance*, as referred to in clause 11.4(g)(xii)(G).

28. LIABILITY AND INDEMNITY

28.1. Customer acknowledgement

You acknowledge that any involvement by *us* in relation to *works* related to the *transferable assets* (including, without limitation, *our* review of *design documentation* under clause 7.5, *our* review of *authorisations* under clause 7.7(c) and any audit undertaken by *us* under clause 12):

- (a) is undertaken by *us* purely to provide reasonable assurance to *us* that *we* will not, upon transfer of those *transferable assets* to *us* under clause 11.5(c), assume any risk in excess of *our* acceptable risk profile;
- (b) does not, and is not in any circumstances to be taken to, constitute any review, approval, consent, ratification, endorsement, certificate or any similar action by *us*;
- (c) will not ground any liability of *us* to *you*; and
- (d) does not in any way restrict *our* ability to recover amounts under this *contract* in relation to a failure by *you* to comply with this *contract*.

28.2. Ergon Energy not liable

- (a) Despite any other provision of this *contract*:
 - (i) *we* will not be liable to *you* for; and
 - (ii) *our* right to recover the *construction charges* will not be limited by, the *construction charges* differing from the amounts set out in Schedule 1 for any reason.
- (b) *We* are not liable to *you* for, or in connection with, any of the following:
 - (i) subject to clause 28.5, any loss suffered by *you* as a result of *us* exercising *our* rights under clause 23.1(a)(ii);
 - (ii) any involvement of *us* as contemplated in clause 28.1; or
 - (iii) *us* exercising any right to terminate under this *contract*, provided that such right has been exercised in accordance with this *contract*.
- (c) *We* agree that where *we* subcontract any of the *Ergon Energy activities* to a subcontractor, and *you* make a claim against *us* under this *contract* in respect of the *Ergon Energy activities* the subject of that subcontract:
 - (i) *we* must exercise *our* entitlements under that subcontract to enforce compliance and/or recover damages (as relevant) (and must permit *you* to be joined in any action under that subcontract); and
 - (ii) *we* will only be liable to *you* to the extent that:
 - (A) *we* can recover damages from the subcontractor; or
 - (B) the subcontract does not accurately reflect *our* obligations under this *contract*.
- (d) Provided *we* comply with *our* obligations under clause 8.4(a)(iii), no damages (liquidated or otherwise) will be payable to *you* if *we* do not complete construction of the *Ergon Energy activities* by *our* target completion date.

28.3. No relief from obligations under this contract

- (a) The review, or otherwise, of the *design documentation* by *us* under clause 7.5 does not relieve *you* of *your* obligations under this *contract*, and *you* remain solely liable for the *design documentation*.
- (b) *Our* issuing a *notice of acceptance* does not relieve *you* of any obligations or liability in connection with the *transferable assets* or for any *transferable asset defects*.

- (c) Subject to clause 28.2(c), subcontracting of any *works* by a party does not relieve that party of its obligations under this *contract*.

28.4. Exclusion of liability for consequential loss

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

- (a) any cost, expense, loss or damage of an indirect or consequential nature;
- (b) loss of profits, loss of contract, loss of opportunity, loss of goodwill, loss of business reputation, loss of revenue, loss of use of property or loss of production;
- (c) increased costs of working or labour costs;
- (d) costs of capital;
- (e) costs of business interruption; or
- (f) costs, expenses, loss or damage that are not a direct and immediate consequence of the breach,

suffered by the other party however arising due to any causes including but not limited to the default or sole or concurrent negligence of a party or its *representatives* and whether or not foreseeable at the date of this *contract*.

28.5. Indemnity from the *Customer*

- (a) Subject to clause 28.4, *you* indemnify *us* against any loss to *us* or any claims against *us* for:
 - (i) personal injury or death; and
 - (ii) loss of, or damage to, *our connection assets* and plant and equipment necessary for the construction of *our connection assets*, up to \$5 million,arising out of *your* breach of this *contract*, any acts or omissions by *you* in the performance of this *contract* that are negligent, or any acts or omissions by *you* in the performance of this *contract* that are a breach of legislation.
- (b) Clause 28.7 applies to this indemnity to the extent that *our* negligent act or omission may have contributed to the injury, death, loss or damage.

28.6. Indemnity from *Ergon Energy*

- (a) Subject to clauses 28.2 and 28.4, *we* indemnify *you* against any loss to *you* or any claims against *you* for:
 - (i) personal injury or death; and
 - (ii) loss of, or damage to, *your* connection assets and plant and equipment necessary for the construction of the *your* connection assets, up to an amount of \$5 million,arising out of *our* breach of the Contract, any acts or omissions by *us* in the performance of this *contract* that are negligent, or any acts or omissions by *us* in the performance of this *contract* that are a breach of legislation.
- (b) Clause 28.7 applies to this indemnity to the extent that *your* negligent act or omission may have contributed to the injury, death, loss or damage.

28.7. Contribution to loss suffered

If a party makes a claim against the other party under this *contract* and the party making the claim has contributed to the loss that it has suffered, the entitlement to damages of the party making the claim must be proportionately reduced, taking into account the extent to which it has contributed to its own loss.

1. SCHEDULE 1 – REFERENCE SCHEDULE

- (a) The *target completion dates* are:
 - (i) for the *Ergon Energy activities*: [insert]; and
 - (ii) for the *Customer’s activities*: [insert].
- (b) The estimated *construction charges* as at the date of this *contract* are set out below:

Component	Estimate
ACS component (GST exclusive)	\$[insert]
Unregulated component (GST exclusive)	\$[insert]
GST	\$[to be inserted]
Total Cost (GST inclusive)	\$[to be inserted]

- (c) *Security amounts, security start dates and security end dates*

Type of security	Things secured	Security amount	Security start date	Security end date
Security for construction charges	[Identify particular payment for which security is to be given]	[Insert relevant amount plus GST.] (GST inclusive)	[Insert date (same as for that payment under Item 1(b).)]	
Security for defects	[Expected cost of rectifying transferable asset defects]	[Insert amount including GST.] (GST inclusive)	[Insert date (same as for that payment under Item 1(b).)]	
Security for removal	Ergon Energy’s costs of recovery and removal of any assets upon termination of the <i>Ongoing Connection Contract</i> .	[insert amount including GST.] (GST inclusive)	[Within 10 business days of us starting construction works under this contract.]	In accordance with the <i>Ongoing Connection Contract</i> .
Security for stranded assets				

- (d) *Liaison personnel*

[Drafting note: insert details of nominated *liaison personnel*.]

Ergon Energy	
Name	[insert details]
Phone number:	[insert details]
Mobile number:	[insert details]
Email address:	[insert details]
Fax number:	[insert details]
Customer	
Name:	[insert details]
Phone number:	[insert details]
Mobile number:	[insert details]
Email address:	[insert details]

Fax number:	[insert details]
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- (e) Address details for providing notices

Ergon Energy	
Address:	PO Box 1090, Townsville QLD 4810
Fax number:	(07) 4728 9640
Email address:	AdminConnectionManagers@ergon.com.au
Attention:	Portfolio Manager Major Customers
Customer	
Address:	[insert details]
Fax number:	[insert details]
Email address:	[insert details]
Attention:	[insert details]

- (f) 24-hour contact details

Ergon Energy	
Name	[insert details]
Phone number:	[insert details]
Mobile number:	[insert details]
Email address:	[insert details]
Fax number:	[insert details]
Customer	
Name:	[insert details]
Phone number:	[insert details]
Mobile number:	[insert details]
Email address:	[insert details]
Fax number:	[insert details]

- (g) *Specifications*

[insert]

- (h) *Approved contractors panel*

[insert details of each approved contractor]

- (i) *Approved suppliers panel*

[insert details of each approved supplier]

- (j) *Prescribed materials and equipment*

[insert descriptions of materials and equipment that need to be sourced from approved suppliers]

2. SCHEDULE 2 – WORKS

- (a) *Unregulated component of Ergon Energy activities*

[Insert list of any unregulated services.]

- (b) *ACS component of Ergon Energy activities*

[Insert list of any alternative control services.]

- (c) *SCS component of Ergon Energy activities*
[Insert list of any standard control services.]
- (d) *Customer's activities*
[Insert list of *Customer's activities*.]
- (e) *Transferable assets*
[Insert list of *transferable assets*.]

3. SCHEDULE 3 – WORKS PROGRAM

[Insert *works program* setting out list of major milestones for the *works*.]

4. SCHEDULE 4 – TECHNICAL CONSTRUCTION REQUIREMENTS

[insert]

5. SCHEDULE 5 – INFORMATION FORMAT SPECIFICATIONS

[insert any relevant details]

6. SCHEDULE 6 – WORKS PROTOCOL

[insert]

EXECUTED as an agreement.

SIGNED for and on behalf of **Ergon Energy Corporation Limited (ABN 50 087 646 062)** by its attorney under power of attorney dated 28 October 2014:

Signature of attorney

Alan Newman, Manager Major Customers

Name and title of attorney

Signature of witness

Name of witness

Date:

EXECUTED by **[name of Customer]** (ABN **[insert]**)
in accordance with s 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Name

Signature of director/secretary

Name

Date: